UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN CUT-TO-LENGTH STEEL PLATE
FROM FRANCE, INDIA, INDONESIA, ITALY, JAPAN, AND KOREA
Investigations Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3273, January 2000)

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DETERMINATIONS[1]

On the basis of the record[2] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from France,[3] India, Indonesia, Italy, and Korea of certain cut-to-length steel plate, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the respective governments. The Commission also determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of such imports from France,[3] India, Indonesia, Italy, Japan, and Korea that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to such imports from Japan.

BACKGROUND

The Commission instituted these investigations effective February 16, 1999, following receipt of petitions 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; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Tuscaloosa Steel Co., Tuscaloosa, AL; and the United Steelworkers of America, Pittsburgh, PA.[4] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain cut-to-length steel plate from France, India, Indonesia, Italy, and Korea were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that imports from France, India, Indonesia, Italy, Japan, and Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing 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 September 15, 1999 (64 FR 50104). The hearing was held in Washington, DC, on December 14, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] Commissioner Okun not participating.

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

[3] Commissioner Askey dissenting.

[4] Gulf States is not a petitioner with respect to the investigations on France. Tuscaloosa is not a petitioner with respect to the investigations on France and Italy.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is materially injured by reason of imports of certain cut-to-length ("CTL") steel plate from France, India, Indonesia, Italy, and Korea that the Department of Commerce ("Commerce") found to be subsidized and by reason of imports of certain CTL steel plate from France, India, Indonesia, Italy, Japan, and Korea that Commerce found to be sold in the United States at less than fair value ("LTFV").[1] [2] We further find that critical circumstances do not exist with respect to subject imports from Japan.

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[3] 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."[4] 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."[5]

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.[6] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[7] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[8] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[9]

Commissioner Askey dissenting with respect to France. See Concurring and Dissenting Views of Commissioner Thelma J. Askey.

[2] Commissioner Deanna Tanner Okun did not take part in these determinations.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

[6] See, e.g., NEC Corp., et al. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); 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).

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

[8] 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).

[9] Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a (continued...)

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of these investigations as follows:

> The products covered by the scope of these investigations are certain hot-rolled carbon-quality steel: (1) universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).[10]
>
> The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.
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> The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000.

(...continued)
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).

[10] Commerce's notice specifies the weight limits for certain elements as follows:

> Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or 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 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.

64 Fed. Reg. 73143, 73144 (Dec. 29, 1999).

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.[11]

C. Domestic Like Product Issues

In the preliminary phase of these investigations, the Commission found a single domestic like product, CTL steel plate, corresponding to the description of the scope of the subject merchandise.[12] In so doing, the Commission considered two domestic like product issues. First, the Commission considered whether domestic grade X-70 CTL plate was a separate like product. The Commission concluded that, based on its traditional six-factor analysis, the record on balance supported the inclusion of X-70 plate with the other CTL plate products included within the scope of the investigations and that X-70 plate was not clearly distinct from all the other types of CTL plate products.[13]

Second, the Commission considered whether non-alloy and micro-alloy CTL plate, excluding other alloy steel plate, comprise one domestic like product. Applying its traditional six-factor analysis, the Commission found, consistent with its reasoning in Hot-Rolled Steel,[14] that the differences between micro-alloy steels and non-alloy CTL plate were not so pronounced as to constitute clear dividing lines, but that the other alloy steel plate exhibited marked differences from both non-alloy and micro-alloy CTL plate.[15] It accordingly concluded that, for purposes of the preliminary determinations, there was one domestic like product consisting of all domestically produced CTL steel plate that corresponded to the scope description, including grade X-70 plate, micro-alloy steel plate, and plate cut from coils.[16]

In the final phase of these investigations, no party has argued for the exclusion of micro-alloy steel plate from the definition of the domestic like product. Petitioners support the same like product found by the Commission in the preliminary phase of the investigations. However, the French and Japanese respondents again contend that grade X-70 plate comprises a separate like product. There is, therefore, one domestic like product issue in the final phase of these investigations: whether grade X-70 plate comprises a separate like product from all other CTL plate included within the scope of these investigations. As explained below, we again find a single domestic like product consisting of all domestically produced CTL steel plate that corresponds to Commerce's scope description, including grade X-70 plate, micro-alloy steel plate, and plate cut from coils.

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[11] 64 Fed. Reg. 73143, 73144.

[12] Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary) at 5-7, USITC Pub. 3181 (April 1999).

[13] USITC Pub. 3181 at 6.

[14] See Certain Hot-Rolled Steel Products From Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999); Certain Hot-Rolled Steel Products From Brazil and Russia, Invs. Nos. 701-TA-384 and 731-TA-806 and 808 (Final), USITC Pub. 3223 (Aug. 1999) ("Hot-Rolled Steel").

[15] USITC Pub. 3181 at 7.

[16] USITC Pub. 3181 at 7. The Commission noted that it was not aware of any information that would warrant reexamining, and no party had urged it to reexamine, its prior decision in Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine ("Carbon Steel Plate"), Invs. Nos. 731-TA-753-756 (Final), USITC Pub. 3076 at 5-9 (Dec. 1997), that the domestic like product included plate cut from coils but did not include coiled plate. USITC Pub. 3181 at 5-6, n.21.

1. Whether Grade X-70 Cut-to-Length Steel Plate Is a Separate Like Product

Grade X-70 plate, while included within the scope of these investigations, was specifically excluded from the scope of previous plate investigations. Grade X-70 plate is used to produce large diameter welded line pipe conforming to API Specification 5L, Grade X-70, for oil or gas transmission lines. Pipeline companies, who are the ultimate end users of line pipe made from grade X-70, may also impose additional, more restrictive requirements than those in API 5L on the manufacture of grade X-70.[17]

In the final phase of these investigations, the French and Japanese respondents again argue that grade X-70 plate should be defined as a separate like product.[18] As discussed below, application of the like product factors results in our finding that grade X-70 plate is not a separate like product.

Physical Characteristics and Uses: The record indicates that, while the only use for X-70 plate is for large diameter line pipe, particularly in demanding environments, grades other than X-70 are used in the production of large diameter pipe generally.[19] Other plate products, besides X-70, are produced in such a way as to allow the purchaser to manufacture pipe meeting API grades or other specifications for high strength, such as ASTM.[20]

Interchangeability: The record indicates that ordinary carbon steel cannot be used in applications where X-70 is specified and, moreover, that a pipeline that specifies X-70 plate cannot substitute another form of commercial plate -- not even other X grades -- without redesigning the pipeline completely. The record also indicates, however, that X-70 plate that is downgraded may in fact be used in other applications, such as piling, although such use may be unintentional and not commercially practicable.[21]

Channels of Distribution: The record confirms that in 1998 all X-70 plate produced in the United States or imported into the United States was sold directly to the end user. Similarly, the record also indicates that plate, other than X-70, that is destined for large diameter pipe applications is primarily sold directly to end users.[22] In addition, U.S. mills ship more than 40 percent of the domestic product generally (X-70 and non-X-70 plate) to end users, while around 60 percent of their shipments (excluding X-70) are to service centers or distributors.[23] Processors that produce CTL plate from coils ship about 70 percent of their CTL plate to end users and about 30 percent to distributors, other processors (for further value added), and service centers.[24] Thus, the same channels of distribution are utilized by X-70 as by other variants of CTL plate included in the scope of these investigations.[25]

Common Manufacturing Facilities, Employees, and Processes: The record indicates that, while the production of X-70 to exacting specifications does require close attention to steel chemical composition and close control of the rolling process, X-70 is produced on the same equipment and by the same

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[17] Confidential Report ("CR") at I-10-11, Public Report ("PR") at I-7-8.

[18] French Respondents' Prehearing Brief at 3-20; Japanese Respondents' Prehearing Brief at 2.

[19] For example, Oregon Steel's Napa Pipe facility produces large diameter water main pipes in addition to a full range of API-certified pipe, including X-52, X-60, X-65, and X-70. Interview with ***. In addition, IPSCO's facility was reportedly designed to produce a variety of API-grade material, including X-60, X-70, and X-80 plate. Petitioners' Postconference Brief, Exhibit 22; Hearing Tr. at 117.

[20] CR at I-11, PR at I-8.

[21] CR at I-11, PR at I-8.

[22] CR at I-9, PR at I-7.

[23] Table I-1, CR at I-10, PR at I-8.

[24] Table I-1, CR at I-10, PR at I-8.

[25] CR at I-11, PR at I-8.

employees that produce other plate products.[26] In addition, X-70 plate for line pipe is not the only plate grade for which special processes are used to achieve, for example, high strength and a fine grain structure.[27]

Producer and Customer Perceptions: The major importer of X-70 plate from the subject countries characterizes X-70 plate as a separate and distinct product from other CTL plate.[28] The record also indicates, however, that customers of U.S. producers view X-70 plate not only as a particular grade of CTL plate, but also as part of a continuum of plate products.[29]

Price: The average unit value ("AUV") in 1998 for U.S. commercial shipments of X-70 plate by U.S. producers was $455.78, as compared with an AUV of $436.98 for all types of plate combined.[30] However, while X-70 is more expensive than commercial grades of CTL plate, it is far from the most expensive and is about midpoint on the pricing continuum for all CTL plate products. The record indicates that a number of grades cost at least *** more per ton than X-70 plate.[31]

2. Conclusion

On balance, the record supports the inclusion of X-70 plate with other CTL plate products in the domestic like product. Grade X-70 plate is not clearly distinct from all other types of CTL plate and is part of a continuum of CTL plate products included within the scope of these investigations. Where the domestically manufactured merchandise is itself within the continuum of similar products, the Commission generally does not consider each item of merchandise to be a separate like product, but considers the continuum itself to be the domestic like product.[32] Based on the above analysis, we find that grade X-70 plate is one CTL plate product that falls within the continuum of all CTL plate products included within the scope of subject merchandise. Accordingly, we find a single domestic like product consisting of all domestically produced CTL steel plate that corresponds to the scope description, including grade X-70 plate, micro-alloyed steel plate, and plate cut from coils.

D. Domestic Industry and Related Parties

Section 771(4) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[33] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that

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[26] CR at I-11, PR at I-8.

[27] CR at I-11, PR at I-8; see also the Commission Report discussion of controlled rolling (CR at I-6, PR at I-5-6, n.13).

[28] CR at II-11, PR at I-8; Hearing Tr. at 169-170; Conference Tr. at 115-116.

[29] Petitioners' Prehearing Brief, Exhibit 1, ¶¶ 3, 8.

[30] Table II-4, CR at II-13, PR at II-9. Actual pricing data for grade X-70 plate were not available. See USITC Pub. 3181 at V-8, n.4.

[31] Table II-4, CR at II-13, PR at II-9; Petitioners' Prehearing Brief at 9.

[32] See, e.g., Certain Steel Wire Rod From Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 701-TA-763-766 (Final), USITC Pub. 3075 at 7 (Nov. 1997).

[33] 19 U.S.C. § 1677(4)(A).

adequate production-related activity is conducted in the United States.[34] Based on our finding that the domestic like product consists of all CTL steel plate included within the scope of these investigations, we define the corresponding domestic industry as consisting of all domestic producers of CTL steel plate, whether toll producers, integrated producers, or processors.

We consider two issues with respect to the domestic industry: (1) whether the production of CTL plate includes the operation of processors such as steel service centers; and (2) whether any producers should be excluded as related parties.

1. Whether Processors Should Be Included in the Domestic Industry

In the preliminary determination, the Commission found that toll and non-toll processors of imported and domestic coil into CTL plate should be included within the domestic industry.[35] In the final phase of these investigations, three petitioners urge the Commission to exclude processors from the domestic industry on the grounds that the processors' production-related activity of producing plate from coils is insufficient.[36]

We note at the outset that the processing performed by steel service centers -- i.e., using coiled plate as an input, uncoiling it, and cutting it to length to form CTL plate -- changes the product from one which we have found is not part of the domestic like product into a product that corresponds to the domestic like product.

In deciding whether a firm qualifies as a domestic producer, the Commission often has analyzed the overall nature of a firm's production-related activities in the United States,[37] although production-related

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[34] See, e.g., DRAMs From Taiwan ("DRAMS"), Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry). See generally, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG"), Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

[35] USITC Pub. 3181 at 9.

[36] Posthearing Brief of Petitioners Gulf States Steel, IPSCO, and Tuscaloosa at A-21. They cite the following factors as evidence that the processors' production-related activity is insufficient: lower capital investment in cutting equipment than in plate production equipment; more limited technical requirements of cutting plate compared to plate production; the minor value added by cutting to length; the few number of employees involved; and the non-specialized nature of the function being performed. Id. at A-24.

Petitioners Bethlehem Steel and U.S. Steel Group do not ask the Commission to treat processors as a separate industry, or plate cut from coil as a separate like product. Posthearing Brief of Petitioners Bethlehem Steel and U.S. Steel, Exhibit 1 at 2-3. Respondents argue that the domestic industry includes processors that cut plate from coils and, moreover, that in analyzing the impact of imports on the domestic industry, the Commission should not focus on the integrated producers, but should look at the industry as a whole. Joint Posthearing Brief of French, Italian, and Japanese Respondents, Exhibit 1J.

[37] See, e.g., Sulfur Dyes from China and the United Kingdom, Invs. Nos. 731-TA-548 and 551 (Final), USITC Pub. 2602 (Feb. 1993); Dry Film Photoresist from Japan, Inv. No. 731-TA-622 (Preliminary), USITC Pub. 2555 at 14 (Aug. 1992); Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea, Inv. No. 731-TA-556 (Preliminary), USITC Pub. 2519 at 11-12 (June 1992).

activity at minimum levels could be insufficient to constitute domestic production.[38] The Commission generally considers six factors:

(1) source and extent of the firm's capital investment;
(2) technical expertise involved in U.S. production activities;
(3) value added to the product in the United States;
(4) employment levels;
(5) quantity and type of parts sourced in the United States; and
(6) any other costs and activities in the United States directly leading to production of the like product.[39]

With respect to the third factor, Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer.[40] No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation.[41]

We find, consistent with our reasoning in the 1997 Carbon Steel Plate investigations,[42] that the record here supports the inclusion of toll and non-toll processors of imported and domestic coil in the domestic industry. Processors invest a significant amount of capital in relatively sophisticated processing operations, and account for a significant percentage of overall employment of the U.S. industry.[43]

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[38] Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 at I-8 (June 1995).

[39] See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan ("Large Newspaper Printing Presses"), Invs. Nos. 731-TA-736 and 737 (Final), USITC Pub. 2988 at 7-8 (Aug. 1996); OCTG, USITC Pub. 2911 at I-11, n.37.

[40] See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-8-9 & n.34 (June 1994) ("no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account"); Low Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded that twenty percent value added by flux coaters was sufficient); see also Low Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-246 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

The Commission has also stated that a "modest percentage of domestically sourced parts or raw materials as a percentage of cost does not necessarily mean that a firm is not a domestic producer." Certain All Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 at 13-14 (Mar. 1989). Conversely, the Commission has decided not to include a firm in the domestic industry where its operations contributed only a "minor percentage of the total value" of the product. Certain Radio Paging and Alerting Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 (Aug. 1983) (operations involved assembly and soldering of foreign-sourced parts involving little technical skill); see also Color Television Receivers from the Republic of Korea and Taiwan, Invs. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (Apr. 1984) at 7-8 (Commission emphasized for the first time that no single factor--including value added--is determinative).

[41] See DRAMs From Taiwan, USITC Pub. 3256 at 7-10; OCTG, USITC Pub. 2911 at I-11 n.37; Silicon Carbide from The People's Republic of China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 at I-11 n.49 (June 1994). See also Large Newspaper Printing Presses, USITC Pub. 2988 at 7-8.

[42] Carbon Steel Plate, USITC Pub. 3076, at 9-12.

[43] Petitioners Gulf States Steel, IPSCO, and Tuscaloosa argue that investments by processors in equipment for cutting plate to length range from a low of $4-10 million to a high of $15 million. Joint Posthearing Brief of Gulf States Steel, IPSCO, and Tuscaloosa at A-22. The Commission similarly found in the 1997 investigations that investment for CTL lines producing a combination of products, gauges, and widths was as much as $15 million to

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Significantly, the manufacturing equipment and processes used by service centers to decoil and cut to length coiled plate is the same as that used by the domestic mills to produce CTL plate from coiled plate.[44] Although the value added is small, this factor is not determinative of the outcome.[45] Rather, we place considerable importance on the fact that the processing performed by the service centers involves changing a product that was affirmatively decided not to be in the domestic like product -- coiled plate -- into the domestic like product.[46]

Based on the foregoing, we include all producers of CTL plate in the domestic industry, whether toll producers, integrated producers, or processors.[47]

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.[48] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[49]

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[43] (...continued)
$18 million, and that total capital investment by processors for their operations producing CTL plate ranged from $17.9 million to $19.4 million during the period under investigation. USITC Pub. 3076 at 11. It further found that, while the U.S. mills' total capital investment was significantly higher (as the three petitioners here argue), the processors' investments were nevertheless significant. Id.

In the 1997 investigations, the Commission found that processors accounted for approximately 10 percent of all production workers in the CTL industry and that this percentage was significant. USITC Pub. 3076 at 11-12. The record in those investigations showed that the employment levels of the processors ranged from 558 to 692 workers, while those for the mills ranged from 6,854 to 7,173. Id. at 11. The record in these investigations, cited by the petitioners, similarly shows that processors account for approximately 10 percent of all CTL workers, given that the employment level of the processors was 685 in the first half of 1999, as compared with 5,961 for the mills. CR at C-7-9, PR at C-5-7; Posthearing Brief of Gulf States Steel, IPSCO, and Tuscaloosa at A-23.

[44] CR at I-9, PR at I-7.

[45] In the 1997 investigations, the value added (defined as the conversion costs (labor and factory overhead) divided by the total cost of goods sold) averaged between 5.3 percent and 11.1 percent (when SG&A expenses are included in the conversion costs). USITC Pub. 3076 at 11-12. The three petitioners similarly argue here that the value added is approximately 8 percent. Posthearing Brief of Gulf States Steel, IPSCO, and Tuscaloosa at A-23.

[46] Carbon Steel Plate, USITC Pub. 3076 at 12.

[47] For the reasons given above, Chairman Bragg, Vice Chairman Miller, and Commissioner Hillman believe that the processors should be included in the domestic industry. However, they believe that it is appropriate to take into account the greater vulnerability of the domestic mills to the effects of dumped imports in determining whether the domestic industry as a whole is experiencing material injury by reason of subject imports. Thus, while they have looked at the data for the entire domestic industry, they have placed particular emphasis on the condition of the domestic mills in reaching their finding that subject imports are causing material injury to the domestic industry. They note, however, that this emphasis did not alter the outcome of their decision with respect to the CTL plate industry as a whole. Finally, their decision to include processors in the domestic industry producing CTL plate should not be construed as an indication that in any future investigations they will necessarily determine that processors will be included in the industry. An analysis of the facts specific to each investigation will govern their treatment of the issue.

[48] 19 U.S.C. § 1677(4)(B).

[49] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904
(continued...)

Several domestic producers in these investigations fall within the statutory definition of related parties. The Commission in the preliminary phase found that appropriate circumstances did not exist to exclude any of these producers from the domestic industry.[50] In the final phase, no party has argued for the exclusion of any producer under the related parties provision, and no new evidence warrants changing this finding.

a. CSI, National, North Star, U.S. Denro, Cargo Steel & Wire, Feralloy, FPC, and JIT

CSI and National are partially owned by foreign producers of the subject merchandise. Kawasaki Steel Corp. of Japan has a 50 percent ownership interest in CSI, and NKK Corp. of Japan has a 67.6 percent ownership interest in National. North Star is a mill producer and Cargill Steel & Wire is a processor of the domestic like product, and both are wholly owned by Cargill, Inc., which also owns Cargill Ferrous, an importer of subject merchandise. Feralloy Corp. is related through common ownership (Preussag North America) to importer Preussag. FPC is also related to Preussag because Feralloy Corp. owns a 51 percent interest in the company. U.S. Denro is partially owned by SAW Pipes, an importer of subject merchandise. JIT is majority owned by importer Mitsui.[51] All of these companies appear to be related parties under section (ii)(II) or (III) of the related parties provision.[52]

We consequently consider whether "appropriate circumstances" exist to exclude any of these companies from the domestic industry. None of these companies imports the subject product, nor did any report purchases of subject merchandise from their related company or any other source. We note that the processors as a group did not have operating income margins outside the range of the mill producers as a group.[53] We recognize that there may be some argument to be made for the exclusion of ***, ***, or *** based on the fact that their operating income margins were generally higher than those of other domestic

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[49] (...continued)
F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (February 1997).

[50] USITC Pub. 3181 at 10-12.

[51] Table III-1, CR at III-2-4, PR at III-2-4.

[52] The Commission has previously decided that "control does not exist, absent evidence to the contrary, if the ownership interest is less than that necessary, in and of itself, to establish control." Certain Structural Steel Beams From Germany, Japan, Korea, and Spain, Invs. Nos. 701-TA-401 & 731-TA-852-855 (Preliminary), USITC Pub. 3225 at 8, n.40 (Sept. 1999); see also Engineered Process Gas Turbo-Compressor Systems From Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 8 (July 1996).

[53] Table VI-5, CR at VI-16-17, PR at VI-6.

producers.[54] However, each of the companies under consideration, including ***, ***, and ***, individually accounts for a very small percentage of domestic production.[55] Thus, neither excluding nor including the data of any of the companies would significantly affect the industry data and our analysis. *** support the petition, while *** take no position. No party has advocated that any of these producers be excluded from the domestic industry. Based on the available facts on the record, we do not find that appropriate circumstances exist to exclude any of these producers under the related parties provision of the statute.

b. Oregon Steel and Ryerson

Oregon Steel and Ryerson are related parties because they import subject merchandise. Oregon Steel, which accounted for *** percent of domestic mill production in 1998, imported *** of CTL plate from Japan for internal consumption or inventory because of capacity constraints and downtime at its new plate rolling mill. The mill produced ***. Therefore, its subject imports were *** percent of its domestic production.

Ryerson, which in 1998 accounted for *** percent of processor production, or *** percent of total production, imported ***. Ryerson converted ***.[56] Therefore, its subject imports were *** percent of its production.

We do not find that the importing activities of Oregon Steel or Ryerson warrant their exclusion as related parties. Based on the available information, Oregon Steel's imports appear to be a result of ***. Its primary interests appear to be in production, and not importation. Although it *** the petition, for full-year periods 1997 and 1998, its operating income ratios were generally *** than those of most other domestic producers.[57] Thus, it *** from its importation activities.

Although Ryerson's imports are equivalent to a significant percentage of its production, its operations are a small percentage of the overall CTL plate industry.

c. ***

***, a processor of CTL plate, reported purchases of subject imports during 1998. The Commission has construed the related parties provision to cover producers who purchase large volumes of imports.[58] The threshold question is whether these purchases establish that this processor is "related" under

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[54] *** reported operating income only for 1998, and that was consistent with the other domestic producers. Table VI-5, CR at VI-16-17, PR at VI-6.

[55] In 1998, CSI accounted for *** percent of mill production; National accounted for *** percent of mill production; North Star accounted for *** percent of mill production; U.S. Denro accounted for *** percent of mill production; Cargill Steel & Wire accounted for *** percent of non-toll processing production, which corresponds to *** percent of total domestic production; Feralloy accounted for *** percent of non-toll and *** percent of toll processor production, which corresponds to *** percent of total domestic production; FPC accounted for *** percent of toll processor production, which corresponds to *** percent of total domestic production; and JIT accounted for *** percent of non-toll and *** percent of toll processor production, which corresponds to *** percent of domestic production. Calculations including toll production reflect double counting. Table III-1, CR at III-2-4, PR at III-2-4.

[56] Commission questionnaire responses.

[57] Table VI-5, CR at VI-16-17, PR at VI-6.

[58] Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2528 at 12 (June 1992)

the statute by directly or indirectly controlling an exporter or importer. *** purchased *** of Indian product in 1998.[59]

The Commission generally has found direct or indirect control to exist where a producer was responsible for a predominant share of an importer's purchases, and the importer's purchases were substantial.[60] This producer did not purchase a "predominant share" of imports that accounted for a substantial amount of subject imports. Indeed, *** Indian purchases accounted for only *** percent of Indian imports in 1998.[61] Given this level of purchases, and absent other evidence of control, we do not find that this producer is a "related party."

Accordingly, we define the domestic industry to consist of all domestic producers of CTL steel plate.

II. CUMULATION[62] [63]

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, 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

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[59] CR at IV-1, PR at IV-1; Commission questionnaire responses.

[60] See, e.g., Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10, n.50 (April 1997).

[61] Commission questionnaire responses.

[62] The Commission in the preliminary phase of these investigations found imports from the Czech Republic and Macedonia to be negligible for purposes of both present material injury and threat of material injury. Its investigations with respect to these two countries were thereby terminated, and their imports were not cumulated with those of the other subject countries for purposes of the Commission's present material injury analysis. USITC Pub. 3181 at 13-17. (Chairman Bragg dissenting with respect to the Czech Republic). Four alternative sets of data were presented to the Commission for measuring negligibility in the preliminary phase of the investigations. Chairman Bragg and Commissioners Crawford and Koplan based their negligibility and material injury analyses on Method 4, the equivalent of Method B in the final phase Commission Report; Vice Chairman Miller and Commissioners Hillman and Askey based their negligibility and material injury analyses on Method 3, the equivalent of Method A. Methods A and B both include micro-alloy, as well as non-alloy, CTL plate imports, and account for temporary importation under bond ("TIB") and foreign trade zone ("FTZ") entries. The difference between them is that Method B counts as subject imports TIB and FTZ entries that were reexported to Canada after transformation, but Method A does not. USITC Pub. 3181 at 22, n.149.

Under either Method A or Method B, as presented in the staff report, no subject country's imports are below 3 percent for calendar year 1998, the most recent 12 months for which complete import data (i.e., including adjustments for micro-alloys and TIB and FTZ entries) are available. Tables IV-2a, IV-2b, CR at IV-8, IV-10, PR at IV-6-8. Negligibility is therefore not an issue in the final phase of these investigations. See 19 U.S.C. § 1677(24)(A)(i)(I).

[63] Commissioner Askey joins only in subsection II.A. For her cumulation analysis, see Concurring and Dissenting Views of Commissioner Thelma J. Askey.

States market.[64] In assessing whether subject imports compete with each other and with the domestic like product,[65] 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;

(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.[66]

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.[67] Only a "reasonable overlap" of competition is required.[68]

Because the petitions in these investigations were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies in the final phase of these investigations.[69] Therefore, we are required to determine whether there is a reasonable overlap of competition both between the domestic like product and subject imports from each of the subject countries, as well as among the subject imports from the subject countries.

B. Analysis

In the preliminary phase of these investigations, the Commission cumulated subject imports from France, India, Indonesia, Italy, Japan, and Korea, finding a sufficient degree of fungibility of the subject imports with each other and the domestic merchandise, overlap of geographic markets, common or similar

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[64] 19 U.S.C. § 1677(7)(G)(i).

[65] 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).

[66] 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).

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

[68] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[69] These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

channels of distribution, and simultaneous presence in the U.S. market.[70] In the final phase of these investigations, we again find that each of the criteria for cumulation is met with respect to all the subject countries.

1. Fungibility

CTL plate produced in the United States is highly, although not perfectly, interchangeable with CTL plate produced in the subject countries.[71] Eighty-five percent of purchaser responses, and the majority of purchaser responses for each subject country, indicated that subject country imports are always or frequently interchangeable with the domestic like product, and no responses characterized any subject imports as never interchangeable with the domestic like product.[72] A *** of grade X-70 plate stated that the interchangeability of domestically-produced and imported product depends upon technical factors and physical dimensions specific to the end use.[73] Another purchaser reported that all subject country imports are generally interchangeable unless either state or federal funding stipulates a domestic source or if surface or flatness conditions are critical.[74] Most purchasers reported that they change suppliers only infrequently and then on the basis of price, technical specifications, and delivery performance or availability.[75] These three factors together accounted for 85.3 percent of the factors purchasers considered most important when choosing a supplier.[76]

Some respondents argue that their imports are not fungible because most of their imports are specialty or "niche" products, as compared to very limited domestic production and/or imports from the other subject countries of the same specialty products.[77]

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[70] Because the investigations with respect to the Czech Republic and Macedonia were terminated on the basis of negligibility, their imports could not be cumulated with those of the other subject countries. See 19 U.S.C. § 1677(7)(G)(ii)(II). Chairman Bragg found in the preliminary phase of these investigations that imports from the Czech Republic were not negligible and that there was a reasonable overlap of competition with regard to imports from the Czech Republic. See USITC Pub. 3181, Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from the Czech Republic.

[71] CR at II-11, PR at II-7.

[72] Table II-3, CR at II-11, PR at II-8. Purchasers tended to consider plate from France and Japan as always being used interchangeably with the U.S. product, while Korean-produced CTL plate is either always or frequently interchangeable with U.S.-produced plate. CR at II-11, PR at II-7. CTL plate from India, Indonesia, and Italy is always, frequently, or sometimes used interchangeably with U.S.-produced CTL plate. Id.

[73] CR at II-11, PR at II-7.

[74] CR at II-11, PR at II-7.

[75] CR at II-10-11, PR at II-6.

[76] CR at II-14, PR at II-10.

[77] The French, Italian, and Japanese respondents argue that their imports, taken together, do not compete with those of India, Indonesia, and Korea, based on a comparison of "specialty" versus commodity-grade CTL plate. They argue that the Commission at most should only cumulate imports from France, Italy, and Japan, on the one hand, and those from India, Indonesia, and Korea on the other. French, Italian, and Japanese Respondents' Joint Prehearing Brief at 76-89.

The French respondents further argue that the Commission should treat X-70 CTL plate as a separate like product, and that the remaining French imports, excluding X-70 CTL plate, should not be cumulated with any other subject imports. French Respondents' Prehearing Brief at 27-29. The French respondents argue in the alternative that, even if X-70 CTL plate is not considered a separate like product, France's imports still should not be cumulated with those of the other countries. French Respondents' Prehearing Brief at 29, n.92.

(continued...)

We do not find respondents' arguments persuasive. We have considered data gathered by the Commission on specific types of CTL plate[78] as to which respondents claim limited competition either with the U.S. product or among subject imports.[79] We recognize that these products share certain characteristics that distinguish them from commodity grades of plate in that they are made to certain specifications, are certified for a particular end use, or are manufactured using special chemical processes or equipment.[80]

The record also indicates, however, that certain products broken out by respondents -- i.e., pressure vessel plate, floor plate, shipbuilding plate, and heavy gauge A-36 plate -- are considered commodity grades, rather than "specialty" grades, by CTL plate customers.[81] [82] Moreover, because of the differences among the various grades, particularly with respect to end use, we do not group the "specialty" products identified by respondents for the purpose of analyzing cumulation. Rather, we consider whether there is a reasonable overlap of competition with respect to individual products on which the respondents base their cumulation argument -- namely, grade X-70 CTL plate and heavy gauge A-36 plate, and find that cumulation of all subject imports is warranted.

We find that, despite X-70 plate from France and extra-thick plate from Italy having limited fungibility with the domestic like product and other subject imports, there is a substantial presence of other non-X-70 and non-extra thick, fungible subject imports from each of these countries. U.S. commercial shipments of non-X-70 plate accounted for *** percent of French imports, as compared to 98 percent for U.S. producers' shipments, *** percent for imports from Italy, *** percent for Japan,[83] *** percent for Korea, and *** percent for both India and Indonesia.[84] With respect to grade X-70 CTL plate, U.S. commercial shipments accounted for *** percent of French subject imports in 1998 and 2 percent of U.S. producers' shipments, ***: 138,853 short tons for U.S. producers' shipments and *** short tons for French subject imports. This analysis of X-70 and non-X-70 CTL plate suggests a reasonable overlap of competition among subject imports and between the U.S. product and subject imports, including those of France.

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[77] (...continued)

The Italian respondents argue that the Commission should not cumulate Italian imports due to the alleged limited fungibility between the Italian imports and the U.S. product. They note that the vast majority of Italian CTL plate imports in 1998 consisted of either line pipe plate (X-65 and X-70) or thick plate. Italian Respondents' Prehearing Brief at 1-6.

[78] See Table II-4, CR at II-13-14, PR at II-9-10.

[79] Respondents, and the Commission's questionnaire, refer to the products as "specialty," as opposed to commodity-grade CTL plate. General Information, Instructions, and Definitions for Commission Questionnaires at 5; Respondents' Joint Prehearing Brief, Exhibit 24. We do not view the list identified by respondents as a definitive or all-inclusive breakout of specialty versus commodity grade CTL plate but rather as a tool for understanding the differences and similarities among the types of CTL plate imported from each subject country and produced domestically.

[80] See General Information, Instructions, and Definitions for Commission Questionnaires at 5; Petitioners' Prehearing Brief at 5; CR at I-8, PR at I-6-7.

[81] Petitioners' Posthearing Brief at 27-28, Exhibit 6; Hearing Tr. at 72-73.

[82] The record indicates that U.S. commercial shipments of shipbuilding, floor, and heavy gauge plates accounted for over *** percent of French subject imports in 1998. French imports of these three types of plate, when viewed as commodity grades, thus exhibit a reasonable overlap of competition with subject imports from all other countries and with the domestic product, the majority of which are commodity grade. Table II-4, CR at II-14, PR at II-10.

[83] In 1998 ***. INV-X-011 (Jan. 11, 2000).

[84] Table II-4, CR at II-14, PR at II-10.

The record also reveals, with respect to Italian imports, limited fungibility between Italian imports and those of all the other subject countries and U.S. merchandise with respect to extra-thick plate, but a high degree of fungibility between all other Italian imports and all other CTL plate produced by U.S. producers and imported from the subject countries. U.S. commercial shipments of extra-thick plate accounted for 59 percent of Italian subject imports in 1998, but only 1.6 percent of U.S. producers' shipments, and the following percentages for the other subject countries: France, 0.4 percent; Japan, 1.6 percent; Korea, 1.4 percent; and none for India and Indonesia. However, U.S. commercial shipments of all non-extra thick plate reveal the following percentages for 1998: Italy, 41 percent; United States, 98.4 percent; France, 99.6 percent; Japan, 98.4 percent; Korea, 98.6 percent; India and Indonesia, 100 percent.[85] A comparison of extra-thick and all other CTL plate thus reveals a reasonable overlap of competition among subject imports and between the U.S. product and subject imports, including those of Italy.

2. Geographic Overlap

CTL plate produced in the United States is shipped nationwide.[86] Imported CTL plate from the subject countries is marketed in most areas of the United States. The record shows that for the period January 1996 through June 1999, imports from each of the subject countries entered all four regions of the United States (East, Gulf, Great Lakes, and West), although Indian and Italian imports entering the West region, and Indonesian and Japanese imports entering the Great Lakes region, were all less than one percent of total imports.[87]

3. Channels of Distribution

Both the domestic producers and importers sell CTL plate to end users as well as distributors, but in different proportions. Importers' trade sales, with the exception of Italian imports, are primarily to distributors, while domestic product sales are more evenly divided between end users and distributors.[88] Approximately 56.4 percent of the CTL plate shipments of U.S. mills, which represent the majority of U.S. production, was to distributors, processors and service centers in 1998, and about 43.6 percent to end users.[89] About 28.2 percent of U.S. processors' shipments was to distributors, processors and service centers, and about 71.8 percent to end users.[90] For most of the subject countries, more than two-thirds of their imports were to distributors, processors and service centers.[91] About 79.4 percent of Italian imports was to end users, and 20.6 percent was to distributors.[92]

4. Simultaneous Presence

[85] Table II-4, CR at II-14, PR at II-10.

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

[87] Table IV-3, CR at IV-11, PR at IV-8.

[88] CR at I-9, PR at I-7.

[89] Table I-1, CR at I-10, PR at I-8.

[90] Table I-1, CR at I-10, PR at I-8.

[91] Table I-1, CR at I-10, PR at I-8.

[92] Table I-1, CR at I-10, PR at I-8.

Domestically produced CTL plate was present throughout the United States during the period reviewed. Based on official import statistics, imports of non-alloy CTL steel plate from France, Italy, Japan, and Korea entered the United States in nearly every month between January 1996 and December 1998.[93] Imports from India and Indonesia entered the United States in fewer months over the three-year period, but entered in 17 out of 18 months between January 1998 and June 1999.[94] [95]

5. Conclusion

Based on the evidence in the record of the general fungibility among the subject imports and the domestic like product, nationwide sales, similar channels of distribution, and the simultaneous presence of all subject imports in the U.S. market, we again find a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. With respect to fungibility, there are some quality differences between the subject merchandise from France, Italy, and Japan, the domestic like product, and other subject imports, as well as some degree of differentiation in the product mix. Nonetheless, we find that the record reveals that all the subject countries exported to the United States a sufficient quantity of subject merchandise that was interchangeable with each other and with the domestic like product, generally manufactured to industry standards, and suitable for a wide range of applications. Therefore, we find that subject imports compete with each other and with the domestic like product in the U.S. market. Consequently, we cumulate subject imports from all the subject countries for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports.

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[93] Table IV-4, CR at IV-12, PR at IV-9.

[94] Table IV-4, CR at IV-12, PR at IV-9.

[95] The Indian respondents argue that the Commission should not cumulate Indian imports because they left the U.S. CTL plate market in July 1998 before the alleged injury to the U.S. industry occurred -- that is, in the fourth quarter of 1998 and the first half of 1999. Indian Respondents' Prehearing Brief at 2. The Indian respondents state that their last shipment of subject merchandise to the United States was in October 1998, based on a sale that was finalized in July 1998. Id. at 2. They thus argue that most of the Indian product that entered the United States in the second half of 1998 had been presold, leaving only 19,690 short tons of non-presold Indian imports that entered in the second half of 1998 and the first half of 1999. Id. at 15, n.31. They do not dispute the fungibility of their product with that of other suppliers, but claim a lack of competition based on limited sales of imports from India of Indian CTL plate in the U.S. market during the period that injury occurred. Id. at 21-23.

We do not find this argument persuasive. We note that the record shows the presence of 49,451 short tons of imports from India in the United States during the second half of 1998. Tables IV-5a, IV-5b, CR at IV-14-15, PR at IV-10-11. This quantity was more than total imports from India during all of 1996. We further note that, despite the Indian respondents' claim that most of these imports had been presold, by their own admission, most of them were sold in the second half of 1998 -- i.e., in July 1998. While we note that imports from India declined significantly in the first half of 1999, we find overall that imports from India and other subject imports, as well as the domestic product, were simultaneously present in the U.S. market during the period under investigation.

III. MATERIAL INJURY BY REASON OF SUBSIDIZED AND LTFV IMPORTS[96]

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.[97] In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[98] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[99] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[100] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[101]

For the reasons discussed below, we determine that the domestic industry producing CTL steel plate is materially injured by reason of subsidized and LTFV imports from France, India, Indonesia, Italy, Japan, and Korea.[102]

A. Conditions of Competition

Several conditions of competition are relevant to our determination.

U.S. demand for CTL plate depends upon the demand for various end-use products, and demand in most sectors has generally increased since 1996.[103] Although apparent U.S. consumption of CTL plate fell by 5.1 percent between 1996 and 1997, it grew by 23.3 percent between 1997 and 1998, with apparent consumption in 1998 17.0 percent greater than in 1996. Consumption then dropped 20.0 percent in January-June 1999 compared to the same period in 1998.[104]

Consistent with growing demand and tighter supply in 1998, domestic mills' end-of-period order books, which had averaged 665,819 short tons between the first quarter of 1996 through the third quarter of 1997, jumped to 1,229,598 short tons in the fourth quarter of 1997. End-of-period orders remained high

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[96] Commissioner Askey joins this section except as noted. Commissioner Askey made a different cumulation determination than did her Colleagues, which results in her making three distinct material injury analyses. For purposes of establishing whether Italian and Japanese imports are a cause of injury, she cumulates imports from all six countries. Accordingly, she joins subsections B-D, except as noted, for this limited purpose. She also joins in the discussion regarding Conditions of Competition. For her analyses regarding whether French, Indian, Indonesian, and Korean imports are a cause of material injury, see her Concurring and Dissenting Views.

[97] 19 U.S.C. §§ 1671d(b) and 1673d(b).

[98] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[99] 19 U.S.C. § 1677(7)(A).

[100] 19 U.S.C. § 1677(7)(C)(iii).

[101] 19 U.S.C. § 1677(7)(C)(iii).

[102] Commissioner Askey dissenting with respect to France.

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

[104] Table C-1a, CR at C-3, PR at C-3; see also Table C-1b, CR at C-5, PR at C-5.

at 1,318,835 short tons and 1,111,229 short tons, respectively, in the first and second quarters of 1998 before returning to historical levels in the third quarter of 1998.[105]

The median lead time for orders of CTL plate placed with U.S. producers jumped from 25 days in the first half of 1997 to 32 days in the third quarter of 1997 and increased to 35 days in the first quarter of 1998, a further indication that demand was increasing during the period. The median lead time then dropped to 21 days in the third quarter of 1998 and remained at that level through the first half of 1999.[106]

The industry underwent considerable consolidation over the period under investigation, added significant capacity, and increased production, although some producers experienced setbacks and delays in bringing new capacity on line.[107] Bethlehem and Lukens completed a merger of their plate operations in 1998 and then closed the Sparrows Point plate mill.[108] During 1995-1996, Ispat/Inland halted production of CTL plate at its Indiana mill. Both IPSCO and U.S. Denro began production in late 1997, while Oregon Steel replaced its reversing mill with a Steckel mill during 1997-1998.[109] Nucor began construction of a new plate mill and IPSCO, Inc. of Canada announced plans to build a new plate mill in the United States.[110] Among processors, Huntco, JIT, Olympic, Robinson, Feralloy, and Cargill Steel & Wire all added cut-to-length lines during the period 1996 to 1999.[111]

Geneva Steel filed for Chapter 11 bankruptcy in February of 1999, following default on the payment of interest on long-term debt, and Gulf States Steel filed for Chapter 11 bankruptcy in June of 1999.[112]

The domestic industry's capacity to produce CTL plate increased by 6.1 percent between 1996 and 1997, by 21.0 percent between 1997 and 1998, and by 6.5 percent between the first half of 1998 and the first half of 1999. Between 1997 and 1998, capacity utilization dropped slightly, from 73.3 percent to 71.0 percent, as total unit costs decreased by 2.0 percent and sales quantity increased by 19.7 percent.[113] Between the first half of 1998 and the first half of 1999, while capacity increased by 6.5 percent, capacity utilization fell from 72.3 percent to 51.9 percent, as total unit costs decreased by 4.2 percent and net sales quantity decreased by 23.1 percent.[114]

The record indicates that the domestic manufacturers produce a wide variety of grades and types of CTL plate within the scope of these investigations, and that there is some variation among the grades and types of CTL plate imported by the individual subject countries.[115]

The costs of raw materials for CTL plate production showed differing trends for the period under investigation. While the costs of coal and iron ore were relatively stable, the cost of scrap fell dramatically during 1998.[116] As a result, producers with scrap as a major primary raw material input (i.e., over 80

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[105] CR at III-9, PR at III-6.

[106] CR at II-15, PR at II-11.

[107] See CR at III-6-7, PR at III-5-6. For example, Citisteel's attempts to increase production in 1998 ***. Oregon Steel reported that, throughout 1998, its production was ***. CR at III-7, PR at III-6.

[108] CR at III-4, PR at III-1.

[109] CR at III-4, PR at III-1.

[110] CR at III-4-5, PR at III-1.

[111] CR at III-5, PR at III-4.

[112] Table III-1, CR at III-4, PR at III-4.

[113] CR at II-2, PR at II-2.

[114] Table C-1a, CR at C-4, PR at C-4.

[115] CR at II-12, PR at II-8; Table II-4, CR at II-13, PR at II-9.

[116] Figure V-1, CR at V-2, PR at V-2.

percent of the total raw material cost) reported larger overall reductions in unit raw material costs in the first half of 1999 than did producers for which scrap was not the primary raw material. Mills purchasing slabs also reported declines in raw material costs.[117]

The share of apparent consumption accounted for by total imports, both subject and nonsubject, decreased from 1996 to 1997, following the Commission's affirmative determinations on CTL plate imports from China, Russia, South Africa, and Ukraine, and then increased in 1998. Nonsubject import market share decreased over the period while subject import market share increased.[118]

B. Volume of the Cumulated Subject Imports[119]

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[120]

Volume and market share of the subject imports increased significantly during the period for which data were collected. The volume of cumulated imports from the subject countries rose from 274,859 short tons in 1996 to 485,732 short tons in 1997 and to 1.15 million short tons in 1998, an overall increase of 318.4 percent.[121] [122] Two-thirds of 1998 subject imports entered in the second half of 1998.[123] We note

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[117] CR at VI-6-8, PR at VI-5.

[118] Table C-1a, CR at C-3, PR at C-3; Table C-1b, CR at C-5, PR at C-5.

[119] The injury analysis of Vice Chairman Miller and Commissioners Askey and Hillman is based on Method A, while the injury analysis of Chairman Bragg and Commissioner Koplan is based on Method B. Both Method A and Method B adjust official imports for consumption to include micro-alloys and to take into account TIB and FTZ entries. The difference between the two methods is that Method A excludes all TIB and FTZ entries which are reexported to another country, including a NAFTA country, after transformation, while Method B includes TIB and FTZ entries that are shipped into the United States after transformation or reexported to Canada on the ground that NAFTA subjects such imports to antidumping and countervailing duties and treats them as entries for consumption. See 19 C.F.R. § 10.31(h), 19 C.F.R. § 181.53(a)(2),(b)(4)(ii),(b)(5), 19 C.F.R. § 181.42(a), 19 C.F.R. § 181.44(a), (b). The Commission generally treats TIB and FTZ entries as subject imports where they enter U.S. customs territory after transformation. See Titanium Sponge From Japan, Kazakhstan, Russia, and Ukraine, Invs. Nos. 751-TA-17-20, USITC Pub. 3119 at 19-20 (Aug. 1998); Clad Steel Plate From Japan, Inv. No. 731-TA-739 (Final), USITC Pub. 2972 at 14-15 (June 1996); Coumarin From the People's Republic of China, Inv. No. 731-TA-677 (Final), USITC Pub. 2852 at I-10, n.54 (Feb. 1995).

The total volume of 1998 imports included in Method B that is not included in Method A is *** short tons, from the following subject countries: France, *** short tons; Italy, *** short tons; Japan, *** short tons; Korea, ***; the remaining *** short tons were from nonsubject countries. Compare Table C-1a with Table C-1b, CR at C-3-6, PR at C-3-5. The trends exhibited under either method are the same.

The petitioners argue that the Commission should use Method B in analyzing material injury, while the French and Italian respondents urge the Commission to use Method A. See Petitioners' Prehearing Brief at Appendix A; French Respondents' Posthearing Brief at Exhibit 5; Italian Respondents' Posthearing Brief at Exhibit 1.

The respective rationales for selecting Method A or Method B (identified as Method 3 and Method 4 in the preliminary determinations) are stated in the preliminary determinations. See USITC Pub. 3181 at 13-14, nn.71, 72, 73, 74.

Data used in the text of the material injury analysis are based on Method A.

[120] 19 U.S.C. § 1677(7)(C)(i).

[121] Table C-1a, CR at C-4, PR at C-4. Under Method B, the volume of cumulated imports from the subject countries rose from *** short tons in 1996 to *** short tons in 1997 and to *** million short tons in 1998, an

(continued...)

further that, although subject import volumes decreased in the first half of 1999 relative to the first half of 1998, the decrease was only 6.4 percent, as compared to a 20 percent drop in apparent consumption from 1998 to 1999. In addition, U.S. producers' market share remained flat during the period while subject imports' market share increased to 9.1 percent in the first half of 1999, as compared to 7.8 percent in the first half of 1998.[124]

While the subject imports gained market share in part at the expense of fairly traded imports, they also gained market share at the expense of the domestic producers, particularly toward the end of the period for which data were collected. The cumulated market share of the subject imports by quantity rose from 3.3 percent in 1996 to 6.1 percent in 1997 and to 11.7 percent in 1998.[125] The domestic producers' share of consumption increased from 76.9 percent in 1996 to 82.2 percent in 1997, and then declined to 77.9 percent in 1998.[126] Nonsubject imports' market share decreased from 19.8 percent in 1996 to 11.7 percent in 1997 to 10.4 percent in 1998.[127]

Four U.S. producers and processors reported to the Commission that since 1996 they have experienced periods when they were unable to supply CTL plate to a customer at prevailing prices in the quantity, type, and quality desired due to various factors, including unplanned outages, a labor strike, a severe winter storm that caused electrical problems, and the failure of imported coils to arrive as scheduled.[128] We acknowledge that the domestic industry experienced sporadic problems in meeting demand during the period under investigation, as well as difficulties in bringing new capacity on line, but do not view these occurrences as evidence of a domestic supply shortage in late 1997/early 1998 that drew

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[121] (...continued)
overall increase of *** percent. Table C-1b, CR at C-6, PR at C-5.

[122] Commerce found de minimis antidumping and countervailing duty margins for Pohang, a Korean producer of CTL plate. For our material injury analysis, we exclude Pohang's exports from subject import volume and market share data to the extent information is available to the Commission on Pohang's exports. However, we note that, with or without Pohang's exports, the trends exhibited by subject imports are the same. If Pohang's exports are excluded as subject imports, then the volume of total subject imports in 1998 was *** million short tons under Method A and *** million short tons under Method B.

[123] Table C-1a, CR at C-4, PR at C-4; Table C-1b, CR at C-6, PR at C-5.

[124] Table C-1a, CR at C-3, PR at C-3. Under Method B, subject imports' market share increased to *** percent in the first half of 1999 as compared to *** percent in the first half of 1998. Table C-1b, CR at C-5, PR at C-5.

If Pohang's exports are excluded, the subject imports' market share increased from *** percent in the first half of 1998 to *** percent in the first half of 1999 under Method A, and increased from *** percent to *** percent over the same period under Method B.

[125] Table C-1a, CR at C-3, PR at C-3. Under Method B, subject imports' market share increased from *** percent in 1996 to *** percent in 1997 to *** percent in 1998. Table C-1b, CR at C-5, PR at C-5.

If Pohang's exports are excluded, subject imports' market share increased to *** percent in 1998 under Method A, and to *** percent in 1998 under Method B.

[126] Table C-1a, CR at C-3, PR at C-3. Under Method B, the domestic producers' share of consumption increased from *** percent in 1996 to *** percent in 1997, and then declined to *** percent in 1998. Table C-1b, CR at C-5, PR at C-5.

Domestic producers' share of consumption does not change regardless of whether Pohang's exports are classified as subject or nonsubject imports.

[127] Table C-1a, CR at C-3, PR at C-3. Under Method B, nonsubject imports' market share decreased from *** percent in 1996 to *** percent in 1997 to *** percent in 1998. Table C-1b, CR at C-5, PR at C-5.

If Pohang's exports are counted as nonsubject, then nonsubject import market shares are *** percent in 1998 under Method A and *** percent in 1998 under Method B.

[128] CR at II-3, PR at II-2.

subject imports into the United States in 1998. We, therefore, reject respondents' argument that a supply shortage caused the massive increase in subject import volumes in 1998.[129]

We find that the volume of cumulated subject imports, both absolutely and in terms of percentage of domestic consumption, is significant and the increase in subject import volume was dramatic during the period of investigation. From 1996 to 1998, subject import volumes increased by 318.4 percent, from 274,859 short tons to 1.15 million short tons.[130] The subject imports in 1997 initially gained market share at the expense of other imports after the filing of petitions against China, Russia, South Africa, and Ukraine in the last CTL plate case and the suspension agreements that ensued.[131] U.S. producers also gained market share from 1996 to 1997. However, the subject imports continued to gain market share, at the expense of the domestic industry, particularly from 1997 to 1998 and in the second half of 1998. In the face of rising U.S. consumption of CTL plate over the period for which data were collected, U.S. producers' market share declined in 1998 to close to 1996 levels, while subject imports as a share of consumption more than tripled during the period for which data were collected.

C. Price Effects of the Cumulated Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether --

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[132]

The record evidence in these investigations shows that, despite some perceived differences in quality, most producers and importers consider the subject imports to be highly substitutable with the domestic like product.[133] [134] We note, however, that substitutability may be limited with respect to plate used in specific applications, or with greater thickness.

The pricing data gathered in these investigations show that prices of both domestic CTL plate and subject imports in all product categories declined during the second half of 1998 and the first half of

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[129] Respondents' Joint Prehearing Brief at 61-69; Respondents' Joint Posthearing Brief, Exhibit 1-B. The record evidence does not support respondents' theory of an "acute shortage" of CTL plate in the first half of 1998.

[130] Table C-1a, CR at C-4, PR at C-4. Under Method B, subject imports increased from *** short tons in 1996 to *** million short tons in 1998, an increase of *** percent. Table C-1b, CR at C-6, PR at C-5. If Pohang's exports are excluded as subject imports, then the volume of subject imports in 1998 was *** million short tons under Method A and *** million short tons under Method B.

[131] Carbon Steel Plate, USITC Pub. 3076.

[132] 19 U.S.C. § 1677(7)(C)(ii).

[133] CR at II-11, PR at II-7.

[134] We note that substandard quality does not appear to be an issue for most of the imports in question. Purchasers and importers discussed the quality of CTL plate from France, Italy, Japan, and Korea in positive terms, although instances of inferior quality were noted for imports from India and Indonesia. CR at II-17, PR at II-12.

1999.[135] The decline in prices occurred as subject import volumes peaked, particularly in the second half of 1998, and the AUVs of the cumulated subject imports reached their lowest level.[136]

Overall, there was significant underselling from 1996 through the first half of 1999, particularly with respect to the higher-volume pricing product categories.[137] The imported product undersold the domestic product in 143 out of 228 quarterly observations, or 62.7 percent of the time, and oversold the domestic product in 85 quarterly comparisons. Underselling increased in 1998 from 1996-97 levels, and the instances and severity of underselling were greater in 1998 than in prior periods.[138] The average underselling margin per period of underselling ranged from 4.8 to 16.0 percent.[139] [140]

AUVs for imports from the subject countries declined from $475.16 in 1996 to $427.94 in 1997, to $405.62 in 1998, and to $400.08 in the first half of 1999.[141] [142] Throughout the period under investigation, the cumulated subject imports' AUVs declined consistently and, with the exception of 1996 and the first half of 1999, were lower than the domestic producers' AUVs. The declines in AUVs correspond to significantly increasing levels of subject imports, both absolutely and in terms of domestic consumption, and are consistent with the declines in prices shown in the pricing data.

We find that the increasing and increasingly underpriced subject imports contributed to a significant degree to price depression.

D. Impact of the Cumulated Subject Imports on the Domestic Industry[143] [144]

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[135] Tables V-5-14, CR at V-18-32, PR at V-12-26.

[136] See Hot-Rolled Steel, USITC Pub. 3202 at 14, n.76 (declines in AUVs considered in analyzing price effects of subject imports).

[137] Tables V-5-14, CR at V-18-32, PR at V-12-26.

[138] Table V-15, CR at V-33, PR at V-27. In 1996, there were 10 instances of underselling out of 31 comparisons; this increased to 47 instances out of 69 comparisons in 1997, then to 62 instances out of 89 comparisons in 1998. In the first half of 1999, there were 24 instances of underselling out of 39 comparisons. Tables V-5-14, CR at V-18-32, PR at V-12-26.

[139] Table V-15, CR at V-33, PR at V-27.

[140] Several producers alleged the loss of sales or revenues to CTL plate imported from the subject countries. The majority of these allegations, however, were disputed by the companies alleged to have purchased the product in question. Purchasers did confirm lost sales involving CTL plate from India, Indonesia, Japan, and Korea, as well as two allegations of revenue lost to imports of Korean CTL plate in late 1998. The domestic industry stated thatcustomers are reluctant to provide the detailed information needed to document allegations of lost sales and revenues. CR at V-35, PR at V-27-28.

We do not find that the lack of confirmation of some lost sales and lost revenue allegations detracts from other evidence in the record showing the adverse price effects of the subject imports. See generally, e.g., Czestochowa v. United States, 890 F. Supp. 1053, 1076 (Ct. Int'l Trade 1995); Lone Star Steel Co. v. United States, 650 F. Supp. 183, 186 (Ct. Int'l Trade 1986).

See Concurring and Dissenting Views of Commissioner Thelma J. Askey at n.66.

[141] Table IV-2a, CR at IV-7, PR at IV-6. Using Method B, the AUVs for imports from the subject countries declined from *** in 1996 to *** in 1997, to *** in 1998, and to *** in the first half of 1999. Table IV-2b, CR at IV-9, PR at IV-8.

[142] We are mindful that the declines in AUVs may result, not only from an increase in imports, but from other factors, such as a shift in product mix or a decline in the cost of raw materials, but nevertheless find that the declines in AUVs are consistent with the declines in prices shown in these investigations.

[143] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final

(continued...)

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[145] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[146]

The data show a CTL plate industry with declines in a number of key performance indicators, despite increases in U.S. production, capacity, and overall demand during the period for which data were collected. The domestic industry's capacity to produce CTL plate increased 28.3 percent from 1996 to 1998, production increased by 21.2 percent, and apparent consumption increased by 17.0 percent.[147] The capacity utilization of the domestic industry, however, declined from 75.2 percent in 1996 to 71.0 percent in 1998.[148] While orders for CTL plate produced by U.S. mills reached their highest level, 1,318,835 short tons, at the end of the first quarter of 1998, orders declined dramatically throughout the year to 574,714 short tons at the end of fourth quarter 1998.[149] Orders in place with U.S. mills at the close of 1998 were at the second lowest level reported for any quarter over the entire period for which data were collected.[150]

From 1996 to 1997, the domestic industry's total CTL plate sales volume increased by more than one percent, while total sales value increased by only 0.04 percent. As the cost of goods sold ("COGS") and SG&A expenses increased by 1.6 percent and 14 percent, respectively, the industry's gross profits and operating income were reduced. In 1998, the industry experienced higher sales volumes and lower unit COGS, but further declines in average unit prices.[151] Average unit sales prices for CTL plate by the

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[143] (...continued)
antidumping duty margins are as follows: France 10.43; India 72.49; Indonesia 42.36-52.42; Italy 8.97, de minimis for ILVA; Japan 10.78-59.12; Korea 2.98, de minimis for Pohang. CR at I-3, PR at I-3. The individual company margins for each country are listed in the staff report, CR at I-3, PR at I-3.

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

[145] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[146] 19 U.S.C. § 1677(7)(C)(iii).

[147] Table C-1a, CR at C-3, PR at C-3. Under Method B, apparent consumption increased by *** percent. Table C-1b, CR at C-5, PR at C-5.

[148] Table III-2, CR at III-6, PR at III-5.

[149] CR at III-9, PR at III-6.

[150] The record reveals that the inventories held by U.S. producers compared to total shipments remained relatively flat during the period under investigation. See Table III-4, CR at III-9-10, PR at III-8. We have not relied for our affirmative determination on petitioners' argument that there was an overhang of 1998 subject import inventories into 1999. Petitioners' Posthearing Brief at II-14. The available data on inventories of U.S. service centers (some of which are importers) are not limited to subject imports, but include nonsubject imports and the domestic like product, as well as coiled plate, a product outside the scope of subject merchandise. Figure VII-1, CR at VII-17, PR at VII-8.

[151] CR at VI-3, PR at VI-1.

domestic industry declined throughout the period under investigation and fell precipitously at the end of the period, from $450.80 per short ton in 1996 to $444.86 in 1997, to $442.02 in 1998, and to $390.20 in the first half of 1999.[152] As indicated above, the decline in the domestic industry's average unit sales prices occurred at the same time that subject imports grew[153] and subject import AUVs fell. The industry's reduced unit sales values during the period under investigation were generally greater than the reduction in raw material costs.[154]

At the end of the period under investigation, the domestic industry's sales volumes and values were 23 percent and 33 percent lower than in the first half of 1998, and their cash flow was negative.[155] All producers, mills as well as processors, reported reduced unit values in the first half of 1999 compared to the same period in 1998. Overall, the industry's gross profits in the first half of 1999 decreased by 96 percent as compared to the first half of 1998. The industry's operating income decreased from $97.4 million in the first half of 1998 to a negative $63.6 million in the first half of 1999.[156]

We note, moreover, that the industry's capital expenditures decreased from $622.99 million in 1996 to $250.457 million in 1997 to $221.676 million in 1998. Expenditures were $71.839 million for the first half of 1999.[157] In addition, the decline in the number of employees, hours worked, and wages paid by the domestic industry outstripped productivity gains, particularly in the first half of 1999.[158]

In sum, based on the rapid increases in the volume and market share of the subject imports, the declining average unit values of the subject imports and a decline in the domestic industry's average unit sales prices, and the adverse trends in the financial condition of the domestic industry, particularly during 1998 and into the first half of 1999, despite growing U.S. production, capacity, and demand, we find that the subject imports are causing material injury to the domestic industry producing certain CTL steel plate.

IV. CRITICAL CIRCUMSTANCES

Because Commerce made affirmative critical circumstances determinations with respect to certain imports from Japan and we have determined that the domestic CTL steel plate industry is materially injured by reason of subject imports from Japan, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued."[159] The URAA Statement of Administrative

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[152] Table III-3, CR at III-8, PR at III-7.

[153] The overall increase in the volume of subject imports from 1996 to 1998 was 318.4 percent using Method A and *** percent using Method B.

[154] CR at VI-8, PR at VI-5.

[155] Table C-1a, CR at C-4, PR at C-4.

[156] Table C-1a, CR at C-4, PR at C-4.

[157] Table VI-7, CR at VI-20, PR at VI-8.

[158] Table III-5, CR at III-11, PR at III-9; Table C-1a, CR at C-4, PR at C-4.

19 U.S.C. § 1673d(b)(4)(A)(i). The statute further provides that in making this determination:

> the Commission shall consider, among other factors it considers relevant--
>
> > (I) the timing and the volume of the imports,
> >
> > (II) a rapid increase in inventories of the imports, and
> >
> > (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(ii).

Action indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[160]

In its final determination on Japan, Commerce made affirmative findings of critical circumstances with respect to imports from four Japanese companies: Nippon Steel Corporation, NKK Corporation, Kobe Steel, Ltd., and Sumitomo Metal Industries, Ltd. It made a negative critical circumstances determination with respect to Kawasaki Steel Corporation, the remaining subject Japanese company. Commerce further determined that critical circumstances do not exist for Indonesia.[161] Commerce applied the facts available and adverse inferences to determine a final dumping margin of 59.12 for the four Japanese companies (Kobe, Nippon, NKK, and Sumitomo) and, based on that margin, found a reasonable basis to believe or suspect that importers knew or should have known that these four companies' merchandise was selling at less than fair value. Absent verifiable information on the record with respect to these companies' import volumes, Commerce also used an adverse inference in applying the facts available to determine that there were massive imports from the four companies over a relatively short period. The period examined by Commerce was calendar year 1998.[162]

Consistent with Commission practice, in considering the timing and volume of imports, we have compared import quantities prior to the filing of the petition with those subsequent to the filing of the petition.[163] We are not required to analyze the same comparison periods that Commerce analyzed.[164]

We generally consider the six-month period before and the six-month period after the filing of the petition for purposes of our critical circumstances analysis, unless there is a basis to warrant examining a different period.[165] In these investigations, the petition was filed in mid-February 1999. We therefore examined critical circumstances data submitted by the Japanese respondents for the six-month period prior to February 1999 (August 1998 through January 1999) and for the six-month period after February 1999 (March through August 1999).[166] In comparing data for these two periods, we do not find that the imports subject to Commerce's affirmative critical circumstances determinations would undermine seriously the remedial effect of the orders.

Exports to the United States from the four Japanese producers subject to Commerce's affirmative critical circumstances determinations declined dramatically from *** short tons for the period August 1998

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[160] SAA at 877.

[161] 64 Fed. Reg. 73164, 73168; 64 Fed. Reg. 73215, 73219 (Dec. 29, 1999).

[162] 64 Fed. Reg. 73215, 73219 (Dec. 29, 1999).

[163] See Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom ("Stainless Steel Sheet and Strip"), Invs. Nos. 701-TA-380-382 and 731-TA-797-804 (Final), USITC Pub. 3208 at 21 (July 1999); Certain Preserved Mushrooms From China, India, and Indonesia ("Mushrooms"), Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors From China ("Certain Brake Drums"), Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997).

[164] See Stainless Steel Sheet and Strip, USITC Pub. 3208 at 21; Steel Concrete Reinforcing Bars From Turkey ("Rebar"), Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 34 (April 1997).

[165] See Stainless Steel Sheet and Strip, USITC Pub. 3208 at 21; Certain Hot-Rolled Steel Products From Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999) at 33-34 & n.129; Mushrooms, USITC Pub. 3159 at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums, USITC Pub. 3035 at 19; Rebar, USITC Pub. 3034 at 34.

[166] Critical Circumstances Data of Japanese Respondents (Jan. 10, 2000).

through January 1999 to *** short tons for the period March 1999 through August 1999.[167] Therefore, there was no surge after the filing of the petition. The overall value of these four companies' exports likewise declined significantly, from *** for the period prior to the filing of the petition, to *** for the subsequent period.[168]

For three products, Japanese prices (which include data for all Japanese producers, not just the four producers subject to the affirmative critical circumstances finding) were lower in the second quarter of 1999 (April through June 1999) than in the fourth quarter of 1998 (October through December 1998).[169] Given our conclusion regarding the volume of imports from the four Japanese producers after the petition was filed, however, we do not find these data particularly significant.

There is no company specific information in the record for inventories of the subject merchandise from Japan for the relevant periods. We therefore looked at inventories of all subject imports from Japan. While inventories of Japanese imports held by U.S. importers at the end of 1998 (19,487 short tons) were higher than those of any other subject country and represented a significant portion of subject import inventories (47,576 short tons), there were no reported inventories of Japanese subject merchandise in the United States for the period January through June 1999.[170] Moreover, the volumes of Japanese imports held as inventory in the United States at the end of 1998 (19,487 short tons) and at the end of the first half of 1999 (zero) were dwarfed by the size of Japanese producers' CTL plate inventories in Japan at the end of 1998 (405,287 short tons), as well as at the end of the January-June 1999 period (332,422 short tons).[171] Even though, as noted, the information on inventories is not limited to the four producers subject to Commerce's affirmative critical circumstances determination, it nevertheless indicates, given that there were no reported inventories of Japanese subject imports from any Japanese producer in the March-June 1999 period after the petition was filed, that there was no rapid increase in Japanese inventories of subject merchandise during the period from the filing of the petition to the effective date of relief.

In sum, we do not find that the record evidence indicates that the relevant subject imports from Japan would undermine seriously the remedial effect of the respective orders. Accordingly, we make a negative critical circumstances finding with respect to the relevant producers in Japan.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing certain CTL steel plate is materially injured by reason of imports of certain CTL steel plate from France, India, Indonesia, Italy, and Korea that Commerce found to be subsidized and by imports of certain CTL steel plate from France, India, Indonesia, Italy, Japan, and Korea that Commerce found to be sold in the United States at less than fair value.[172] We also determine that critical circumstances do not exist with respect to subject imports from Japan.

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[167] Critical Circumstances Data of Japanese Respondents at 1-4.

[168] Critical Circumstances Data of Japanese Respondents at 1-4.

[169] Tables V-6, V-8, V-14, CR at V-21, V-25, V-32, PR at V-14, V-18, V-26.

[170] Table VII-7, CR at VII-16, PR at VII-7.

[171] Compare Table VII-7, CR at VII-16, PR at VII-7, with Table VII-5, INV-X-011 (Jan. 11, 2000).

[172] Commissioner Askey dissenting with respect to France.

CONCURRING AND DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in these investigations, I determine that an industry in the United States is materially injured by reason of imports of certain cut-to-length ("CTL") steel plate from India, Indonesia, Italy, and Korea that the Department of Commerce ("Commerce") found to be subsidized and by reason of imports from India, Indonesia, Italy, Japan and Korea that Commerce found to be sold in the United States at less than fair value ("LTFV"). However, I further determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of certain cut-to-length steel plate from France that Commerce found to be subsidized and sold in the United States at less than fair value.

I join with my colleagues in the discussions regarding domestic like product, domestic industry, conditions of competition and critical circumstances. I also join with my colleagues in their discussion of material injury for purposes of evaluating whether imports from Italy and Japan are a cause of material injury. However, because I came to a different conclusion regarding cumulation, my separate views on cumulation, my concurring views regarding whether imports from India, Indonesia and Korea are a cause of material injury and my dissenting views concerning whether imports from France are a cause of material injury are set forth below.

I Cumulation[1]

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, 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.[2]

A. Fungibility

As discussed in Section II.B.1 in the Views of the Commission, CTL plate produced and sold in the United States is highly interchangeable with CTL plate produced in the subject countries. However, I find that there are significant distinctions between imports from certain subject countries in terms of product mix, which leads me to conclude that subject imports from certain countries are not interchangeable with imports from certain other countries. In other words, while I find that the statutory requirement that imports must compete with the domestic like product is satisfied, I do not find that the additional statutory requirement that imports must compete with each other is satisfied with respect to each country.

The Commission determined that there is one like product, all CTL plate, which encompasses a broad spectrum of types of CTL plate, ranging from commodity to more specialized types of CTL plate. However, the record shows that while each type of CTL plate is part of the same like product, there are

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[1] For my analysis of import volumes I use "Method A," as described in the Views of the Commission, n. 119. See also Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary) at 22, n. 149, USITC Pub. 3181 (April 1999).

[2] 19 U.S.C. § 1677(7)(G)(i).

distinctions between certain types of plate that limit their interchangeability and, therefore, the degree to which they compete, and that not all subject countries import each type of identified plate.[3] For example, X-70 CTL plate is used in manufacturing line pipe for the transmission of oil and gas.[4] Commodity grades of CTL plate may not be substituted for X-70 where the pipeline design calls for X-70.[5]

The record shows that U.S. commercial shipments of special categories of plate, such as X-70, pressure vessel plate, other plate for line pipe, X-60, etc.[6] accounted for virtually all, *** percent, of French imports in 1998. French U.S. commercial shipments of X-70 alone made up *** percent of French imports in that year.[7] By contrast, the record shows the exact opposite with respect to India, whose imports were made up of almost entirely "all other CTL plate" (i.e., general purpose plate); *** percent of Indian imports in 1998 were of that category.[8] Likewise, *** percent of Indonesian imports are of "all other CTL plate."[9] Similarly, *** percent of Korean imports are in the "all other CTL plate" category, with less than *** percent of its other special types of plate overlapping with types imported from France. By contrast, a more substantial portion of Italian and Japanese plate, *** percent and *** percent, respectively, are in categories that compete with imports from France.[10] Accordingly, I find that there is a reasonable degree of interchangeability between imports from France and imports from Italy and Japan, but that there is little or no interchangeability between imports from France and from India, Indonesia and Korea.[11]

With respect to Italy and Japan, the record shows that more than half of the imports from each country are of "all other CTL plate": U.S. commercial shipments of "all other CTL plate" in 1998 accounted for *** percent of Italian imports and *** percent of Japanese imports.[12] As discussed above, the vast majority of imports from India, Indonesia and Korea are of "all other CTL plate." Additionally, some

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[3] See Table II-4, CR at II-13-14, PR at II-9-10. See, e.g., Hearing Transcript at 71 (testimony of Richard B. Cochran, Jr.). The Commission's questionnaires requested producers and importers to categorize their CTL plate according to grade, specification, etc., with a basket category ("all other CTL plate") for general purpose CTL plate. The break out avoids an overlap between any two types, including between "all other CTL plate" and any of the other categories, regardless of whether the product is considered "specialty" or "commodity." See Producer and Importer Questionnaires.

[4] CR at I-10; PR at I-7.

[5] See, e.g., Hearing Transcript at 116 (testimony of Richard B. Cochran, Jr.). The record contains some evidence suggesting that the reverse may be physically possible, even if it is not commercially feasible, i.e., that line pipe could be used in place of commodity grade pipe in some applications. CR at I-11, PR at I-8.

[6] Table II-4, CR at II-13, PR at II-9.

[7] Id.

[8] Id.

[9] See id. Indonesia also imports some shipbuilding plate, which ***. Id.

[10] See id.

[11] Petitioners argue in particular that pressure vessel plate, floor plate and shipbuilding plate, are not in fact "specialized," that they should be viewed more as commodity than as specialty plate (like X-70). Posthearing brief of Petitioners Bethlehem Steel and U.S. Steel Group at 27-28, Exhibit 6. However, irrespective of how any of these types of plate are identified as a general matter, i.e. as commodity, specialized or something else, there is no evidence on the record that there is any competition in any of these three types among imports from France and from India, Indonesia or Korea. See Table II-4, CR at II-13, PR at II-9.

[12] See Table II-4, CR at II-13, PR at II-9.

categories of special plate from these three countries overlap with imports from Italy and Japan.[13] Therefore, more than half of imports from Italy and Korea are interchangeable with imports from India, Indonesia and Korea. Moreover, as shown above, a substantial portion of Italian and Japanese imports are interchangeable with those from France. Accordingly, I find that imports from Italy and Japan are interchangeable with imports from each of the other four subject countries.

Finally, with respect to India, Indonesia and Korea, the record shows that their imports compete with each other since either virtually all or the large majority of their imports are in the "all other CTL plate" category.[14] As noted above, a substantial portion of these imports also compete with those from Italy and Japan. However, because these three countries import little or no special types of plate such as X-70, which make up virtually all of French imports, there is little or no interchangeability with imports from France. Accordingly, I find that imports from India, Indonesia and Korea are interchangeable with those from Italy and Japan, but not with those from France.

B. Geographic Overlap

CTL plate produced in the United States is shipped throughout the country and subject imports are sold in most areas of the United States.[15] The record indicates that while the relative distribution of subject imports from each country varied by each of the four regions of the United States, subject imports were present in each region during the POI.[16]

C. Channels of Distribution

Both domestic producers and importers sell CTL plate to both end users and distributors, although the proportions varied. The majority of shipments were to distributors, processors and service centers rather than to end users.[17] Sales of domestically produced CTL plate are relatively evenly divided between the two, with slightly more going to distributors, processors and service centers than to end users.[18] By contrast, while individual country percentages varied, overall, more than two-thirds of subject imports were sold to distributors, processors and service centers.[19] Some types of plate, X-70 in particular, that are used for large diameter pipe, are shipped primarily to end users.[20]

D. Simultaneous Presence

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[13] See id. For example, India, Indonesia, Japan and Korea all show imports of shipbuilding plate. Likewise, *** all show imports of X-70. See id.

[14] Id.

[15] CR at IV-11, PR at IV-8.

[16] Table IV-3 at CR at IV-11, PR at IV-8.

[17] See Table I-1, CR at I-10, PR at I-8.

[18] Id.

[19] Id.

[20] See id.

The record indicates that both domestically produced and subject import CTL plate were present in the United States throughout the POI.[21] Official import statistics show imports of non-alloy CTL steel plate from France, Italy, Japan and Korea having entered the United States in nearly every month between January 1996 and December 1998.[22] Imports from India and Indonesia entered the United States in fewer months over the POI, but entered in 17 out of 18 months between January 1998 and June 1999.[23]

E. Conclusion

The record shows that the domestically produced product and subject imports were sold through similar channels of distribution, were present in the same geographic markets and were simultaneously present in the United States over the POI. The record further shows that the domestically produced product and subject imports are fungible. However, the record also shows a significant lack of fungibility among certain imports from different countries.

Because I find little or no competition between French imports and those from India, Indonesia and Korea, I decline to cumulate them because the statutory requirement of competition among subject imports is not satisfied; I cumulate French imports only with Italian and Japanese imports for purposes of evaluating whether French imports are a cause of material injury to the domestic industry. For purposes of establishing whether Italian and Japanese imports are a cause of material injury, I find that the statutory requirement that imports compete with each other is satisfied and, accordingly, cumulate imports from all six countries for that purpose. Similarly, with respect to whether subject imports from India, Indonesia and Korea are a cause of material injury, I find that those imports compete with imports from Italy and Japan and, therefore, cumulate imports from those five countries for that purpose.

II. Material Injury by Reason of Subject Imports

Because of my determinations with respect to cumulation, I make three separate material injury analyses. First, I evaluate subject imports from all six cumulated subject countries for purposes of establishing whether Italian and Japanese imports are a cause of material injury. Second, I evaluate cumulated subject imports from France, Italy and Japan for purposes of establishing whether French imports are a cause of material injury. Third, I evaluate cumulated subject imports from India, Indonesia, Italy, Japan and Korea for purposes of establishing whether imports from India, Indonesia and Korea are a cause of material injury.

Because my analysis concerning Italian and Japanese imports involves the same six countries that are analyzed in the preceding Views of the Commission, I join with my colleagues for purposes of establishing causation with respect to Italian and Japanese imports. I also join them in the discussion of conditions of competition. My analyses with respect to whether imports from France, India, Indonesia and Korea are a cause of material injury to the domestic industry follow.

A. Volume

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[21] CR at IV-12, PR at IV-9; Table IV-4, CR at IV-12, PR at IV-9.

[22] Table IV-4, CR at IV-12, PR at IV-9.

[23] Id.

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[24]

i. France

The volume of cumulated imports from France, Italy and Japan rose from 194,616 short tons in 1996 to 269,616 short tons in 1997 and to 492,247 million short tons in 1998, an overall increase of 153 percent.[25] The cumulated market share of the subject imports by quantity rose from 2.3 percent in 1996 to 3.4 percent in 1997 and to 5.0 percent in 1998; cumulated subject import volumes increased further in interim 1999 compared with interim 1998, increasing from 3.0 percent of domestic consumption to 5.2 percent.[26] Domestic producers' market share fluctuated between 77 percent and 84 percent throughout the period of investigation, and was at its highest level in interim 1999, at 83.6 percent.[27] Non-subject imports' market share, which includes imports from India, Indonesia and Korea for purposes of this analysis, decreased from 20.8 percent in 1996 to 14.4 percent in 1997 and then rose slightly to 16.1 percent in 1998.[28]

I do not find the increases in cumulated subject import volumes to be significant, either in absolute terms or relative to production or consumption in the United States. In absolute terms, cumulated subject imports increased by 297,631 short tons between 1996 and 1998.[29] I do not find this amount to be significant in this market, in which domestic consumption quantity averaged 8.7 million short tons per year between 1996 and 1998.[30]

Relative to production and consumption in the United States, the increase in imports from France, Italy and Japan is equal to only 21 percent of both the increase in domestic production[31] and the increase in domestic consumption[32] during the same period. It also represented less than half of the decrease in non-subject imports over that period.[33] Moreover, the data show that the majority of subject imports from these countries are of types of CTL plate that represent a small percentage of overall domestic production. Data

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[24] 19 U.S.C. § 1677(7)(C)(i).

[25] Table C-1a, CR at C-3, PR at C-3. As noted above, Commerce found de minimis antidumping and countervailing duty margins for Pohang, a Korean producer of CTL plate. For my material injury analysis, I exclude Pohang's exports from subject import volume and market share data to the extent information was available to the Commission on Pohang's exports, but note that, with or without Pohang's exports, the trends exhibited by subject imports are the same. Views of the Commission at n. 122 et seq.

[26] Table C-1a, CR at C-3, PR at C-3.

[27] Id.

[28] Id.

[29] See id.

[30] See id.

[31] Domestic production increased by 1.3 million short tons between 1996 and 1998. See Table C-1a, CR at C-4. PR at C-4.

[32] Domestic consumption increased by 1.4 million short tons between 1996 and 1998. See Table C-1a, CR at C-3. PR at C-3.

[33] Non-subject imports decreased by *** short tons between 1996 and 1998. See Table C-1a, CR at C-4, PR at C-4.

for 1998 show that U.S. commercial shipments of special categories of CTL steel plate accounted for *** percent of French imports, *** percent of Italian imports and *** percent of Japanese imports.[34] By contrast, only 14.6 percent of domestic shipments were of comparable CTL plate.[35] For example, U.S. commercial shipments of X-70 plate accounted for *** percent of French imports in 1998 but only 2.1 percent of U.S. producers' domestic shipments.[36] Moreover, more than half of Italian imports, *** percent, were of plate in thickness greater than or equal to 4 inches, while a mere *** percent of domestic shipments were of comparable CTL plate.[37] Accordingly, relative to domestic production, the majority of subject imports are in categories that represent very small domestic producer market segments.

In sum, I find that the volume of the subject imports from France, when cumulated with those from Italy and Japan, is not significant, either in absolute terms or relative to production or consumption in the United States.

ii. India, Indonesia and Korea

The volume of cumulated imports from India, Indonesia, Italy, Japan and Korea rose from 121,484 short tons in 1996 to 320,018 short tons in 1997 and to 1.03 million short tons in 1998, an overall increase of 745 percent.[38] Subject import volumes decreased in the first half of 1999 relative to the first half of 1998 by 28 percent and their market share decreased slightly to 5.8 percent in the first half of 1999, as compared to 6.5 percent in the first half of 1998.

While these subject imports gained market share in part at the expense of fairly traded imports, they also gained market share at the expense of the domestic producers, particularly between 1997 and 1998. The cumulated market share of the subject imports by quantity rose from 1.5 percent in 1996 to 4.0 percent in 1997 and to 10.4 percent in 1998.[39] The domestic producers' share of consumption increased from 76.9 percent in 1996 to 82.2 percent in 1997, and then declined to 77.9 percent in 1998.[40] Non-subject imports' market share, which for purposes of this analysis includes imports from France, decreased from 21.6 percent in 1996 to 13.8 percent in 1997 and to 11.7 percent in 1998.[41] Accordingly, between 1997 and 1998, as cumulated subject import market share increased by 6.4 percentage points, non-subject imports declined by 2.1 percentage points and domestic producer market share declined by 4.3 percentage points.[42]

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[34] See Table II-4, CR at II-14, PR at II-10. These individually identified categories are: pressure vessel plate, floor plate, two types of platform plate, X-70 (or higher) plate, X-65 plate, X-60 plate, and other plate for line pipe. See id. As discussed above, whether any of these particular types of steel are designated as "commodity" or "specialty," the record reflects that these are different types of steel that have been broken out by producers, importers. See supra, n. 3.

[35] See Table II-4, CR at II-14, PR at II-10.

[36] Id.

[37] Id.

[38] Table C-1a, CR at C-4, PR at C-4.

[39] Table C-1a, CR at C-3, PR at C-3.

[40] Id.

[41] Id.

[42] See id.

The record indicates that the domestic industry experienced sporadic problems in meeting demand during the period under investigation, as well as difficulties in bringing new capacity on line. Four U.S. producers and processors reported to the Commission that since 1996 they have experienced periods when they were unable to supply CTL plate to a customer at prevailing prices in the quantity, type, and quality desired due to various factors, including unplanned outages, a labor strike, a severe winter storm that caused electrical problems, and the failure of imported coils to arrive as scheduled.[43] While this evidence shows that the domestic industry experienced some difficulties in meeting U.S. demand it does not rise to the level of supporting allegations of an "acute" domestic supply shortage in late 1997 and early 1998 that drew subject imports into the United States in 1998.[44]

In sum, I find that the volume of the cumulated subject imports from these five countries, both absolutely and in terms of percentage of domestic consumption, is significant.

iii. Conclusion

In sum, I find that the volume and market share of the cumulated imports from India, Indonesia, Italy, Japan and Korea is significant but that the volume and market share of cumulated imports from France, Italy and Japan is not significant over the POI.

B. Price

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether --

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[45]

The record evidence in these investigations shows that, despite some perceived differences in quality, most producers and importers consider the subject imports to be highly substitutable with the domestic like product.[46] [47] However, the record also indicates that this substitutability is limited with respect to plate used in specific applications, or with greater thickness.

The pricing data gathered in these investigations show that prices of both domestic CTL plate and subject imports in all product categories declined during the second half of 1998 and the first half of 1999.[48]

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[43] CR at II-3, PR at II-2.

[44] See Respondents' Joint Prehearing Brief at 61-69.

[45] 19 U.S.C. § 1677(7)(C)(ii).

[46] CR at II-11, PR at II-7.

[47] Substandard quality does not appear to be an issue for most of the imports in question. Purchasers and importers discussed the quality of CTL plate from France, Italy, Japan, and Korea in positive terms, although instances of inferior quality were noted for imports from India and Indonesia. CR at II-17, PR at II-12.

[48] Tables V-5-14, CR at V-18-32, PR at V-12-26.

The decline in prices occurred as subject import volumes peaked, particularly in the second half of 1998.[49] Purchaser questionnaire responses indicate that price is an, if not the most, important factor in purchasing decisions.[50]

i. France

Pricing data show that there was greater overselling by cumulated imports from France, Italy and Japan than underselling during 1996 to 1998 and in interim 1999. The imported product from these three cumulated countries oversold the domestic product in 65 quarterly comparisons and undersold the domestic product in 57.[51] Moreover, French and Japanese imports made up more than 84 percent of subject imports in two of the three years and in the interim period,[52] and imports from these two countries oversold to an even greater degree, overselling in 57 comparisons and underselling in only 30.[53] The patterns varied by country, with the Italian imports underselling domestic product more towards the end of the comparison period while French and Japanese imports increasingly oversold domestic product toward the end of the period.[54] The average overselling margin per period of overselling ranged from 4.7 to 13.6 percent while the average underselling margin per period of underselling ranged from 4.8 to 16.0 percent.[55] Again, average underselling margins for France and Japan, at 4.8 percent and 7.9 percent respectively, were lower than those of Italy.[56] Accordingly, the cumulated subject imports from these three countries have oversold the domestic like products of the United States to a substantial degree over the course of the period of investigation. Specific and aggregate AUV data comparisons are consistent with this pricing data.

AUVs for imports from the three cumulated subject countries declined from $518.13 in 1996 to $485.00 in 1997, to $462.25 in 1998, and increased to $481.01 in the first half of 1999.[57] While the AUVs declined through the first three years of the investigation, the cumulated subject imports' AUVs were consistently above domestic producer AUVs, by as much as $20-100 per short ton.[58] Because of the differences in product mix between domestic and French, Italian and Japanese producers, aggregate AUV comparisons have limited probative value. However, available 1998 data that compare domestic and subject import AUVs for each separate type of CTL plate product show that French, Italian and Japanese AUVs

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[49] See Hot-Rolled Steel, USITC Pub. 3142 at 16 (declines in AUVs considered in analyzing price effects of subject imports).

[50] Asked to rank the most important factors in selecting a CTL plate supplier, 10 identified price as their first factor, compared with 4 identifying quality, 5 identifying delivery and 4 identifying "other." Table II-5, CR at II-15, PR at II-10.

[51] See Table V-15, CR at V-33, PR at V-27.

[52] Of imports from France, Italy and Japan, French and Japanese imports made up 91 percent in 1996, 68 percent in 1997, 84 percent in 1998 and 95 percent in interim 1999. Table C-1a, CR at C-3, PR at C-3.

[53] See Table V-15, CR at V-33, PR at V-27.

[54] See id.

[55] Table V-15, CR at V-33, PR at V-27.

[56] Id.

[57] Table IV-2a, CR at IV-7, PR at IV-6.

[58] Table III-3, CR at II-8, PR at III-7.

were usually, and often significantly, above those of domestic producers for comparable types of CTL plate.[59]

In sum, with respect to the subject imports from France, when cumulated with those from Italy and Japan, I find that there has not been significant price underselling by the imported merchandise as compared with the price of the domestic like product of the United States and that such imports have not otherwise depressed domestic prices to a significant degree or prevented price increases, which would otherwise have occurred, to a significant degree.

ii. India, Indonesia and Korea

AUVs for imports from the five cumulated subject countries declined from $446.70 in 1996 to $394.68 in 1997, to $392.23 in 1998, and to $342.26 in the first half of 1999.[60] Throughout the period under investigation, the cumulated subject imports' AUVs declined consistently and were lower than the domestic producers' AUVs.[61] Aggregate AUV data is more probative for this comparison group than for the prior group (France, Italy and Japan) because the mix of products imported by this group is more similar to the mix of products produced by domestic manufacturers.[62] The declines in AUVs correspond to significantly increasing levels of subject imports, both absolutely and in terms of domestic consumption, and are consistent with the declines in prices shown in the pricing data.[63]

Overall, there was significant underselling during 1996 to 1998 and interim 1999, with the imported product from these five cumulated countries underselling the domestic product in 128 quarterly comparisons and overselling the domestic product in only 53 quarterly comparisons. Underselling increased in 1998 from 1996-97 levels, and the instances and severity of underselling were greater in 1998 than in prior periods.[64] The average underselling margin per period of underselling ranged from 7.9 to 16.0 percent.[65] [66] I note that

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[59] For example, in 1998, for "X-70 (or higher) plate, the U.S. AUV was $455.78, the French was ***, the Italian was *** and the Japanese was ***; for "pressure vessel plate", the U.S. AUV was $492,92, the French was ***, and the Japanese was ***; for "X-60 plate," the U.S. was $411.10, the French was *** and the Japanese was ***. Table C-1a, CR at C-4, PR at C-4; Table II-4, CR at II-13, PR at II-9.

[60] Table IV-2a, CR at IV-7, PR at IV-6.

[61] Table C-1a, CR at C-3-4, PR at C-3-4.

[62] See Table II-4, CR at II-13-14, PR at II-9-10.

[63] The record does not show whether the declines in AUVs are a result of the increase in imports or are a result of other factors, such as a shift in product mix or a decline in the cost of raw materials, but the declines are consistent with the pricing data on the record.

[64] Table V-15, CR at V-33, PR at V-27. In 1996, there were 7 instances of underselling out of 15 comparisons; this increased to 42 instances out of 55 comparisons in 1997, then to 56 instances out of 79 comparisons in 1998. Tables V-5-14, CR at V-18-32, PR at V-12-26.

[65] Table V-15, CR at V-33, PR at V-27.

[66] Several producers alleged the loss of sales or revenues to CTL plate imported from the subject countries. The majority of these allegations, however, were disputed by the companies alleged to have purchased the product in question. Purchasers did confirm lost sales involving CTL plate from *** as well as two allegations of revenue lost to imports of *** CTL plate in late 1998. The domestic industry stated that customers are reluctant to provide the detailed information needed to document allegations of lost sales and revenues. Table V-16, CR at V-34, PR at V-28; CR at V-35, PR at V-28.

the exclusion of France from the aggregate data brings into relief the significant degree to which imports from these five countries were underselling the domestic like product.

In sum, I find that the increasing and increasingly underpriced subject imports from the cumulated five countries contributed to a significant degree to the depression or suppression of domestic prices.

iii. Conclusion

In conclusion, I find that the increasing and increasingly underpriced subject imports from India, Indonesia, Italy, Japan and Korea contributed to a significant degree to the depression or suppression of domestic prices. I also find that there has not been significant price underselling by subject imports from France, when cumulated with those from Italy and Japan, and that such imports have not otherwise depressed domestic prices to a significant degree or significantly prevented price increases that otherwise would have occurred.

C. Impact

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[67] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[68]

i. France

The data show that over the POI the CTL plate industry experienced declines in various economic indicators, such as in operating income, gross profits and capital expenditures.[69] Between interim periods these declines increased, and the industry also experienced declines in such areas as U.S. and export shipments, net sales and production workers employed.[70] However, because I found that cumulated subject imports from France, Italy and Japan have not increased to a significant degree and have caused no significant negative price effects, I do not find that these cumulated imports have had a significant negative impact on the domestic industry's condition.

I find the lack of confirmation of lost sales and lost revenue allegations troubling because it undermines arguments that subject imports are having an adverse impact on the domestic industry. However, this lack does not negate the other evidence in the record showing the adverse price effects of the subject imports.

[67] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[68] 19 U.S.C. § 1677(7)(C)(iii).

[69] Table C-1a, CR at C-4, PR at C-4.

[70] Id.

As discussed above, subject import volumes, i.e., imports from France, Italy and Japan for purposes of this analysis, have not increased significantly. Subject imports have increased, but at levels that I do not find material to the domestic industry's condition. In particular, their increase represents a very small portion of domestic consumption (297,631 short tons compared with a yearly average of 8.7 million short tons), and is small in comparison with substantial increases in both domestic consumption and domestic production (which increased 1.4 and 1.3 million short tons, respectively over the same period).[71] Moreover, the substantial majority of subject imports were of types of CTL plate that make up only a relatively small portion of domestic producer CTL plate sales.

Pricing data show that there was a substantial degree of overselling by cumulated imports from France, Italy and Japan. Imports from these three countries oversold the domestic like product in a majority of comparisons, and imports from France and Japan, which make up the overwhelming majority of imports from the three countries, oversold in two-thirds of comparisons.[72] Accordingly, the record does not show cumulated subject imports to have had a significant negative effect on prices.

Therefore, because I find that the subject imports from France, when cumulated with those from Italy and Japan, have neither increased to a significant degree nor caused significant negative price effects, I find that they have not had a significant negative impact on the domestic industry.

ii. India, Indonesia and Korea.

The data show a CTL plate industry experiencing declines in a number of key economic factors, despite increases in U.S. production, capacity, and overall demand during the period for which data were collected. The domestic industry's capacity to produce CTL plate increased 28.3 percent from 1996 to 1998, production increased by 21.2 percent, and apparent consumption increased by 17.0 percent.[73] The capacity utilization of the domestic industry, however, declined from 75.2 percent in 1996 to 71.0 percent in 1998.[74] While orders for CTL plate produced by U.S. mills reached their highest level at the end of the first quarter of 1998, 1,318,835 short tons, orders declined dramatically throughout the year to 574,714 short tons at the end of fourth quarter 1998.[75] Orders in place with U.S. mills at the close of 1998 were at the second lowest level reported over the entire period for which data were collected.[76]

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[71] Table C-1a, CR at C-3-4, PR at C-3-4.

[72] French, Italian and Japanese imports oversold domestic like product in 65 of 122 quarterly comparisons; French and Japanese imports oversold domestic like product in 57 of 87 quarterly comparisons. See Table V-15, CR at V-33, PR at V-27. Imports from France and Japan made up 91 percent of subject imports in 1996, 68 percent in 1997, 84 percent in 1998 and 95 percent in interim 1999. Table C-1a, CR at C-3, PR at C-3.

[73] Table C-1a, CR at C-3-4, PR at C-3-4.

[74] Table III-2, CR at III-6, PR at III-5.

[75] CR at III-9, PR at III-6.

[76] The record reveals that the inventories held by U.S. producers compared to total shipments remained relatively flat during the period under investigation and are a neutral factor in our material injury analysis here. See Table III-4, CR at III-9-10, PR at III-8. For my affirmative determination I have not relied on petitioners' argument that there was on overhang of 1998 subject import inventories into 1999. Petitioners' Posthearing Brief at II-14. The available data on inventories of U.S. service centers (some of which are importers) is not limited to subject imports, but includes non-subject imports as well as coiled plate, a product outside the scope of subject merchandise. Figure VII-1, CR at VII-17, PR at VII-8.

From 1996 to 1997 the domestic industry's total CTL sales volume increased by more than one percent, while total sales value increased by only 0.04 percent. As the cost of goods sold ("COGS") and SG&A expenses increased by 1.6 percent and 14 percent, respectively, the industry's gross profits and operating income declined. In 1998, the industry experienced higher sales volumes and lower unit COGS, but further declines in average unit prices.[77] Average unit sales prices for CTL plate by the domestic industry declined throughout the period under investigation and fell precipitously at the end of the period, from $450.80 per short ton in 1996 to $442.02 in 1998 to $390.20 in the first half of 1999.[78] As indicated above, the decline in the domestic industry's average unit sales prices occurred at the same time that subject imports grew[79] and cumulated subject import AUVs fell. The industry's reduced unit sales values during the period under investigation were generally greater than the reduction in raw material costs.[80]

At the end of the period under investigation, the domestic industry's sales volumes and values were 23 percent and 33 percent lower than in the first half of 1998, and their cash flow was negative.[81] All producers, mills as well as processors, reported reduced unit values compared to the first half of 1998. Overall, the industry's gross profits in the first half of 1999 decreased by 96 percent as compared to the first half of 1998. The industry's operating income decreased from $97.4 million in the first half of 1998 to a negative $63.6 million in the first half of 1999.[82]

Moreover, the industry's capital expenditures decreased from $622.99 million in 1996 to $250.457 million in 1997 to $221.676 million in 1998. Expenditures were $71.839 million for the first half of 1999.[83] In addition, the decline in the number of employees, hours worked, and wages paid by the domestic industry outstripped productivity gains, particularly in the first half of 1999.[84]

In sum, I find that the cumulated subject imports from India, Indonesia, Italy, Japan and Korea have had a significant negative impact on the domestic industry producing certain CTL steel plate. This conclusion is based upon the rapid increases in the volume and market share of the subject imports, which increased by 745 percent between 1996 and 1998 and from a market share of 1.5 percent in 1996 to 10.4 percent in 1998, the declining average unit values of the subject imports and a decline in the domestic industry's average unit sales prices, and the adverse trends in the financial condition of the domestic industry, particularly during 1998 and into the first half of 1999, despite growing U.S. production, capacity, and demand.

iii. Conclusion

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[77] CR at VI-3, PR at VI-1.

[78] Table III-3, CR at III-8, PR at III-7.

[79] The overall increase in the volume of imports from the five subject countries from 1996 to 1998 was 745 percent. Table C-1a, CR at C-4, PR at C-4.

[80] CR at VI-8, PR at VI-5.

[81] Table C-1a, CR at C-4, PR at C-4.

[82] Id.

[83] Table VI-7, CR at VI-20, PR at VI-8.

[84] Table III-5, CR at III-11, PR at III-9; Table C-1a, CR at C-4, PR at C-4.

Accordingly, for the foregoing reasons, I find that the subject imports from France, when cumulated with those from Italy and Japan, have not had a significant negative impact on the domestic industry and that cumulated subject imports from India, Indonesia, Italy, Japan, and Korea have had a significant negative impact on the domestic industry.

D. Conclusion

Accordingly, I find that subject imports from India, Indonesia, Italy, Japan and Korea are a cause of material injury to the domestic industry and that subject imports from France, when cumulated with those from Italy and Japan, are not a cause of material injury to the domestic industry.

III. Threat of Material Injury by Reason of Subject Imports

A. Cumulation for Purposes of Threat Analysis

In my analysis concerning whether subject imports were a cause of material injury, I cumulated subject imports from France with those from Italy and Japan. However, for purposes of my threat analysis, I determine that it is not appropriate to cumulate subject imports from France with those from Italy and Japan. The record clearly shows that imports from France, while they compete with those from Italy and Japan, have substantially different volume and price trends than those of the other two countries and, therefore, should be considered alone for purposes of a threat analysis.

With respect to volume, French imports decreased between 1996 and 1998 by 19.8 percent, dropping from 153,375 short tons in 1996 to 123,083 short tons in 1998, then increased by almost 100 percent comparing interim periods. By contrast, Japanese imports increased by 1,090 percent between 1996 and 1998, skyrocketing from 24,238 short tons in 1996 to 288,398 short tons in 1998, and then increased slightly between interim periods. Italian imports likewise increased substantially over the POI, by 375 percent, from 17,003 short tons in 1996 to 80,766 short tons in interim 1998, before declining by 57 percent comparing interim periods.[85]

With respect to pricing, French imports oversold comparable domestic products by an average of 12.1 percent in more than two-thirds of quarterly comparisons, and undersold domestic products by an average of only 4.8 percent in the remaining comparisons.[86] Japanese imports exhibited a similar pattern, although their underselling rates were somewhat higher than French underselling rates and they oversold in less quarters; Japanese imports undersold domestic products by an average of 7.9 percent in 15 of 40 quarterly comparisons.[87] By contrast, Italian imports undersold the domestic product in 77 percent of the comparisons, by an average margin of 16.0 percent.[88]

In sum, Italian and French imports exhibited significantly different volume and pricing trends. Italian import volumes increased at a significant rate as French imports fluctuated and Italian imports undersold the domestic product to a significant degree while French product primarily oversold the domestic

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[85] Table C-1a, CR at C-3, PR at C-3.

[86] Table V-15, CR at V-33, PR at V-27.

[87] See id.

[88] Id.

product. While French and Japanese pricing trends were similar, Japanese import volumes rose significantly, both relatively and absolutely, as compared to French import levels. Accordingly, because of these significantly different trends, I have exercised my discretion concerning cumulation to evaluate French imports alone for purposes of my threat analysis.

B. Vulnerability of the Industry.

As discussed above in the section on impact for purposes of material injury, the domestic industry has indeed experienced downturns in a number of important financial indicators, which leave it in a somewhat weakened condition. However, because I find that French import volumes have not increased significantly and that French prices have not had a significant negative affect on domestic prices, I do not find that the industry is vulnerable with respect to the potential for increased imports of French CTL plate.

C. No Threat of Material Injury By Reason of the Subject Imports from France.

I have considered all of the relevant statutory threat factors when assessing whether the subject imports from France threaten to materially injure the domestic industry. For the reasons set forth below, I find that the domestic industry is not threatened with material injury by reason of the subject imports from France.

As required by the statute, when performing my threat analysis, I first considered the nature of the countervailable subsidy involved in this investigation. The Commerce Department assigned the following CVD margins to producers from France: Usinor, 5.56 percent; GTS, 6.86 percent; and all others, 6.80 percent.[89] I find the level of these subsidy rates to be small, particularly given that average French overselling margins are roughly twice those rates, at 12.1 percent.[90]

I have also examined whether there is "any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports."[91] In these investigations, the record indicates that the subject producers in France have been operating at a relatively high degree of capacity utilization, ranging from *** percent to *** percent over the POI and that available capacity has remained essentially stable throughout the POI and is projected to *** in 2000.[92] The record also indicates that no other country maintains trade restrictions on French CTL imports that would limit French exports to other markets.[93] Accordingly, I find no significant unused production capacity or actual or likely increases in production capacity in France that are likely to lead to substantially increased subject imports into the U.S. in the imminent future.

I have also considered whether there has been "a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased

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[89] 64 FR 73277, Dec. 29, 1999.

[90] Table V-15, CR at V-33, PR at V-27; Table C-1a, CR at C-4, PR at C-4.

[91] 19 U.S.C. § 1677(7)(F)(i)(II).

[92] Table VII-1, CR at VII-4, PR at VII-3.

[93] CR at VII-3, PR at VII-3.

imports."[94] In this case, the volume of imports from France fluctuated over the POI and rose at the end of the period.[95] As I discussed above in the volume section regarding present material injury, I do not find that this fluctuation and increase in the interim period represents either a significant rate of increase or a likelihood of substantially increased imports. Moreover, I note that the record indicates that the substantial majority of French imports are of a CTL plate product that represents a very small portion of domestic shipments and that the domestic industry may not be able to supply purchaser needs absent imports. As discussed above, U.S. commercial shipments of X-70 plate accounted for *** percent of French imports in 1998.[96] By contrast, U.S. producer commercial shipments accounted for only 2.1 percent of domestic producer shipments in that year. The *** domestic purchaser of French X-70, Berg Steel Pipe Corp.,[97] reported substantial difficulties in obtaining sufficient domestic X-70.[98] Accordingly, the record indicates that French X-70 CTL plate imports play an important role in the U.S. market that is not being fully served by the domestic industry, further supporting the conclusion that French imports have not increased to the detriment of U.S. producers.

Similarly, I have examined "whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports."[99] As I explained in my injury views above, the record does not indicate that subject imports from France have had significant effects on the price of domestic merchandise. Pricing data shows French imports overselling domestically produced product in 68 percent of comparisons, by an average overselling margin of 12.1 percent, as compared to an underselling average margin of 4.8 percent for the remaining comparisons.[100] 1998 average unit value comparisons confirm the price data, showing French AUVs to be substantially higher than comparable domestic producer AUVs.[101] Accordingly, French imports are not entering the United States at prices that are likely to have a significant depressing or suppressing effect on domestic price or are likely to increase demand for further imports.

I have also considered the levels of "inventories of the subject merchandise."[102] French end-of-period inventories fluctuated over the POI, but were lower in 1998 and interim 1999 than they were earlier in

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[94] 19 U.S.C. § 1677(7)(i)(III).

[95] French imports were 153,375 short tons in 1996, 165,713 short tons in 1997, 123,083 short tons in 1998 and 128,882 short tons in interim 1999. Table C-1a, CR at C-3, PR at C-3.

[96] Table II-4, CR at II-14, PR at II-10.

[97] See Purchaser questionnaire of Berg Steel Pipe Corp.; Table II-4, CR at II-13, PR at II-9; Table C-1a, CR at C-3, PR at C-3.

[98] Hearing Transcript at 209-10 (testimony of Milan Kosanovich) ("They [Bethlehem] were never there for Berg."). Berg reported that Bethlehem Steel Corp. had *** and that Bethlehem had *** and/or *** Berg's technical specifications. Purchaser questionnaire of Berg Steel Pipe Corp.

[99] 19 U.S.C. § 1677(7)(F)(i)(III).

[100] Table V-15, CR at V-33, PR at V-27.

[101] Table II-4, CR at II-13, PR at II-9.

[102] 19 U.S.C. § 1677(7)(F)(i)(V).

the period.[103] French importers have held no CTL plate in inventory throughout the POI.[104] Accordingly, I do not find that inventory levels of subject merchandise support a finding of a threat of material injury.

I am also directed to consider whether there is a "potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products."[105] The record indicates that there is a potential for shifting production lines between CTL plate and other steel products.[106] However, there is no indication in the record that the subject producers actually shifted production between these products to increase shipments to the United States during the period of investigation, or that they intend to do so.

I also examined "the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product."[107] The record shows that the domestic industry actively expanded capacity throughout the POI, having increased capacity by 28.3 percent between 1996 and 1998, and by a further 6.5 percent between interim periods.[108] Total capital expenditures have been declining throughout the period,[109] which may in part reflect a drop-off in expenditures following the completion of a number of new or upgraded production facilities in 1996 and 1997.[110] Research and development expenditures declined slightly over the POI.[111] However, as discussed above in the material injury section, the record indicates that French imports have had and will continue to have, little or no impact on the domestic industry overall and, accordingly, have and will continue to have little or no impact on the industry's ability to finance production and development efforts.

Finally, I am required by the statute to consider "any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time)."[112] I do not find that the record in these investigations indicates that there are any demonstrable adverse trends suggesting that the subject imports will imminently materially injure the domestic industry.

In sum, I determine that the domestic industry producing certain CTL steel plate is not threatened with material injury by reason of the subject imports from France.

IV. Conclusion

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[103] French inventories were *** short tons in 1996, *** in 1997, *** in 1998, *** in interim 1998 and *** in interim 1999. Table VII-1, CR at VII-4, PR at VII-3.

[104] Table VII-7, CR at VII-16, PR at VII-7.

[105] 19 U.S.C. § 1677(7)(F)(i)(VI).

[106] CR at II-2, PR at II-1-2.

[107] 19 U.S.C. § 1677(7)(F)(i)(VIII).

[108] Table C-1a, CR at C-4, PR at C-4.

[109] Table VI-7, CR at VI-20-21, PR at VI-8.

[110] See CR at III-4-6, PR at III-4-5.

[111] See Table VI-7, CR at VI-20, PR at VI-8.

[112] 19 U.S.C. § 1677(7)(F)(i)(IX).

For the foregoing reasons, I determine that the domestic industry producing certain CTL steel plate is materially injured by reason of imports of certain CTL steel plate from India, Indonesia, and Korea that Commerce found to be subsidized and sold in the United States at less than fair value. I also determine that the domestic industry producing certain CTL steel plate is not materially injured or threatened with material injury by reason of imports of certain CTL steel plate from France that Commerce found to be subsidized and sold in the United States at less than fair value. For the reasons discussed in the Views of the Commission, I determine that the domestic industry producing certain CTL steel plate is materially injured by reason of imports of certain CTL steel plate from Italy that Commerce found to be subsidized and by imports from Italy and Japan that Commerce found to be sold in the United States at less than fair value.