UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN HOT-ROLLED STEEL PRODUCTS FROM BRAZIL, JAPAN, AND RUSSIA

Investigations Nos. 701-TA-384 and 731-TA-806-808 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3142, November 1998)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 701-TA-384 (Preliminary) and
Investigations Nos. 731-TA-806-808 (Preliminary)

CERTAIN HOT-ROLLED STEEL PRODUCTS
FROM BRAZIL, JAPAN, AND RUSSIA

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 threatened with material injury by reason of imports from Brazil of certain hot-rolled steel products, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Brazil.[2] 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 threatened with material injury by reason of such imports from Brazil, Japan, and Russia that are alleged to be sold in the United States at less than fair value.[2]

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 these 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 section 705(a) and section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations, have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On September 30, 1998, a petition was filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; U.S. Steel Group, a unit of USX Corp., Pittsburgh, PA; Ispat Inland Steel, East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; National Steel Corp., Mishawaka, IN;[3] California Steel Industries, Fontana, CA; Gallatin Steel Co., Ghent, KY; Geneva Steel, Vineyard, UT; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Steel Dynamics, Butler, IN; Weirton Steel Corp., Weirton, WV; Independent Steelworkers Union, Weirton, WV; and the United Steelworkers of America, Pittsburgh, PA, alleging that an industry in the United States is materially injured by reason of

[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] Commissioner Crawford determined that there is a reasonable indication that an industry in the United States is materially injured.

[3] National Steel Corp. is not a petitioner with respect to Japan.

subsidized or LTFV imports of certain hot-rolled steel products from Brazil, Japan, and Russia. Sales of such product are allegedly subsidized with respect to Brazil and made at LTFV with respect to Brazil, Japan, and Russia. Accordingly, effective September 30, 1998, the Commission instituted investigation No. 701-TA-384 (Preliminary) and investigations Nos. 731-TA-806-808 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of October 7, 1998 (63 FR 53926). The conference was held in Washington, DC, on October 21, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 threatened with material injury by reason of imports of certain hot-rolled carbon steel products from Brazil that are allegedly subsidized and imports of certain hot-rolled carbon steel products from Brazil, Japan, and Russia 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

---

[1] Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain hot-rolled steel products from Brazil that are allegedly subsidized and imports of certain hot-rolled steel products from Brazil, Japan, and Russia that are allegedly sold in the United States at LTFV. *See* Views of Commissioner Carol T. Crawford, *infra*. She joins in sections I-IV of this opinion.

[2] 19 U.S.C. §§ 1671b(a) and 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 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* Nippon Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

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

B. Product Description

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

> certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) is not included within the scope of these investigations.
>
> Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.
>
> Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is 2 percent or less, by weight, and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:
>
> 1.80 percent of manganese, or
> 1.50 percent of silicon, or
> 1.00 percent of copper, or
> 0.50 percent of aluminum, or
> 1.25 percent of chromium, or
> 0.30 percent of cobalt, or
> 0.40 percent of lead, or
> 1.25 percent of nickel, or
> 0.30 percent of tungsten, or

---

[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).

0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.[11]

C. Domestic Like Product

The scope of these investigations is similar to the scope of prior investigations of hot-rolled carbon steel products[12] except for the addition of certain steel products that are classified under the Harmonized Tariff System as alloy steel (referred to, for the sake of convenience, as "microalloyed steels").[13]

Petitioners argue that there is a single like product in these investigations, consisting of all hot-rolled carbon steel products within the scope of these investigations. No party has presented an alternative definition.[14] We have considered whether (1) microalloyed steels should be defined as a separate domestic like product; or (2) if not, whether the inclusion of microalloyed steels warrants expanding the definition of the domestic like product to include not only certain hot-rolled carbon steel products (including microalloyed steels) but also all alloy steels.

---

[11] 63 Fed. Reg. 56607-56608 and 56623 (Oct. 22, 1998). Commerce excluded the following products from the scope of these investigations: (1) Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506); (2) SAE/AISA grades of series 2300 and higher; (3) Ball bearing steels, as defined in the HTSUS; (4) Tools steels, as defined in the HTSUS; (5) Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent; (6) ASTM specifications A710 and A736; and (7) USS abrasion-resistant steels (USS AR 400, USS AR 500).

[12] *See, e.g.,* Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-342, 344 and 347-353 (Final); and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 12-13 (Aug. 1993).

[13] This is because one or more of the alloying elements present in the products meets or exceeds levels contained in the definition of "other alloy steel" in Note 1(f) to Chapter 72 of the HTS.

[14] Itochu International, Inc. ("Itochu"), an importer of the subject merchandise from Japan, argues that there is no material injury or threat thereof caused by the importation of two products from Japan that Itochu claims are not produced domestically. These products are: (i) a type of hot-rolled sheet used in the United States to manufacture coiled tubing for deep "in-well" oil and gas servicing operations; and (ii) high-strength hot-rolled single gauge coil with a thickness of 0.054 inches or less used in the metal building component market in the United States. Itochu concentrates its arguments on the sheet used to make coiled oil and gas well tubing. Itochu claims that this sheet is made using proprietary chemical compositions and that it has a unique tapered shape. The price of the product also is considerably higher than the closest grade of domestic steel. Itochu claims that no domestic mill produces the product. Itochu Postconference Brief at 3-7. Itochu's arguments are premised on the assumption that if there is no domestic product exactly like the subject imports, there is no domestic industry and the Commission is compelled to reach a negative determination. This approach ignores the statutory requirement that if there is no product "like" the subject imports, the Commission must find the domestic product that is "most similar in characteristics and uses with" the imports. 19 U.S.C. §1677(10). *See* Certain Stainless Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom, Invs. Nos. 701-TA-380-382 and 731-TA-797-804 (Preliminary), USITC Pub. 3118 at 5, n.16 (Aug. 1998). We find that the product like or most similar to the two niche products that Itochu has identified is certain hot-rolled carbon steel products.

1. Whether Microalloyed Steels and Conventional Hot-Rolled Carbon Steel Products Should be Defined as One or as Separate Domestic Like Products.

Microalloyed steels are carbon steel products made on the same equipment as conventional hot-rolled carbon steel but modified by the introduction of slightly elevated levels of alloying elements (albeit elevated levels of different alloying substances for different kinds of microalloyed steels).[15] Microalloyed steels include some high strength low alloy ("HSLA") steels, interstitial free ("IF") steels, substrate for motor lamination steel, and other products. Hot-rolled carbon steel products, including microalloyed steels, are characterized by their malleability.

While there are differences in characteristics and uses between microalloyed steels and conventional hot-rolled carbon steel, there are also broad similarities, and any differences do not constitute a clear dividing line between the two groups of products, particularly given the spectrum of widely varying products that constitute hot-rolled carbon steel. Producers and consumers generally perceive microalloyed steels to be enhanced carbon steel products, and microalloyed steels are largely produced in the same facilities and by the same employees as conventional hot-rolled carbon steel products.[16] It appears that some microalloyed steels are somewhat interchangeable with conventional carbon steel products.[17] While physical characteristics and uses, channels of distribution and pricing for the two groups of products differ somewhat, the differences are not so pronounced, in light of the general similarities noted above, to warrant treating microalloyed steels as a separate like product.

2. Whether the Domestic Like Product Should be Defined More Broadly Than the Subject Merchandise to Include All Alloy Steels.

The lack of a clear dividing line between microalloyed steels and hot-rolled carbon steel, however, does not warrant broadening the like product to include all alloy steels. There are marked differences between hot-rolled carbon steels and all alloy steels according to almost every factor that we traditionally consider in our like product analysis. Carbon steel and alloy steel have different physical characteristics and uses, with carbon steel noted for its malleability and alloy steel characterized by its hardenability.[18] Thus, carbon and alloy steels generally are not interchangeable, and there are differences in the channels of distribution and end uses for carbon and alloy steels.[19] Carbon and alloy steels are perceived as different products by producers and consumers.[20] Unlike carbon steels, alloy steels are perceived as specialty products manufactured for special applications and generally sold in smaller quantities than carbon steel.[21] Carbon and alloy steels are generally manufactured by different groups of domestic producers.[22] Finally, there is a large price difference between carbon and alloy steels.[23] In sum, we believe that there continue to be clear dividing lines between hot-rolled carbon steels and alloy steels (notwithstanding the fact that the development in recent years of some types of microalloyed steels may have tended to blur the distinction somewhat), and that an expansion of the definition of the domestic like product beyond certain hot-rolled carbon steel products (including microalloyed steel) is not appropriate.

---

[15] CR at I-4 and I-12, PR at I-3 and I-9. Petitioners note that many HSLA and IF steels fall within the HTSUS definition of carbon steel. Petitioners' Postconference Brief (hereinafter "Pet. Br.") at 6.

[16] CR at I-12, PR at I-9.

[17] Transcript of Oct. 21, 1998, Staff Conference ("TR") at 106 (testimony of petitioners' representative that IF steels compete with traditional carbon steels in the marketplace).

[18] TR at 104, 105 (Testimony of Brian Atwood).

[19] CR at I-10, I-13, and I-16; PR at I-7-8, I-10, and I-12; Pet. Br. at 12.

[20] TR at 118 (Testimony of Brian Atwood); CR at I-16, PR at I-12.

[21] TR at 106-07 (Testimony of Brian Atwood).

[22] CR at I-15 and n.40, PR at I-11 and n.40.

[23] Table I-3, CR at I-14, PR at I-10.

D. Domestic Industry and Related Parties

The domestic industry is defined as "the producers as a [w]hole of a domestic like product."[24] 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.[25] Because we have found that the domestic like product consists of all hot-rolled carbon steel flat products within the scope of these investigations, for purposes of these preliminary investigations, we also find that the domestic industry consists of all domestic producers of these products.

In these investigations, two domestic producers are subject to exclusion under section 771(4)(B) of the Act:[26] National Steel because it is majority-owned by NKK Corp., a Japanese exporter of the subject merchandise, and *** because it imported the subject merchandise from Japan. No party has urged the Commission to exclude either producer from the industry. Petitioners argue that appropriate circumstances do not exist to exclude any domestic producers that qualify as "related parties" because in each case the domestic producer's primary interest is in domestic production, and any companies that imported the subject merchandise imported only small quantities to serve short-term needs.[27] We find that appropriate circumstances do not exist to exclude either producer from the domestic industry for purposes of our injury determination. The record does not reflect that NKK's relationship with National Steel shields National Steel from the effects of the subject imports.[28] With respect to ***, its low ratio of imports to production as well as its support for the petition demonstrate that ***'s interests are primarily those of a producer.

III. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a material injury determination, Section 771(7)(G)(I) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.[29] In assessing whether subject imports compete with each other and with the domestic like product,[30] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;[31]

---

[24] 19 U.S.C. § 1677(4)(A).

[25] *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).

[26] 19 U.S.C. §1677(4)(B).

[27] Pet. Br. at 14-15.

[28] Commissioner Crawford finds that National Steel's primary interest lies in domestic production, and thus that appropriate circumstances do not exist to exclude it from the domestic industry.

[29] 19 U.S.C. § 1677(7)(G)(I). There are four exceptions to the cumulation provision, none of which applies to these investigations. *See id.* at 1677(7)(G)(ii).

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

[31] Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with

(continued...)

(2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[32]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[33] Only a "reasonable overlap" of competition is required.[34]

For purposes of determining if a threat of material injury exists, cumulation is discretionary. Under section 771(7)(H) of the Act, the Commission may "to the extent practicable" cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.[35] In addition to considering the four cumulation factors described above, the Commission also may consider the similarity of trends in the volume and price of subject imports from the countries under investigation.[36]

Petitioners argue that the Commission should cumulate imports from the three subject countries. They point to evidence of competition among hot-rolled carbon steel from the subject countries, as well as between these countries and domestic producers. They also argue that the vast majority of hot-rolled carbon steel from the subject countries and the domestic producers is fungible. Petitioners contend that all subject imports and domestic hot-rolled carbon steel compete in overlapping geographic markets, and that imported and domestic hot-rolled carbon steel are sold through similar channels of distribution, and were simultaneously present in the U.S. market throughout the period examined.[37]

Respondents argue that imports from each of the subject countries should not be cumulated with those from the other subject countries. Respondents argue that imports from Russia do not compete with the subject imports from Japan or Brazil because of differences in quality, product grades and sizes, and price.[38] Respondents also point to differences in the geographic markets in which imports from Russia and Japan are

---

[31] (...continued)
her colleagues that subject imports from Brazil, Japan, and Russia should be cumulatively assessed. However, in any final phase investigations she intends to examine further the substitutability between Russian subject imports and other subject imports. *See* Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

[32] *See* Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

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

[34] *See* Goss Graphic System, Inc. v. United States, ___ CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[35] 19 U.S.C. § 1677(7)(H).

[36] See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States , 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

[37] Pet. Br. at 15-22.

[38] Respondents' Joint Postconference Brief ("Jt. Resp. Br.") at 29-36.

concentrated.[39] In addition to their general arguments concerning cumulation, the Russian respondents argue that the Commission should not cumulate their imports for purposes of the threat analysis, because of differences in the trends of import penetration and in pricing patterns among the three subject countries.[40] Brazilian respondents argue that cumulation of their imports with those from the other subject countries for purposes of the threat analysis would be inappropriate because the volume of imports from Brazil is far below that of imports from Russia or from Japan, and the trend in Brazilian import volume has been downward over the last interim period, compared to the levels from Russia and from Japan, which increased. Brazilian respondents further note that their imports have shown significant price stability over the period examined relative to imports from Japan and Russia.[41] Japanese respondents argue that cumulating their imports with imports from Brazil would be improper for the threat analysis, given that the economic situations in the two countries differ significantly.[42]

We find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. The record shows that imports from each of the subject countries were present in the U.S. market throughout the period examined.[43] Both the domestic like product and the subject imports from all three countries were sold throughout the United States. Although the geographic distribution of subject imports varied somewhat, imports from each of the three subject countries were found in each region during the period examined.[44]

Both the domestic producers and importers sell to distributors, processors, and service centers; manufacturers of tubular products; and other end users. The distribution of imports from Japan closely mirrors the open market distribution of the domestic like product, with approximately one-half going to distributors, processors, and service centers and the remainder divided equally between tube manufacturers and other end users. Imports from Brazil are overwhelmingly sold to distributors, processors, and service centers. While the bulk of imports from Russia are also sold to distributors, processors, and service centers, the share of imports from Russia purchased by tubular manufacturers is nearly identical to that for imports from Japan.[45]

With respect to fungibility, there are some quality differences between the subject merchandise from Russia, the domestic like product and other subject imports as well as some degree of differentiation in the product mix. Nonetheless, we find that the current record suggests that product from all three countries are broadly interchangeable with each other and with the domestic like product, generally manufactured to industry standards, and suitable for a wide range of applications.[46] A majority of the importers responding to our questionnaire consider Russian steel to be generally interchangeable with Brazilian steel, and nearly half of them consider Russian steel to be generally interchangeable with Japanese steel.[47] Importers did identify factors that differentiate Russian hot-rolled carbon steel products from the domestic merchandise and other subject imports.[48] However, we find that the weight of the evidence in the current record demonstrates that

---

[39] Jt. Resp. Br. at 34-44.

[40] Russian Respondents' Postconference Brief at 3-5.

[41] Brazilian Respondents' Postconference Brief at 5.

[42] Japanese Respondents' Postconference Brief at 3.

[43] Table IV-3, CR at IV-6, PR at IV-5 and Table IV-5, CR at IV-10, PR at IV-9; *see also* Pet. Br. at Exhibit 28, showing monthly imports for the period examined.

[44] Nearly 40 percent of all imports from Brazil, 45 percent of Japanese, and 60 percent of Russian imports were landed in the Gulf region. Imports from Brazil had a notable presence in each of the other regions. Imports from Japan tended to be concentrated in the West region, while Russian products were more likely bound for the East region or the Great Lakes region. Table IV-4, CR at IV-9, PR at IV-8. Most importers of the subject imports reported that the majority of their sales were within 100 miles of the port of entry or storage facility. CR at V-3, PR at V-1.

[45] CR at II-1, PR at II-1.

[46] CR at II-5-7, PR at II-3-4.

[47] CR at II-7, PR at II-4.

[48] CR at II-6, PR at II-4.

there is a reasonable level of fungibility among the domestic merchandise and the subject imports, including those from Russia. We will reexamine this issue in any final phase of these investigations.[49] [50]

We have taken into account the fact that imports from the subject countries exhibited similar volume and pricing trends during the period for which data were collected. Between 1995 and 1997, the volume of imports from each of the three countries rose. For the interim first six months of 1998, compared to the same period in 1997, imports from Japan and Russia continued to rise.[51] Imports from Brazil have leveled off somewhat, but are higher than the 1995 and 1996 levels.[52] Prices of imported product from each of the three countries showed similar trends between 1995 and 1997, with the average unit value of imports from Brazil, Russia, and Japan declining by 16 percent, 12 percent, and 20 percent, respectively. The downward trend of import prices has continued into 1998, with prices dropping for subject imports from all three countries.[53] Thus, based on consideration of all of the factors discussed above, we have exercised our discretion to assess cumulatively the volume and price effects of the subject imports from all three countries.

IV. CONDITIONS OF COMPETITION

The following conditions of competition are pertinent to our analysis in these investigations. First, the domestic industry captively consumes the majority of its domestic production of the domestic like product in the manufacture of downstream products.[54] Accordingly, we have considered whether the captive production provision requires us to focus our analysis on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.[55] [56] [57] [58] We agree with

---

[49] According to the official import statistics, imports of hot-rolled carbon steel products from the subject countries accounted for the following percentages of the total quantity of U.S. imports of the subject merchandise in the period September 1997 through August 1998: Brazil -- 5.0 percent, Japan -- 20.2 percent, and Russia -- 31.8 percent. Table IV-2, CR at IV-5, PR at IV-5. Consequently, we do not find negligible imports from any of the subject countries. *See* 19 U.S.C. §§ 1671b(a) and 1673b(a).

[50] Based on the foregoing, Commissioner Crawford finds that there is a reasonable overlap of competition among the subject imports and with the domestic like product for purposes of her determination that there is a reasonable indication of material injury by reason of the subject imports. She does not join in the remainder of the discussion concerning cumulation for purposes of the majority's threat determination.

[51] Table IV-3, CR at IV-6, PR at IV-5.

[52] If preliminary data for July and August (following the period examined) are considered, the drop in Brazilian import volume is significantly smaller than appears when comparing January-June data alone. CR at VII-8, n.6, PR at VII-8, n.6, Pet. Br. at Exhibit 11.

[53] Table IV-3, CR at IV-6, PR at IV-5.

[54] Table III-3, CR at III-7, PR at III-6.

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

> (iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --
>
> > (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
> >
> > (II) the domestic like product is the predominant material input in the production of that downstream article, and
> >
> > (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

(continued...)

petitioners that significant production of the domestic like product is both internally transferred and sold in the merchant market.[59] However, the record indicates that hot-rolled carbon steel sold in the merchant market is generally used in the production of the same downstream products for which hot-rolled carbon steel is internally consumed.[60] Accordingly, for purposes of our preliminary determinations we find that the third criterion of the captive production provision is not satisfied. Consequently, the captive production provision does not apply in these investigations.[61] [62] However, even in circumstances in which the captive production

---

(...continued)

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

[56] For purposes of these determinations, Chairman Bragg and Vice Chairman Miller take no position on the applicability of the captive production provision. They do not necessarily subscribe to prior interpretations of this provision and invite the parties to address in detail the scope and legislative intent of this provision and its application in this case.

[57] For our preliminary determination we have analyzed whether this provision applies in these investigations. We invite the parties to comment, however, on whether the captive production provision applies to Commission threat determinations.

[58] No party disputes that the second criterion of the captive production provision is satisfied. The parties disagree, however, on whether the first and third criteria of the captive production provision are satisfied. Petitioners argue that the first criterion is satisfied because the downstream article produced by domestic producers (which, according to petitioners, is cold-rolled sheet) does not enter the merchant market for the domestic like product. Pet. Br. at 26. Respondents argue that the first criterion is not satisfied because the hot-rolled steel used in captive consumption is the same type or category of steel that is used in the merchant market. Jt. Resp. Br. at 7-8. As to the third criterion, petitioners concede that some hot-rolled flat products sold in the merchant market are used in the production of cold-rolled flat products (which petitioners implicitly treat as "the downstream article"), but they argue that the volumes involved are not sufficient for the Commission to find that the domestic like product sold in the merchant market is "generally used" in the production of the downstream article. Pet. Br. at 27-29. Joint Respondents argue that the third criterion is not satisfied because a significant portion of merchant market sales of hot-rolled carbon steel is used to produce the same products as the downstream products, namely cold-rolled and galvanized steel, pipe and tube products, and cold-formed products. Jt. Resp. Br. at 13-15. We will examine further in any final phase investigations the question of whether the first and third criteria of the captive production provision apply, and we invite briefing on these issues.

[59] *See* Pet. Br. at 25. During the period examined, domestic mills internally consumed between 61.5 and 63.6 percent of their total shipments of hot-rolled carbon steel in the production of downstream products, consisting of cold-rolled steel, cut-to-length plate, tubular products, and further-processed (*e.g.*, galvanized or plated) steel; and between 34.6 and 38.2 percent of their total shipments went to the U. S. merchant market. CR at III-6, PR at III-5.

[60] Taking into account the hot-rolled carbon steel that is used to make cold-rolled flat products, tubular products, and cut-to-length plate, it appears that approximately one-third of merchant market shipments in 1997 may have been used to produce downstream products. (This estimate is based on the sum of the merchant market shipments used to make cold-rolled flat products, tubular products, and cut-to-length plate, which are calculated as follows: (1) petitioners estimate that approximately 5 percent of merchant market shipments of hot-rolled flat products in 1997 were used to make cold-rolled flat products. Pet. Br. at 28-29 and Exhibit 10; (2) in 1997, 24.2 percent of merchant market shipments of hot-rolled carbon steel were used to make tubular products. CR at II-1, PR at II-1; (3) in its recent investigations on carbon steel cut-to-length plate, the Commission found that U.S. processors produced 1.2 million short tons of cut-to-length plate from coiled plate produced and sold by U.S. mills in 1996. Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Invs. Nos. 731-TA-753-756 (Final), USITC Pub. No. 3076 at I-6 (Dec. 1997). This volume is equivalent to 5.8 percent of the 21.3 million short tons of commercial shipments of hot-rolled carbon steel products reported by U.S. mills in 1996. Table III-3, CR at III-7, PR at III-6.) Furthermore, 15 of the 19 reporting domestic producers that internally consume hot-rolled steel have reported that a portion of the hot-rolled steel sold on the merchant market is used to produce the same products that are produced from captively consumed hot-rolled steel. CR at III-8, PR at III-7.

[61] Commissioner Askey notes that the statute requires the Commission to analyze the impact of the subject imports on all domestic production operations, including both captive and merchant market shipments. *See* 19 U.S.C.

(continued...)

provision does not apply, the Commission has discretion to consider the significant volume of captive production as a condition of competition.[63] Accordingly, we have examined data both for the domestic industry as a whole and for merchant market operations for purposes of these preliminary determinations. [64] [65]

The period examined was characterized by strong U.S. demand for, and rising consumption of, the subject merchandise. Apparent U.S. consumption of hot-rolled carbon steel products rose from 57.5 million short tons in 1995, to 64.2 million short tons in 1996, and to 66.8 million short tons in 1997. There was also an increase in the interim periods, from 33.1 million short tons in interim 1997 to 36.3 million short tons in interim 1998.[66] The domestic industry's capacity utilization rates during this period were relatively high: 93.1 percent in 1995, 95.1 percent in 1996, 92.9 percent in 1997, 94.5 percent in interim 1997, and 91.7 percent in interim 1998.[67] At the same time, available information indicates that demand for the subject merchandise declined in a number of important foreign markets, including those in Asia, particularly in 1997 and interim 1998.[68]

Imports from nonsubject countries were present in the U.S. market in substantial quantities throughout the period examined. Imports of hot-rolled carbon steel from sources other than Brazil, Japan, and Russia were 2.9 million short tons in 1995, 3.9 million short tons in 1996, 3.5 million short tons in 1997, and 1.7 million short tons in interim 1998.[69] When measured by total U.S. consumption, the market share of nonsubject imports was 5.1 percent in 1995, 6.1 percent in 1996, 5.2 percent in 1997, and 4.6 percent in interim 1998.[70] The market share of nonsubject imports, when measured by merchant market consumption, was 12.7 percent in 1995, 14.7 percent in 1996, and 11.9 percent in 1997.[71]

A further condition of competition raised by respondents is the strike at General Motors Corp. (GM), which appears to have affected demand for hot-rolled steel. The strike began on June 5, 1998, and ended on July 29, 1998, and thus the actual effects of the strike are not entirely reflected in the data for the period

---

[61] (...continued)
§§1677(4)(A) and 1677(7)(B). Moreover, she notes that, even if the statutory provisions are met and the captive production provision applies, it merely permits the Commission to "focus primarily" on the merchant market operations of the industry; the provision does not allow the Commission to disregard the industry's captive consumption completely. 19 U.S.C. §1677(7)(C)(iv).

[62] Commissioner Hillman notes that the captive production provision takes account of cases in which "imports compete primarily with sales of the domestic like product in the merchant market, not with the inventory internally-transferred for processing into a separate downstream article." SAA at 852. She believes the provision's criteria should be interpreted with this purpose in mind. Based on petitioners' estimates and AISI data, it appears that U.S. producers use the vast majority (over 90 percent) of internally-consumed hot-rolled steel to make cold-rolled products (primarily sheet). By contrast, based on these same sources, it appears that open-market purchasers of hot-rolled steel turn only an estimated five percent of their purchases into cold-rolled sheet. This limited overlap, if true, is consistent with the view that imported hot-rolled steel (which is generally sold on the open market) does not compete substantially with captively-consumed domestic hot-rolled steel. Thus, she believes the third criterion -- whether the like product sold in the merchant market is "not generally used" to make the captively-produced downstream product -- would be met on these facts. She intends to examine closely the interpretation and applicability of the captive production provision in any final investigations.

[63] *E.g.*, Open-End Spun Rayon Singles Yarn from Austria, Inv. No. 731-TA-751 (Final), USITC Pub. No. 3059 at 6 (Sept. 1997); Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Invs. Nos. 731-TA-794-796 (Preliminary), USITC Pub. No. 3108 at 14 (May 1998).

[64] Chairman Bragg notes that within her discretion, in these investigations, she has focused more on the merchant market for hot-rolled steel.

[65] Commissioner Crawford's analysis is based on the total domestic market and the domestic industry as a whole.

[66] Table IV-6, CR at IV-11, PR at IV-9.

[67] Table III-2, CR at III-4, PR at III-4.

[68] Pet. Br. at Exhibits 32, 35, and 36.

[69] Table IV-3, CR at IV-6, PR at IV-5.

[70] Table IV-8, CR at IV-13, PR at IV-11.

[71] Table IV-9, CR at IV-14, PR at IV-12.

examined, which generally ended with the second quarter of 1998. GM has estimated that the total amount of flat-rolled steel (including hot-rolled, cold-rolled and corrosion resistant steels) that was not purchased by it and its suppliers as a result of the strike-related work stoppages was about 685,000 tons.[72] We intend to obtain further available information regarding the effect of the GM strike in any final phase investigations.

Lastly, we find that domestically produced and subject imported hot-rolled carbon steel products are broadly interchangeable. Importers explained this interchangeability between the domestic and subject imported product by reference to the applicability of defined product standards.[73] [74] In light of this fact, price is an important factor in purchasing decisions, although many importers reported that factors other than price also are important in comparing the domestic merchandise and the subject imports.[75]

V. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV IMPORTS

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."[76] The Commission may not make such a determination "on the basis of mere conjecture or supposition,"[77] and considers the threat factors "as a whole."[78] In making our determination, we have considered all factors[79] that are relevant to these investigations.[80] [81] [82] [83]

---

[72] GM Postconference Brief at 5.

[73] CR at II-5-6, PR at II-4.

[74] For Commissioner Crawford's findings with respect to the substitutability among the alternative sources for the products, *see* Views of Commissioner Carol T. Crawford, *infra*.

[75] *Id.*

[76] 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

[77] 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, 387-88 (Ct. Int'l Trade 1992), *citing* H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

[78] 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.

[79] 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.

[80] 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).

[81] We have not received any information from Commerce as to the nature of the countervailable subsidies alleged in connection with imports from Brazil. Commerce's notice initiating the countervailing duty investigation of imports from Brazil merely identifies the alleged subsidy programs by name. 63 Fed. Reg. 56623, 56626 (Oct. 22, 1998).

[82] In its notice of initiation, Commerce identified the following estimated dumping margins: Brazil -- from 30.11 percent to 85.71 percent based on price-to-price comparisons, and from 41.56 percent to 67.04 percent based on comparisons of price to constructed value; Japan -- 27.20 percent to 28.25 percent based on price-to-price comparisons, and 56.09 percent to 64.11 percent based on comparisons of price to constructed value; and Russia -- from 100.28 percent to 189.58 percent based on the "factors of production" method of calculating normal value. 63 Fed. Reg. 56607, 56610-56612 (Oct. 22, 1998).

[83] Chairman Bragg notes that she does not ordinarily consider the alleged margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and Dissenting Views of

(continued...)

Based on an evaluation of the relevant statutory factors, we find a reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Brazil, Japan, and Russia. For purposes of these preliminary determinations, we find that the record data reflects a significant rate of increase in the volume and market penetration of the subject imports over the period examined indicating the likelihood of substantially increased imports. The volume of cumulated subject imports increased from 0.9 million short tons in 1995, to 1.3 million short tons in 1996, and to 3.0 million short tons in 1997.[84] More notably, there was also a marked increase in the interim periods, with subject imports rising from 1.5 million short tons in interim 1997, to 2.5 million short tons in interim 1998.[85] When measured by total U.S. consumption, the market share of the subject imports rose from 1.6 percent in 1995, to 2.0 percent in 1996, to 4.4 percent in 1997, and was 6.9 percent in interim 1998, compared to 4.5 percent in interim 1997.[86] When measured by open market (*i.e.*, merchant market) consumption, the market share of the subject imports rose from 4.0 percent in 1995, to 4.9 percent in 1996, to 10.1 percent in 1997, and market penetration was 15.2 percent in interim 1998, compared to 10.3 percent in interim 1997.[87]

We recognize that petitioners have not specifically alleged that the volume of subject imports during 1995-97 was injurious.[88] However, we find that the record reflects a significant increase in the volume of imports in interim 1998 and immediately thereafter, as compared to prior periods, and this increase supports the conclusion that the industry is threatened with material injury in the imminent future. Indeed, in July - August 1998, imports from the subject countries reached their highest monthly levels since January 1995.[89] Moreover, U.S. importers reported orders of subject imports for the second half of 1998 (following the period examined) of 3.2 million tons, an increase of 27 percent over actual imports in the first half of 1998.[90] In our view, these increases in volume and market penetration indicate a likelihood of substantially increased subject imports in the imminent future.

We also find that producers in Japan and Russia have excess capacity that may permit them to increase exports to the United States in the imminent future. The capacity utilization rates of producers in Japan and Russia in interim 1998 were 79.2 percent and 84.4 percent, respectively.[91] Moreover, in the case of each of the subject countries, the United States has become an increasingly significant market over the period examined, and there is reason to believe that this trend will continue, particularly in view of the fact that demand has weakened in many of the foreign producers' home and/or third country markets.[92] It is also significant that Russian and Brazilian hot-rolled carbon steel products are facing antidumping duties in a number of other foreign markets, potentially creating a further incentive for them to increase their exports to the United States.[93] There is also a potential that Russian producers may shift production in the short-term from cut-to-length carbon steel plate, which is subject to quantitative restrictions in the United States under a suspension agreement, to coiled plate, which is within the scope of these investigations.[94]

---

[83] (...continued)
Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

[84] Table IV-3, CR at IV-6, PR at IV-5.

[85] *Id.*

[86] Table IV-8, CR at IV-13, PR at IV-11.

[87] Table IV-9, CR at IV-14, PR at IV-12.

[88] Pet. Br. at 1.

[89] CR at IV-5, n.5, PR at IV-1, n.5.

[90] Even this figure appears substantially understated, as actual July and August imports for Brazil and Russia exceeded reported orders for those countries for the entire third quarter of 1998. CR at VII-8, n.6, PR at VII-8, n.6.

[91] Tables VII-2 and VII-3, CR at VII-5 and VII-7, PR at VII-5 and VII-6.

[92] Pet. Br. at Exhibits 32, 35, and 36; Table VII-2, CR at VII-5, PR at VII-5; Table VII-3, CR at VII-7, PR at VII-5.

[93] CR at VII-4 and VII-8, PR at VII-2 and VII-4. Russian products are subject to antidumping duties in Canada, Chile, Indonesia, Mexico, and Thailand; and Brazilian products are subject to antidumping duties in Mexico.

[94] *See* Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 Fed. Reg. 61780 (Nov. 19, 1997).

The levels of inventories of the subject merchandise held by importers relative to imports declined over the period examined,[95] and the ratios of inventories held by foreign producers to their production remained relatively stable.[96] [97] We find this factor is outweighed by other factors which cause us to conclude that there is a reasonable indication that such an increase is likely.

The record indicates that the subject imports began entering the market in 1998 at prices that are likely to depress or suppress domestic prices to a significant degree. As we discussed previously, domestically produced and imported hot-rolled carbon steel products are broadly interchangeable, and price is a significant factor in purchasing decisions. The record now indicates that the subject imports undersold the domestic product in the majority of comparisons over the period examined, with weighted-average underselling margins of 9.6 percent.[98] Moreover, underselling increased in the period examined, particularly in 1998. In the first three quarters of 1998, imports from Japan, which had consistently oversold domestic product for most of the period for which data were collected, undersold domestic product in a majority of instances, at the same time the volume of imports from Japan was increasing sharply.[99] Furthermore, imports from Russia increased the frequency and margin of underselling in 1998.[100]

The average unit values of the subject imported merchandise declined throughout the period examined: the average unit value for imports from Brazil fell from $382.66 in 1995 to $321.93 in 1997, the average unit value for imports from Japan fell from $469.05 in 1995 to $376.99 in 1997, and the average unit value for imports from Russia fell from $316.22 in 1995 to $277.43 in 1997.[101] The average unit values of the subject merchandise were significantly lower than the average unit value of domestic merchandise in interim 1998.[102] These declines continued into the third quarter of 1998, with imports from Japan and Russia in July - August 1998 reaching their lowest monthly unit values, and imports from Brazil reaching their second- and third-lowest monthly unit values, since January 1995.[103] [104] These price declines correlate with the increasing levels of imports discussed above.

---

[95] Table VII-4, CR at VII-9, PR at VII-7.

[96] Tables VII-1, VII-2, and VII-3; CR at VII-3, VII-5, and VII-7; PR at VII-3, VII-5, and VII-6.

[97] Chairman Bragg notes that in 1997, merchandise held in inventory in Japan *exceeded* the volume exported from Japan to the United States, and that merchandise held in inventory in Brazil was more than 60 percent of the volume exported from Brazil to the United States. In other words, even without excess capacity or shipments which could be diverted from other United States, producers in both countries could export significant additional quantities to the United States.

[98] CR at V-25, PR at V-18.

[99] CR at V-25, PR at V-18.

[100] CR at V-25, PR at V-18.

[101] Table IV-3, CR at IV-6, PR at IV-5.

[102] In interim 1998, the average unit value of domestic merchandise was $344.85, while the average unit values of imports were $312.01 for imports from Brazil, $319.94 for imports from Japan, and $257.72 for imports from Russia. *Compare* Table IV-3, CR at IV-6, PR at IV-5 *with* Table III-3, CR at III-7, PR at III-6. No party has alleged that the reduction in average unit values of subject imports over the period resulted from a shift in product mix to lower unit-value products.

[103] CR at IV-5, n.5, PR at IV-1, n.5.

[104] Respondents assert that price declines in the summer of 1998 were due to the domestic industry's diversion of large amounts of hot-rolled carbon steel into the spot market because of the strike at GM. Jt. Resp. Br. at 67-74. We recognize that the GM strike may have had an important impact on supply and demand conditions in the market and therefore may have contributed to the price declines in the second and third quarter of 1998. However, the effects of the GM strike extended beyond the end of our period for which data were collected and any effects of the strike on hot-rolled carbon steel prices may have continued beyond the end of the strike. Thus, we are not able to assess separately the impact on prices of the GM strike and subject imports. Nonetheless, based on the record in these investigations (*e.g.*, declining average unit values over the period examined, initial import data during and after the strike, and pricing data across various channels of distribution) we conclude that subject imports, as well as, perhaps, the GM strike, contributed to these declines. We intend to examine this issue further in any final phase investigations.

The declining prices are especially significant because they coincided with increasing demand for hot-rolled carbon steel products. Overall apparent consumption of hot-rolled carbon steel products rose by 9.4 percent from interim 1997 to interim 1998, following 16.2 percent growth during 1995-97.[105] During such a period of high demand, with the domestic industry operating at high capacity utilization, prices would not be expected to decline.[106] The fact that domestic and imported prices fell at the same time that imports were rising and increasing market share supports the view that imports are likely to suppress or depress future prices to a significant degree.

We note that the industry was relatively healthy during much of the period examined.[107] [108] Capacity, production, shipments, and net sales all increased during the period.[109] Employment indicators generally held steady, and the industry's productivity improved.[110] Nevertheless, there are signs of imminent future difficulties for the industry from subject imports.

The data available at this preliminary phase of the investigations indicate that the increasing subject import volume and price suppressing or depressing effects likely will adversely impact the domestic industry's revenues and profitability. The increases in volume and market penetration of the subject imports at the end of the period examined and in the two months thereafter are particularly significant in light of the deterioration in the domestic industry's order books in the second and third quarters of 1998. The domestic industry reported that the volume of hot-rolled carbon steel on its order books fell by 13.4 percent in the second quarter of this year, and by a further 31.2 percent in the third quarter.[111] Thus, it is likely that the increase in volume by the subject imports reflected in the third quarter import figures and in the importers' order books will be at the expense of shipments by domestic producers, whose market share likely will decline.

The financial performance of the domestic industry began to decline at the end of the period examined. When measured by results on total operations (*i.e.*, merchant market operations and internal transfers) the domestic industry's operating income per ton fell from $27.98 in interim 1997 to $17.88 in interim 1998, and its operating income ratios fell from 7.7 percent to 5.1 percent.[112] When measured by "trade only" results (*i.e.*, merchant market operations) the domestic industry's operating income per ton fell from $25.56 in interim 1997 to $13.94 in interim 1998, and its operating income ratios fell from 7.1 percent to 4.1 percent.[113] Nevertheless, because of the lag time inherent between orders, shipments, and financial

---

[105] Table IV-6, CR at IV-11, PR at IV-9.

[106] Unit costs of goods sold declined only slightly during the period examined. Table VI-1, CR at VI-2, PR at VI-2; Table VI-5, CR at VI-9, PR at VI-6.

[107] We note that petitioners have not argued that imports were injurious prior to 1998. Pet. Br. at 1.

[108] Chairman Bragg notes that Thyssen, Inc., a U.S. importer and affiliate of a nonsubject producer, argues for "consistency" between the Commission's findings in these investigations and the negative findings in the 1992-93 hot-rolled investigations. Specifically, Thyssen asserts that measured by a variety of indicia, the domestic hot-rolled industry is much "healthier" today than in 1992-93. Thyssen Postconference Brief at 9-13. Thyssen fails to acknowledge, however, that even though there are some indicia that reflect a "healthier" industry today than in 1992-93, the domestic industry's share of total consumption is less today than during the 1992-93 investigations. Indeed, the market share held by just the *three* subject countries in these investigations is roughly equal to or larger than the market share held by the *eight* subject countries in the 1992-93 investigations.

[109] Table III-2, CR at III-4, PR at III-4; Table III-3, CR at III-7, PR at III-6; and Table VI-1, CR at VI-2, PR at VI-2.

[110] Table III-5, CR at III-10, PR at III-8.

[111] CR at III-6, n.6, PR at III-5, n.6. Reported order volumes as of September 30, 1998, were approximately 1.3 million short tons lower than order volumes one year earlier. This amount is approximately twice the quantity reportedly "lost" because of the GM strike.

[112] Table VI-5, CR at VI-9, PR at VI-6.

[113] Table VI-1, CR at VI-2, PR at VI-2.

results, the actual impact of the subject imports on the domestic industry may not be reflected until the third and fourth quarters of 1998.[114]

In sum, based on (1) the rapid increases in the volume and market share of the subject imports, particularly at the end of the period examined, (2) excess foreign production capacity and signs that the United States is becoming a more significant market for the subject imports, (3) the existence of antidumping duty findings in other markets for Russian and Brazilian hot-rolled carbon steel and the potential for product shifting, (4) declining prices for the subject imports, and (5) the adverse trends in the financial condition of the domestic industry in the latter part of the period for which data were collected, we find a reasonable indication that the domestic industry producing certain hot-rolled carbon steel flat products is threatened with material injury by reason of subject imports from Brazil, Japan, and Russia.

CONCLUSION

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

[114] Table VI-6, CR at VI-10, PR at VI-7. The evidence of actual or potential negative effects on the existing development and production efforts of the domestic industry is mixed. On the one hand, capital expenditures declined from 1995 to 1997 (falling from $2 billion in 1995 to $838 million in 1997); on the other hand research and development expenditures rose (from $3.3 million in 1995 to $3.7 million in 1997).

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these preliminary investigations, I determine that there is a reasonable indication that the industry in the United States producing certain hot-rolled carbon steel products is materially injured by reason of imports of certain hot-rolled carbon steel products from Brazil that allegedly are subsidized and imports of certain hot-rolled carbon steel products from Brazil, Japan, and Russia that allegedly are sold in the United States at less-than-fair-value ("LTFV"). I join my colleagues in the findings with respect to like product and domestic industry, in the decision to cumulate the subject imports from all three countries, and in the discussion of the conditions of competition that are distinctive to the domestic industry. However, I do not concur in the majority's determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports. Rather, I determine that there is a reasonable indication that the industry in the United States producing certain hot-rolled carbon steel products is materially injured by reason of the allegedly subsidized and LTFV imports of certain hot-rolled carbon steel products from Brazil, Japan, and Russia. Because my analysis and determinations differ from the majority, my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the allegedly subsidized and LTFV imports, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .[1]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[2] In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[3]

The statute directs that we determine whether a domestic industry is materially injured "by reason of" the unfairly traded imports. Thus we are called upon to evaluate the effect of subsidized and dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the subsidies and dumping. However, the statute does not require us to weigh or prioritize the factors that independently are causing material injury. Rather, the Commission 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 effects 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."[4] It is important, therefore, to assess the effects of the unfairly traded imports in a way that distinguishes those effects from the effects of other factors unrelated to the subsidies and dumping. To do this, I compare the current condition of the industry to the industry conditions

---

[1] 19 U.S.C. § 1677(7)(B)(I).
[2] 19 U.S.C.§ 1677(7)(B)(ii).
[3] 19 U.S.C. § 1677(7)(C)(iii).
[4] S. Rep. No. 100-71 at 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

that would have existed without the subsidies and dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.[5]

In my analysis of material injury, I evaluate the effects of the subsidies and dumping[6] on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the subsidies and dumping on domestic prices, I compare domestic prices that existed when the imports were subsidized and dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of the subsidies and dumping on the quantity of domestic sales,[7] I compare the level of domestic sales that existed when imports were subsidized and dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the effects on the statutory impact factors[8] (e.g., employment, wages, etc.) are derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the subsidies and dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the subsidized and dumped imports.

For the reasons discussed below, I determine that there is a reasonable indication that the domestic industry producing certain hot-rolled carbon steel products is materially injured by reason of allegedly subsidized imports of certain hot-rolled carbon steel products from Brazil and allegedly LTFV imports of certain hot-rolled carbon steel products from Brazil, Japan, and Russia.

II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the subsidies and dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

---

[5] 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 my mode of analysis, expressly holding that my 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, at 1361 (Fed.Cir. 1996), *aff'g* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

[6] As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

[7] In examining the quantity sold, I take into account sales from both existing inventory and new production.

[8] 19 U.S.C. § 1677(7)(C)(iii).

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for certain hot-rolled carbon steel products is relatively low. Therefore, purchasers are not likely to reduce their purchases if prices for these products increase.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (e.g., an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the input or for the downstream product.

Record evidence shows that the cost share of the hot-rolled carbon steel products under investigation here accounts for a relatively high percentage of the intermediate downstream products in which they are used.[9] This high cost share, suggesting a high elasticity of demand, is balanced somewhat by the smaller cost share in the final downstream products in which they are used.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Information on the record indicates that only very limited alternative products are available that can substitute for certain hot-rolled carbon steel products.[10] The limited availability of alternative products indicates that demand is likely to be quite inelastic.

Based on the smaller cost share of certain hot-rolled carbon steel products in the final downstream products in which they are used and the limited availability of substitutable alternative products, I find that the overall elasticity of demand for certain hot-rolled carbon steel products is relatively low. That is, purchasers will not reduce significantly the amount of these hot-rolled carbon steel products they buy in response to a general increase in prices for these products.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon (1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, and quality; (2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and (3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

[9] CR at II-4, PR at II-3.
[10] CR at II-4, PR at II-3.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand elasticity for certain hot-rolled carbon steel products is relatively low, overall purchases will not decline significantly if the overall prices of certain hot-rolled carbon steel products increase. However, purchasers can avoid price increases from one source by seeking other sources of certain hot-rolled carbon steel products. In addition to any changes in overall demand for certain hot-rolled carbon steel products, the demand for certain hot-rolled carbon steel products from different sources will decrease or increase depending on their relative prices and their substitutability. If certain hot-rolled carbon steel products from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have three potential sources of certain hot-rolled carbon steel products: the domestic product, subject imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among certain hot-rolled carbon steel products from the different sources as follows.

For purposes of these preliminary investigations, I find that the domestic products are at best moderate substitutes for subject imports from Brazil and Japan, and poor substitutes for subject imports from Russia and nonsubject imports. I further find that subject imports from Brazil and Japan are fairly good substitutes for each other, at best moderate substitutes for subject imports from Russia, and moderate substitutes for nonsubject imports. Finally, I find that subject imports from Russia are poor substitutes for nonsubject imports.

Overall, there is a basic level of substitutability among subject imports, nonsubject imports, and the domestic like product because all three generally must meet ASTM specifications. In addition, the record indicates that substantial amounts of the domestic product, subject imports and nonsubject imports are sold in the same channels of distribution, particularly to distributors, processors or service centers, and to manufacturers of tubular products.[11] However, the overall substitutability is reduced by nonprice factors.

Lead times for all the subject imports are significantly longer than for the domestic product, which reduces substitutability somewhat.[12] In addition, quality differences differentiate the products from the different sources, but not in a uniform way. Subject imports from Brazil and Japan have product attributes that indicate they are fairly good substitutes for each other, and that the quality of these subject imports is at least as good as, and perhaps better than, the quality of the domestic product.[13] Russian quality, on the other hand, is clearly lower than the quality of the domestic product, the Brazilian imports, and the Japanese imports. Other nonprice factors, particularly different end use applications and different product mixes, further reduce the substitutability between subject imports from Brazil and Japan and subject imports from Russia.[14] Based on this evidence, I find that subject imports from Brazil and Japan are fairly good substitutes for each other, but only at best moderate substitutes for subject imports from Russia.

As discussed above, the quality of subject imports from Brazil and Japan is at least as good as, and perhaps better than, the quality of the domestic products. There is no other information to indicate that substitutability among these sources is reduced, and therefore, based on this evidence, it would appear that subject imports from Brazil and Japan are fairly good substitutes for the domestic products. However, more

[11] CR at II-1, PR at II-1.

[12] CR at II-5, PR at II-3.

[13] CR at II-6, PR at II-4. No party asserts that the subject imports from Brazil and Japan are not at least fairly good substitutes for each other.

[14] CR at II-7, PR at II-4.

than 60 percent of domestic consumption is consumed captively.[15] Thus, less than 40 percent of domestic production is available for open market purchasers to buy. This condition of competition by definition substantially reduces substitutability. Given this large amount of domestic captive consumption, I find that subject imports from Brazil and Japan can, at best, be considered moderate substitutes for the domestic product.

The quality of subject imports from Russia, as discussed above, is considerably lower than the quality of the domestic products, thus reducing the substitutability between these two sources. The large amount of domestic captive consumption further reduces substantially the substitutability between the domestic products and subject imports from Russia. For these reasons, I find that subject imports from Russia and the domestic products are poor substitutes for each other.

The record indicates that nonsubject imports, the domestic products and subject imports from Brazil and Japan are not differentiated substantially from each other by quality and other nonprice factors.[16] However, the lower quality of Russian imports reduces the substitutability between these subject imports and nonsubject imports. Thus, on this basis nonsubject imports are likely fairly good substitutes for the domestic products and the Brazilian and Japanese imports, but likely only moderate substitutes for Russian imports. However, less than one-third, but a significant portion, of the nonsubject imports is captively consumed in the U.S. market by the Pohang/U.S. Steel joint venture.[17] This amount of captive consumption of the nonsubject imports significantly reduces the substitutability of nonsubject imports with other sources of supply. In light of the captive consumption of the nonsubject imports, I find that nonsubject imports are moderate substitutes for subject imports from Brazil and Japan, and poor substitutes for subject imports from Russia. Furthermore, the large amount of captive consumption of the domestic products also reduces substitutability, and thus I find that nonsubject imports and the domestic products are poor substitutes for each other.

Based on the above analysis, I find that the domestic products are at best moderate substitutes for subject imports from Brazil and Japan, and poor substitutes for subject imports from Russia and nonsubject imports. I further find that subject imports from Brazil and Japan are fairly good substitutes for each other, at best moderate substitutes for subject imports from Russia, and moderate substitutes for nonsubject imports. Finally, I find that subject imports from Russia are poor substitutes for nonsubject imports.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of certain hot-rolled carbon steel products appears to be quite low.

Capacity Utilization and Capacity. Unused capacity can discipline prices. If there is a competitive market, no individual producer can make a price increase stick. Any attempt at a price increase by one producer would be beaten back by competitors who could produce more product to sell at the prevailing price. Here, the domestic industry operated at very high levels of capacity utilization throughout the period of investigation, with a capacity utilization rate of 91.7 percent in the six-month period ending in June 1998 ("interim 1998").[18] Thus, in interim 1998 only 8.3 percent of the domestic industry's capacity to produce certain hot-rolled carbon steel products was not used and therefore was available to increase production. However, the very high level of capacity utilization effectively constitutes full capacity in practical terms.

---

[15] Table III-3, CR at III-7, PR at III-6.
[16] CR at II-8, PR at II-5.
[17] CR at II-8, PR at II-5.
[18] Table III-2, CR at III-4, PR at III-4.

Even though nominal available capacity exceeded the total quantity of subject imports by a minuscule amount in interim 1998,[19] the domestic industry does not have sufficient capacity available to supply the demand for subject imports because it is effectively operating at full capacity.

Inventories and Exports. The domestic industry had 2,408,919 short tons, representing 3.8 percent of production, of these hot-rolled carbon steel products in inventories available at the end of interim 1998 that it could have shipped into the U.S. market.[20] However, the domestic industry's exports are very small, and thus do not represent a significant source of supply.[21] Therefore the domestic industry has only minimal inventories and very small exports available that could have filled the demand supplied by subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, there are at least 24 domestic producers of certain hot-rolled carbon steel products, and thus there is significant competition within the domestic industry. Nonsubject imports are not a substantial source of competition in this market, accounting for only 4.6 percent of consumption in interim 1998.[22] Even though there is only limited competition from nonsubject imports, the competition among domestic producers indicates that there is a significant level of competition in the U.S. market for certain hot-rolled carbon steel products.

Notwithstanding the level of competition in the U.S. market, the domestic industry's ability to supply the demand for subject imports is extremely limited, and consequently I find that the elasticity of supply is quite low.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS OF CERTAIN HOT-ROLLED CARBON STEEL PRODUCTS FROM BRAZIL, JAPAN, AND RUSSIA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

[19] Table III-2, CR at III-4, PR at III-4; and Table IV-3, CR at IV-6, PR at IV-5.
[20] Table III-4, CR at III-9, PR at III-7.
[21] Table III-3, CR at III-7, PR at III-6.
[22] Table IV-8, CR at IV-13, PR at IV-11.

A. Volume of Subject Imports

Cumulated subject imports increased from 929,270 short tons in 1995 to 1,308,965 short tons in 1996, and to 2,968,898 short tons in 1997. In the first 6 months of 1998, subject imports were 2,494,559 short tons. The value of subject imports was $335.6 million in 1995, $398.6 million in 1996, $897.8 million in 1997, and $712.2 million in interim 1998.[23] By quantity, subject imports held a market share of 1.6 percent in 1995, 2.0 percent in 1996, 4.4 percent in 1997, and 6.9 percent in interim 1998. Their market share by value was 1.5 percent in 1995, 1.8 percent in 1996, 3.8 percent in 1997, and 5.7 percent in interim 1998.[24] While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of cumulated subject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of the subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been subsidized and dumped. As discussed, both demand and supply conditions in the domestic market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports had not been subsidized and dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic certain hot-rolled carbon steel products. In such a case, if subject imports are good substitutes with other certain hot-rolled carbon steel products, purchasers would have shifted towards the relatively less expensive products.

In these investigations, no subsidy margins have been calculated, but the alleged dumping margins for the subject imports generally are quite large, ranging from 30.11 percent to 85.71 percent for Brazil; 27.20 percent to 64.11 percent for Japan; and over 100 percent for Russia. Therefore, subject imports likely would have been priced significantly higher had they been fairly traded. At the higher, fairly traded prices it is likely that all or nearly all of the demand for the subject imports would have shifted to other sources of supply.

The domestic products and subject imports from Brazil and Japan are at best moderate substitutes for each other, while subject imports from Brazil and Japan are better, moderate substitutes for the nonsubject imports. Therefore, it is likely that most of the demand for subject imports from Brazil and Japan likely would have shifted to nonsubject imports, while only some of this demand likely would have shifted to the domestic products. On the other hand, subject imports from Russia are poor substitutes for both the domestic products and nonsubject imports, and thus it is likely that the demand for subject imports from Russia would have shifted to both the domestic products and nonsubject imports. Because subject imports held a cumulated market share of only 6.9 percent by quantity in interim 1998,[25] the shift in demand away from subject imports would not have been particularly large. Nonsubject imports accounted for only 4.6

[23] Table IV-3, CR at IV-6, PR at IV-5.
[24] Table IV-8, CR at IV-13, PR at IV-11.
[25] Table IV-8, CR at IV-13, PR at IV-11.

percent of the market in interim 1998,[26] and thus represent only limited competition for the domestic industry. Notwithstanding the small market share of the subject imports, for purposes of these preliminary determinations I find that the shift in demand toward the domestic products likely would have been significant.

The elasticity of demand indicates that domestic suppliers should have been able to increase prices in response to this shift in demand. Although competition from nonsubject imports is limited, there is significant competition among producers within the domestic industry, competitive conditions that normally indicate that price discipline exists in the market. However, the domestic industry is effectively operating at full capacity and thus has only a very limited ability to supply the demand satisfied by the subject imports. Consequently, the competition among domestic producers would not have enforced price discipline in the market. In addition, the domestic industry dominates the U.S. market, accounting for about 90 percent of consumption. Because nonsubject imports are such a small presence in the market, it is likely that the domestic industry would have had sufficient market power to be able to increase its prices. In these circumstances, the domestic industry likely would have increased its prices had the subject imports been sold at fairly traded prices. Consequently, I find that subject imports are having significant effects on prices for the domestic hot-rolled carbon steel products.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider 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.[27] These factors together either encompass or reflect the volume and price effects of the subsidized and dumped imports, and so I gauge the impact of the subsidies and dumping through those effects.

As I have discussed above, competition from nonsubject imports is limited, and thus the domestic industry dominates the U.S. market. Therefore, the domestic industry would have increased its prices significantly if subject imports had been sold at fairly traded prices. However, because the domestic industry is effectively operating at full capacity, it would not have been able to increase its output and sales significantly had demand shifted away from the subject imports. Although the domestic industry had inventories available to respond to the shift in demand away from the subject imports, its inventories are so small that the increase in the domestic industry's sales would have been slight. Therefore, the domestic industry likely would not have increased its output and would have increased its sales only slightly had the subject imports been sold at fairly traded prices. Consequently, the impact on the domestic industry would not have been significant.

IV. CONCLUSION

On the basis of the foregoing analysis, I find that the domestic industry would have increased its output and sales only slightly, but would have increased its prices, and therefore its revenues, significantly had the subject imports been fairly traded. Therefore, I find that the domestic industry would have been materially better off if the subject imports had not been subsidized and dumped. Consequently, I determine that there is a reasonable indication that the domestic industry producing certain hot-rolled carbon steel products is materially injured by reason of allegedly subsidized and LTFV imports of certain hot-rolled carbon steel products from Brazil, Japan, and Russia.

---

[26] *Id.*

[27] 19 U.S.C. § 1677(7)(C)(iii).