

# **Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan**

Investigation No. 731-TA-1206 (Preliminary)

**Publication 4395**

**May 2013**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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---

Robert B. Koopman

*Director, Office of Operations*

---

### *Staff assigned*

Nathanael Comly, Investigator

Gerald Houck, Industry Analyst

John Benedetto, Economist

David Boyland, Accountant

Michael Haberstroh, Analyst

Mara Alexander, Statistician

Carolyn Holmes, Statistical Assistant

Rhonda Hughes, Attorney

Douglas Corkran, Supervisory Investigator

Address all communications to  
Secretary to the Commission  
United States International Trade Commission  
Washington, DC 20436

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*www.usitc.gov*

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.





# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1206 (Preliminary)

DIFFUSION-ANNEALED, NICKEL-PLATED FLAT-ROLLED STEEL PRODUCTS FROM JAPAN

## DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of diffusion-annealed, nickel-plated flat-rolled steel products, provided for primarily in subheadings 7210.90 and 7212.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).<sup>2</sup>

## COMMENCEMENT OF FINAL PHASE INVESTIGATION

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

## BACKGROUND

On March 27, 2013, a petition was filed with the Commission and Commerce by Thomas Steel Strip Corporation, Warren, Ohio, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of diffusion-annealed, nickel-plated flat-rolled steel products from Japan. Accordingly, effective March 27, 2013, the Commission instituted antidumping duty investigation No. 731-TA-1206 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 2, 2013 (78 FR 19734). The conference was held in Washington, DC, on April 17, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Commissioner Daniel R. Pearson dissenting.



## VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of this investigation, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of diffusion-annealed, nickel-plated flat-rolled steel products (“nickel plate”) from Japan that are allegedly sold in the United States at less than fair value (“LTFV”).<sup>1</sup>

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

### II. BACKGROUND

#### A. In General

The petition in this investigation was filed on March 27, 2013 by Thomas Steel Strip Corporation (“Thomas Steel”), a U.S. producer of diffusion-annealed, nickel-plated flat-rolled steel products. Thomas Steel appeared at the staff conference and submitted a postconference brief.

Nippon Steel & Sumitomo Metal Corporation (“NSSMC” or “Nippon”) and Toyo Kohan Co., Ltd (“Toyo Kohan”), Japanese producers of the subject merchandise; Metal One America, Inc. (“Metal One”), an importer of the subject merchandise; and The Procter & Gamble Company (“P&G”) and Panasonic Energy Corporation of America (“Panasonic” or “PECA-MD”), purchasers of the domestic product and of subject merchandise, appeared at the staff conference on behalf of respondents and submitted postconference briefs.

U.S. industry data are based on the questionnaire response of the sole domestic producer of nickel plate, Thomas Steel, and therefore represent 100 percent of U.S.

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<sup>1</sup> Commissioner Pearson dissenting. See his Dissenting Views.

<sup>2</sup> 19 U.S.C. § 1673b(a) (2000); see also *American Lamb Co. v. United States*, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); *Aristech Chem. Corp. v. United States*, 20 CIT 353, 354-55 (1996).

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

production.<sup>4</sup> U.S. import data are based on questionnaire responses from four importers, whose total imports represented more than 95 percent of total imports from Japan and more than 80 percent of total imports from all sources between 2010 and 2012 under two broad Harmonized Tariff Schedule (“HTS”) statistical reporting numbers, under which it is believed the large majority of nickel plate within the scope definition is classified.<sup>5</sup> The Commission received responses to its questionnaires from two Japanese producers of subject nickel plate, accounting for all known exports of subject nickel plate from Japan to the United States in 2012.<sup>6</sup>

### **III. DOMESTIC LIKE PRODUCT**

#### **A. In General**

In determining 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.”<sup>7</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole 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.”<sup>8</sup> In turn, the Tariff 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 ....”<sup>9</sup>

#### **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as follows:

flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.*, “diffusion-annealed”); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this investigation, “nickel-based alloys” include all nickel

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<sup>4</sup> Confidential Report as revised by memorandum INV-LL-032, May 9, 2013 (“CR”) and Public Report (“PR”) at III-1.

<sup>5</sup> CR at IV-1 - IV-2, PR at IV-1.

<sup>6</sup> CR at IV-2 n.5, PR at IV-1 n.5.

<sup>7</sup> 19 U.S.C. § 1677(4)(A).

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10).

alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.<sup>10</sup>

Nickel plate is a flat-rolled steel product, plated or coated with nickel or with a nickel-base alloy and subsequently annealed. Annealing after nickel-plating causes the formation of a thin layer of iron-nickel alloy between the steel substrate and the nickel coating, which prevents the nickel coating from flaking or separating from the substrate during fabrication operations. The principal application for nickel plate is for the fabrication of cans and end caps of alkaline and lithium batteries. Nickel plate is used for that purpose because of its strength, its formability, which permits the forming of deep cans, and because of the resistance of the nickel coating to corrosion by electrolytes in the batteries. Additionally, the diffusion of iron from the substrate through the nickel coating to the outer surface of the strip enhances the electrical conductivity between the electrolyte and the metal can. More than 90 percent of U.S.-produced and imported nickel plate U.S. shipments during 2012 were used to produce battery cans and end caps.<sup>11</sup> Because of its resistance to corrosion from motor fuel additives, nickel plate is also used for the manufacture of fuel, power-steering and other automotive fluid lines.<sup>12</sup>

### C. Analysis

Thomas Steel argues that the Commission should define a single domestic like product to be coextensive with the definition of the subject merchandise, *i.e.*, nickel plate.<sup>13</sup> It specifically argues that the domestic like product should not be defined to include other types of corrosion-resistant carbon steel flat-rolled products (“CORE”).<sup>14</sup> For the purposes of the preliminary phase of this investigation, respondents accept Thomas Steel’s definition. However, respondents state that they reserve the right to comment further on the domestic like product in any final phase investigation.<sup>15</sup>

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<sup>10</sup> 78 Fed. Reg. 23905, 23908 (Apr. 23, 2013).

<sup>11</sup> CR at I-7 - I-8, PR at I-5 - I-6.

<sup>12</sup> CR at I-8, PR at I-6.

<sup>13</sup> Petition at 33, 39; Petitioner’s Postconference Brief at 4-5.

<sup>14</sup> Petition at 34-35. Although diffusion-annealed, nickel-plated steel has not been the sole product subject to any prior countervailing or antidumping duty investigations in the United States, it has been encompassed within the definition of CORE, which the Commission has previously investigated on four occasions. With the recent revocation of the orders on CORE from Germany and Korea, there are at this time no outstanding antidumping duty orders or countervailing duty orders in place on CORE. CR at I-5 - I-6, PR at I-4; *see* 67 Fed. Reg. 10553 (Mar. 7, 2002), 68 Fed. Reg. 68483 (Dec. 8, 2003).

<sup>15</sup> Tr. at 155 (Messrs. Wood, Schaefer). Parties are reminded that any requests that the Commission seek additional information in any final phase of the investigation must be submitted in response to staff’s request for written comments to draft questionnaires pursuant to 19 C.F.R. §207.20(b).

For the reasons discussed below, we define nickel plate to be a single domestic like product for purposes of our preliminary determination. We have specifically considered whether other types of CORE should be included in the domestic like product.<sup>16</sup>

*Physical Characteristics and End Uses.* Nickel plate includes only coated or plated steel in which the plating material is nickel or nickel alloy. CORE can include other plating materials, such as zinc or aluminum. The manufacture of nickel plate also requires annealing to take place after the coating or plating is applied, while some types of CORE are annealed prior to plating. CORE has a wide variety of end uses including the manufacture of automobile bodies, appliances, and commercial and residential buildings, while nickel plate is used primarily for battery applications.<sup>17</sup>

*Interchangeability.* The degree to which nickel plate and CORE are interchangeable appears to be minimal at most. No other CORE products were reported to be used in batteries, which account for nearly all U.S. consumption of nickel plate. The only substitute products reported for nickel plate were \*\*\* for use in automotive fuel lines.<sup>18</sup>

*Channels of Distribution.* Nickel plate is sold mainly to battery manufacturers, while CORE is sold to automotive, construction and other end users, as well as to steel service centers and distributors.<sup>19</sup>

*Manufacturing Facilities, Production Processes, and Employees.* Thomas Steel is the only U.S. producer of nickel plate, and produces non-diffused nickel-zinc coated or plated steel at the same facility, but not on the same production lines, as nickel plate that is the subject of this investigation. Thomas Steel does not produce galvanized or aluminum-coated or plated steel, and conversely U.S. producers of those CORE products do not produce nickel plate.<sup>20</sup>

*Producer and Customer Perceptions.* Because Thomas Steel is the sole U.S. producer of nickel plate, which is sold primarily to alkaline battery producers, and other CORE is produced

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<sup>16</sup> The decision regarding the appropriate domestic like products 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. See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors, including the following: (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, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>17</sup> CR at I-11, PR at I-7.

<sup>18</sup> CR at I-11, PR at I-8.

<sup>19</sup> CR at I-11 - I-12, PR at I-8.

<sup>20</sup> CR at I-11, PR at I-7; Petition at 38.

for other purposes and sold to different end users, information available in the record indicates that producers and customers perceive the two types of products to be different.<sup>21</sup>

*Price.* The difference in price between CORE and nickel plate is quite substantial. The average unit values for U.S. producers' CORE shipments were \$834 in 2010, \$929 in 2011 and \$920 in January-June 2012, while the average unit value for nickel plate was \$\*\*\* in 2010, \$\*\*\* in 2011 and \$\*\*\* in 2012.<sup>22</sup>

*Conclusion.* Based on the record in this preliminary phase investigation, we find one domestic like product that is coextensive with the scope of the investigation, encompassing diffusion-annealed, nickel-plated flat-rolled steel products.

#### **IV. DOMESTIC INDUSTRY**

The domestic industry is defined as the domestic "producers as a whole 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."<sup>23</sup> 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. Thomas Steel is the only producer of nickel plate in the United States.<sup>24</sup>

In light of the definition of the domestic like product and the foregoing analysis, we define the domestic industry to include Thomas Steel, the sole producer of nickel plate in the United States.

#### **V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS<sup>25</sup>**

##### **A. Legal Standard**

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under

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<sup>21</sup> See CR at I-11 - I-12, PR at I-7 - I-8.

<sup>22</sup> CR at I-12, PR at I-8.

<sup>23</sup> 19 U.S.C. § 1677(4)(A).

<sup>24</sup> CR/PR at III-1 & n.2. There are no related party issues in this investigation.

<sup>25</sup> Negligibility under 19 U.S.C. § 1677(24) is not an issue in this investigation. The questionnaire data indicate market shares for subject imports exceeded the 3 percent statutory negligibility threshold throughout the period of investigation. CR/PR at Table IV-3. Imports from Japan accounted for 62.4 percent of total imports from March 2012 to February 2013, as reported under the two HTS basket categories. CR at IV-6, PR at IV-3. Imports of nickel plate from Japan accounted for \*\*\* percent of all such imports in 2012, according to questionnaire responses. *Id.*

investigation.<sup>26</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>27</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>28</sup> 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.<sup>29</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>30</sup>

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is “materially injured by reason of” unfairly traded imports,<sup>31</sup> it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.<sup>32</sup> In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.<sup>33</sup>

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might

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<sup>26</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>27</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... {a}nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>28</sup> 19 U.S.C. § 1677(7)(A).

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

<sup>30</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>31</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>32</sup> Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), aff’g 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

<sup>33</sup> The United States Court of Appeals for the Federal Circuit (“Federal Circuit”), in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).



include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.<sup>34</sup> In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.<sup>35</sup> Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.<sup>36</sup> It is clear that the existence of injury caused by other factors does not compel a negative determination.<sup>37</sup>

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<sup>34</sup> Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

<sup>35</sup> SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

<sup>36</sup> S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

<sup>37</sup> See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way,” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”<sup>38 39</sup> Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”<sup>40</sup>

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.<sup>41</sup> The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have

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<sup>38</sup> Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... . {and has} broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

<sup>39</sup> Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal Steel, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of nonsubject imports, albeit without reliance on presumptions or rigid formulas. Mittal Steel explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor. 542 F.3d at 878.

<sup>40</sup> Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

<sup>41</sup> Mittal Steel, 542 F.3d at 875-79.

“evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.<sup>42</sup> Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency’s institutional expertise in resolving injury issues.<sup>43</sup>

## **B. Conditions of Competition and the Business Cycle**

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of subject imports from Japan.

### **1. Demand Conditions**

The major application for nickel plate is battery manufacturing, with only limited use in automotive fuel line manufacturing. Thus, U.S. demand for nickel plate is derived in large part from the demand for batteries.<sup>44</sup> Within battery manufacturing, approximately 90 percent of the consumption of nickel plate is used in the manufacture of alkaline batteries and 10 percent is used in the manufacture of lithium batteries.<sup>45</sup> In recent years battery makers have been shifting to thinner and lighter steel specifications in an effort to reduce costs. As a consequence, the demand for thinner nickel plate is increasing<sup>46</sup> while the total volume (by weight) of nickel plate used by battery manufacturers to make a given quantity of batteries is

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<sup>42</sup> Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

<sup>43</sup> Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

<sup>44</sup> Battery manufacturing comprises approximately 95 percent of nickel plate consumption in the United States and automotive fuel line manufacturing accounts for the remainder. CR/PR at II-1.

<sup>45</sup> CR/PR at II-1. As much as 84 percent of U.S. battery production may comprise AA and AAA batteries; other common sizes are C, D and AAAA (used in 9-volt batteries). Petition, Exh. 30 at 4.

<sup>46</sup> Tr. at 25 (Mr. Hartman), 134 (Mr. Walton).

declining.<sup>47</sup> There is a seasonal aspect to nickel plate sales, as the period of highest demand is between June and November, when battery demand rises due to summer power outages and holiday gift needs.<sup>48</sup>

Demand as measured by apparent U.S. consumption was generally stable over the period of investigation, rising from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, then falling to \*\*\* short tons in 2012.<sup>49</sup>

## **2. Supply Conditions**

There are few producers of nickel plate worldwide.<sup>50</sup> There is a single U.S. producer, petitioner Thomas Steel, which is related to a foreign producer of nickel plate in Germany.<sup>51</sup> Thomas Steel supplies a large majority of the U.S. market. Subject imports supply most of the rest of the U.S. market and a very small share of the market is served by nonsubject imports.<sup>52</sup> Subject imports were used \*\*\* in battery applications. During the period of investigation, nonsubject imports originated from Korea and Germany and were used \*\*\* for automotive applications.<sup>53</sup>

During the period of investigation, the domestic industry's capacity was stable at \*\*\* short tons.<sup>54</sup> Its market share increased slightly from 2010 to 2011, then decreased in 2012 to the lowest point in the period.<sup>55</sup> Conversely, subject import market share decreased slightly from 2010 to 2011, then returned to approximately the 2010 level in 2012.<sup>56</sup> Although nonsubject import market share increased throughout 2010-12, \*\*\* of this increase was for automotive fuel line production, as noted above, and nonsubject import market share remained small overall.<sup>57</sup>

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<sup>47</sup> See CR at II-12 - II-13, PR at II-7, Tr. at 134 (Mr. Walton).

<sup>48</sup> CR at II-11, PR at II-6.

<sup>49</sup> CR/PR at Table IV-4.

<sup>50</sup> Tr. at 54 (Mr. Hartman).

<sup>51</sup> CR/PR at III-2.

<sup>52</sup> CR/PR at Table IV-3.

<sup>53</sup> CR/PR at Table IV-2; CR at IV-3, PR at IV-2.

<sup>54</sup> CR/PR at Table III-2.

<sup>55</sup> CR/PR at Table IV-4.

<sup>56</sup> CR/PR at Table IV-4.

<sup>57</sup> CR/PR at Table IV-4.

### 3. Other Conditions

There are three major U.S. battery producers. In terms of size, the largest is Duracell, followed by Energizer, and then Rayovac.<sup>58</sup> Nickel plate must first be made into a “can” or “end cap” before being used to encase a battery. Battery manufacturers either purchase nickel plate directly and then convert it into cans and end caps within their own facilities or purchase cans and end caps from “can stampers,” *i.e.*, metal stamping firms that take nickel plate and convert it into cans and end caps.<sup>59</sup> Battery makers are often associated with particular can stampers, \*\*\*.<sup>60</sup> Nickel plate producers sell to both battery producers and their associated can stampers.<sup>61</sup> When sales are made to battery makers, can stampers are sometimes involved in the negotiations. In other cases, the battery maker negotiates prices \*\*\*. \*\*\*.<sup>62</sup>

Qualification of the nickel plate supplier is a long, expensive, and comprehensive process that can require up to 18 months.<sup>63</sup> Battery manufacturers purchase samples of nickel plate to make end caps and cans, which are then used to make batteries. The batteries are then tested for cell performance, shelf-life and leakage.<sup>64</sup> Qualification for one of a purchaser’s specifications (such as a AA-size battery) does not transfer to other specifications, even for that purchaser.<sup>65</sup> In addition, when products change, qualification must be updated. Periodic audits are performed of the facilities where the nickel plate is produced in order to maintain certification. If battery materials have not been used for some time, requalification of the supplier is required.<sup>66</sup>

The record is mixed as to whether purchasers prefer single or dual sourcing of nickel plate. Some purchasers have expressed a desire to maintain dual sourcing, due in part to the

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<sup>58</sup> CR/PR at II-1. In 2012, Energizer announced upcoming closures of two of its U.S. facilities, as well as “streamlining” another plant. CR/PR at II-1. Battery producers typically manufacture batteries in multiple countries and make purchasing decisions on a global basis. *See, e.g.*, Tr. at 114, 120-21 (Mr. Medeiros), 187 (Mr. Nguyen); Metal One’s Postconference Supplemental Responses at 2-3. Can stampers may negotiate prices on a global basis. CR at V-5, PR at V-4.

<sup>59</sup> CR at II-1 - II-2, PR at II-1.

<sup>60</sup> CR at II-2, PR at II-1. Thomas Steel described can stamper Cly-Del as typically producing cans for Duracell, can stamper H&T Waterbury as typically producing cans for Energizer, and can stamper PECA as typically producing cans for Rayovac. *Id.*

<sup>61</sup> CR at II-2, PR at II-1.

<sup>62</sup> CR at V-4, PR at V-3.

<sup>63</sup> CR at II-15, II-16, PR at II-8 - II-9.

<sup>64</sup> CR at II-16, PR at II-9.

<sup>65</sup> Japanese Respondents’ Postconference Brief at 6; P&G’s Postconference Brief at 17.

<sup>66</sup> CR at II-16, PR at II-9.

cost of qualifying new suppliers.<sup>67</sup> Nevertheless, the record indicates that some purchasers maintained a single source during the period of investigation.<sup>68</sup>

In the U.S. market, most nickel plate is sold under \*\*\*, with negotiations conducted in the fall for the coming year.<sup>69</sup> A small share of domestic sales occurs \*\*\*.<sup>70</sup> Contract negotiations generally do not fix quantities. Rather, customers estimate the quantity they will need for the coming year.<sup>71</sup> Bid approaches may differ somewhat. For example, \*\*\*.<sup>72</sup> \*\*\*.<sup>73</sup> According to Thomas Steel, suppliers may be invited to bid, even if they have not been formally qualified to supply the product.<sup>74</sup>

Nickel plate sales prices are generally based on a formula that incorporates the prices of raw materials. Typically, the formula \*\*\*.<sup>75</sup> Customers view this pricing methodology as a commodity-cost pass-through developed by Thomas Steel, allowing for raw material cost transparency.<sup>76</sup> Customers make purchasing decisions based on the total delivered price.<sup>77</sup>

We find, based on the record in the preliminary phase of this investigation, that there is a moderately high degree of substitutability between the domestically produced product and the subject imports. Despite the existence of certain quality-related factors and the extensiveness of the qualification process,<sup>78</sup> Thomas Steel reported that its product was \*\*\* interchangeable with subject imports and most importers agreed.<sup>79</sup>

The parties agreed that price is an important factor in purchasing decisions.<sup>80</sup> Thomas Steel reported that non-price factors are never important in making purchasing decisions, but

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<sup>67</sup> CR at II-16, PR at II-9. Qualification is more difficult for new suppliers than for those that are established. However, suppliers who fail the qualification process can continue to attempt to qualify. CR at II-19, PR at II-10.

<sup>68</sup> See Tr. at 130 (Mr. Walton) (Panasonic switched from obtaining nickel plate from both Thomas Steel and Toyo Kohan to sourcing the product solely from the latter). In any final phase investigation, we intend to explore the issue of purchaser preference for dual as opposed to single sources of nickel plate.

<sup>69</sup> Petition at 45.

<sup>70</sup> CR at V-8, PR at V-5.

<sup>71</sup> CR at V-7, PR at V-7.

<sup>72</sup> See CR at V-28, PR at V-9; Petition, Exh. 10, Letter from \*\*\*. In any final phase investigation, we will seek further information about the range of bidding processes used to purchase nickel plate.

<sup>73</sup> PECA-MD's Postconference Answers to Staff Questions at 11.

<sup>74</sup> CR at II-18, PR at II-10. In any final phase investigation, we will seek further information on the extent to which pre-qualification affects nickel plate suppliers' ability to participate in, or influence prices through, purchasers' bid processes.

<sup>75</sup> CR at V-5, PR at V-4.

<sup>76</sup> CR at V-6, PR at V-4.

<sup>77</sup> CR at V-7, PR at V-5.

<sup>78</sup> CR at II-14, PR at II-8.

<sup>79</sup> CR/PR at Table II-3.

<sup>80</sup> Tr. at 21 (Mr. Cannon), 120 (Mr. Medeiros).

none of the responding U.S. importers agreed. All three of the responding importers reported that non-price factors are frequently or sometimes important in purchasing decisions involving the domestically produced product and subject imports.<sup>81</sup> Non-price factors identified as important by importers include quality, delivery and technical assistance.<sup>82</sup>

Raw materials accounted for between \*\*\* and \*\*\* percent of the U.S. producer's cost of goods sold ("COGS") during the period of investigation.<sup>83</sup> Nickel plate prices are closely correlated with the prices of hot-rolled steel and nickel, the principal raw materials. The hot-rolled steel is produced from iron ore and coking coal.<sup>84</sup> According to Thomas Steel, hot-rolled steel prices increased between 2010-11, then remained steady at elevated levels in 2012; forecasts call for 2013 raw material prices to \*\*\*.<sup>85</sup>

### **C. Volume of the Subject Imports**

Section 771(7)(C)(i) of the Tariff 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."<sup>86</sup>

The volume of subject imports was significant over the period of investigation. U.S. imports of nickel plate from Japan decreased from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, before rising to \*\*\* short tons in 2012.<sup>87</sup> Similarly, subject import shipments decreased from 2010 to 2011, then increased nearly back to the 2010 level in 2012.<sup>88</sup> Subject import market share and the ratio of subject imports to U.S. production followed the same trend.<sup>89</sup> Although demand, as measured by apparent U.S. consumption, declined over the period,<sup>90</sup> the domestic industry's shipments declined at a greater rate.<sup>91</sup> Consequently, although the

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<sup>81</sup> CR/PR at Table II-4.

<sup>82</sup> CR at II-21, PR at II-11.

<sup>83</sup> CR/PR at V-1.

<sup>84</sup> CR/PR at V-1. The nickel used is electrolytic nickel. Id.

<sup>85</sup> CR/PR at V-1.

<sup>86</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>87</sup> CR/PR at Table IV-2.

<sup>88</sup> U.S. shipments of subject imports decreased from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, then rose to \*\*\* short tons in 2012. CR/PR at Table IV-3. The lower shipment volumes resulted from the rising levels of importer inventories between 2010 and 2012. CR/PR at Table VII-2.

<sup>89</sup> Subject import market share fell from \*\*\* percent in 2010 to \*\*\* percent in 2011, then climbed to \*\*\* percent in 2012. CR/PR at Table IV-4. The ratio of subject imports to U.S. production was \*\*\* percent in 2010, \*\*\* percent in 2011 and \*\*\* percent in 2012. Computed from CR/PR at Tables III-2, IV-3.

<sup>90</sup> Apparent U.S. consumption rose from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, then declined to \*\*\* short tons in 2012. CR/PR at Table IV-4.

<sup>91</sup> The domestic industry's U.S. shipments climbed from \*\*\* short tons in 2010 to \*\*\* short tons in

(continued...)

domestic industry gained market share from 2010 to 2011, it lost that gain and more from 2011 to 2012; at the same time, subject import market share increased nearly to the 2010 level in 2012 and demand, as noted previously, decreased. During the period of investigation, \*\*\* of the nonsubject imports were sold in the battery segment of the market and \*\*\* subject imports were sold in the automotive segment. Consequently, in the battery segment, the predominant segment of the U.S. nickel plate market and the sole segment in which there was head-to-head competition between the domestically produced nickel plate and subject imports,<sup>92</sup> the increase in subject import market share came \*\*\* at the expense of the domestic industry.<sup>93</sup>

For purposes of the preliminary phase of this investigation, we find that the volume of subject imports is significant both in absolute terms and relative to consumption and production in the United States.

#### **D. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Tariff Act provides that, in evaluating the price effects of 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.<sup>94</sup>

The Commission collected pricing data for five products. Usable data were reported by the sole U.S. producer and three importers, including an importer of nonsubject merchandise.<sup>95</sup> Although Thomas Steel reported pricing data for all five products in all quarters, not all of the importers did so due to the particular specifications.<sup>96</sup> Product 1, which had the \*\*\* quantity of U.S.-produced shipments of the five products, is used for \*\*\*. Product 2 is used for \*\*\*. Product 3 is used for \*\*\*. Product 4 is used for \*\*\*. PECA also described product 4 as a newer

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<sup>91</sup> (...continued)

2011, then fell to \*\*\* short tons in 2012. CR/PR at Table III-3.

<sup>92</sup> CR/PR at Table II-1.

<sup>93</sup> Subject import market share in the battery segment of the market declined from \*\*\* percent in 2010 to \*\*\* percent in 2011, then climbed to \*\*\* percent in 2012. Calculated from CR/PR at Table II-1. The domestic industry's market share for the battery segment of the market rose from \*\*\* percent in 2010 to \*\*\* percent in 2011, then fell to \*\*\* percent in 2012. Calculated from CR/PR at Table II-1.

<sup>94</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>95</sup> CR at V-10 - V-11, PR at V-6 - V-7.

<sup>96</sup> See CR/PR at Tables V-1 - V-5.



product replacing product 5.<sup>97</sup> The data reported accounted for approximately \*\*\* percent of Thomas Steel's 2012 shipments and \*\*\* percent of subject import shipments.<sup>98</sup>

The pricing data show underselling in 45 of 58 quarterly price comparisons. The margins of underselling ranged from \*\*\* percent, with the average margin being \*\*\* percent.<sup>99</sup> Given the high frequency of underselling, the magnitude of the underselling margins, and the fact that price is an important consideration in purchasing decisions, we find the underselling to be significant.

Based on the record in this preliminary phase, we also find evidence that subject imports prevented price increases for the domestic product, that otherwise would have occurred, to a significant degree. The domestic industry's ratio of COGS to net sales increased steadily and substantially over the period, which is evidence that the domestic producer was not able to raise its prices sufficiently to cover rising costs in the face of the significant volume of lower-priced subject imports.<sup>100</sup> We intend to examine more closely the issue of adverse price effects in any final phase of the investigation. In particular, we intend to analyze further the components of the domestic industry's costs in order to ensure we do not attribute to subject imports adverse changes in the domestic industry's COGS to net sales ratio that are instead caused by the industry's practices in obtaining raw materials.

Thomas Steel alleged lost sales totaling \$\*\*\*. Although the record in this preliminary phase of the investigation indicates that certain allegations cannot be confirmed, allegations totaling more than \$\*\*\* appear to be substantiated.<sup>101</sup>

For purposes of this preliminary determination, we find the underselling by the subject imports to be significant and also find evidence of price suppression.

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<sup>97</sup> CR at V-10 - V-11, PR at V-6 - V-7.

<sup>98</sup> CR at V-12, PR at V-7.

<sup>99</sup> CR/PR at Table V-7.

<sup>100</sup> The COGS/net sales ratio rose from \*\*\* percent in 2010 to \*\*\* percent in 2011, then to \*\*\* percent in 2012. CR/PR at Table VI-1.

<sup>101</sup> A \$\*\*\* sale \*\*\* was lost to Japanese producers when Thomas Steel's \*\*\*, according to \*\*\*. A \$\*\*\* sale quoted in \*\*\* was lost in that Thomas Steel \*\*\*. CR/PR at Table V-9. Thomas Steel reports that AA batteries account for about 60 percent of all U.S. alkaline battery sales. Petition at 3. See also CR/PR at Table V-1 (showing sharp increase in subject imports and sharp decrease in domestic shipments at end of 2012 for product 1, which is used for \*\*\*); Petition at Exh. 10.

We intend to seek more information for a number of the lost sale allegations in any final phase investigation, including two alleged lost sales each pertaining to \*\*\*. See CR/PR at Table V-9. We encourage the parties to submit documentation of their transactions that supports their claims.

Thomas Steel's lost revenue allegations totaled \$\*\*\*. One allegation totaling \$\*\*\* is partially substantiated. See CR at V-30, PR at V-9 (\*\*\*). We noted above that evidence in the record indicates that suppliers may be invited to bid, even if they have not been formally qualified to supply the product. In addition, product quality and end product performance may be used as leverage in securing lower prices. Id. Thomas Steel reported that its rejection rate is 0.3 percent. CR at II-19, PR at II-10.

## E. Impact of the Subject Imports<sup>102</sup>

Section 771(7)(C)(iii) of the Act 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.”<sup>103</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>104</sup>

Over the period of investigation, most indicia of the domestic nickel plate industry’s condition showed consistent negative trends, especially when subject import volumes increased between 2011 and 2012. Conversely, when subject import volumes decreased between 2010 and 2011, the domestic industry experienced improvement in these factors.

Although capacity remained the same throughout the period,<sup>105</sup> other trade indicators declined. Production declined overall.<sup>106</sup> As a result, capacity utilization declined overall.<sup>107</sup> Shipments followed the same trend.<sup>108</sup> Inventories rose over the period.<sup>109</sup>

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<sup>102</sup> In its notice initiating an antidumping investigation on nickel plate from Japan, Commerce estimated dumping margins ranging from 56.50 percent to 77.70 percent. 78 Fed. Reg. at 23907.

<sup>103</sup> 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.”)

<sup>104</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>105</sup> Capacity totaled \*\*\* short tons in each year of the period. CR/PR at Table III-2.

<sup>106</sup> Production increased from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, then declined to \*\*\* short tons in 2012. CR/PR at Table III-2.

<sup>107</sup> Capacity utilization rose from \*\*\* percent in 2010 to \*\*\* percent in 2011, then fell to \*\*\* percent in 2012. CR/PR at Table III-2.

<sup>108</sup> U.S. shipments increased from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, then decreased to \*\*\* short tons in 2012. CR/PR at Table III-3.

<sup>109</sup> Inventories increased from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, then declined to \*\*\* short tons in 2012. CR/PR at Table III-5.

Employment indicators also trended downward. The number of production and related workers decreased,<sup>110</sup> as well as hours worked.<sup>111</sup> Wages paid increased,<sup>112</sup> however, and labor productivity remained steady.<sup>113 114</sup>

Financial indicators also showed declining trends over the period. Operating income decreased steadily and \*\*\*.<sup>115</sup> Net sales decreased overall.<sup>116</sup> The industry's operating margin declined throughout the period,<sup>117</sup> coinciding with the increased COGS to net sales ratio. While capital expenditures rose,<sup>118</sup> research and development expenses fell.<sup>119</sup>

We recognize, however, that the domestic industry's raw material acquisition practices may be impacting financial results. The adverse changes in the domestic industry's operating income margin correspond to the increases in the COGS to net sales ratio. We have already noted that we will examine the reasons for the change in this ratio in any final phase of the investigation.

We find, for the purposes of this preliminary determination, that there is an indication that the significant volume of low-priced subject imports, which took market share from the domestic industry in a period of decreasing demand, had an adverse impact on the domestic industry. The decline in demand cannot explain the larger declines in the factors we examine in making our impact finding.<sup>120</sup> As explained above, the market share losses from 2011 to 2012 were particularly pronounced in the battery segment, in which head-to-head competition exists between subject imports and the domestically produced product.

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<sup>110</sup> The number of production and related workers increased from \*\*\* in 2010 to \*\*\* in 2011, then fell to \*\*\* in 2012. CR/PR at Table III-6.

<sup>111</sup> Total hours worked climbed from \*\*\* hours in 2010 to \*\*\* hours in 2011, then fell to \*\*\* hours in 2012. CR/PR at Table III-6.

<sup>112</sup> Wages paid increased from \$\*\*\* in 2010 to \$\*\*\* in 2011, then to \$\*\*\* in 2012. CR/PR at Table III-6.

<sup>113</sup> Labor productivity rose from \*\*\* short tons per 1,000 hours worked in 2010 to \*\*\* short tons per 1,000 hours worked in 2011, then fell to \*\*\* short tons per 1,000 hours worked in 2012. CR/PR at Table III-6.

<sup>114</sup> Thomas Steel reported that, for the first time, it shut down its plant for one week in April 2013 due to a lack of orders. CR at III-4, PR at III-3.

<sup>115</sup> Operating income totaled \$\*\*\* in 2010, \$\*\*\* in 2011 and \$\*\*\* in 2012. CR/PR at Table VI-1.

<sup>116</sup> Total net sales, as measured by quantity, increased from \*\*\* short tons in 2010 to \*\*\* short tons in 2011, then decreased to \*\*\* short tons in 2012. CR/PR at Table VI-1.

<sup>117</sup> CR/PR at Table VI-1.

<sup>118</sup> Capital expenditures rose from \$\*\*\* in 2010 to \$\*\*\* in 2011, then fell to \$\*\*\* in 2012. CR/PR at Table VI-3.

<sup>119</sup> Research and development expenses declined from \$\*\*\* in 2010 to \$\*\*\* in 2011, then to \$\*\*\* in 2012. CR/PR at Table VI-3.

<sup>120</sup> For example, while apparent U.S. consumption declined \*\*\* percent over the period, U.S. production decreased by \*\*\* percent and U.S. shipments declined by \*\*\* percent. CR/PR at Table C-1.

We have considered the role of other factors, such as nonsubject imports, so as not to attribute injury from other factors to subject imports.<sup>121</sup> We do not attribute the domestic industry's difficulties during the period of investigation to nonsubject imports. We have explained that nonsubject imports rose over the period, but remained insignificant. In addition, subject imports' market share gain was greater than that of nonsubject imports toward the end of the period. The role of pricing of nonsubject imports is unclear because nonsubject imports were only present in the automotive segment of the market, in which there was no competition with subject imports. Thus, for purposes of this preliminary determination, we find that the adverse effects that we have attributed to subject imports are not a function of the nonsubject imports.

Consequently, we conclude that, for purposes of the preliminary determination, the subject imports have had a significant adverse impact on the domestic industry.

### CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of this investigation, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject nickel plate imports from Japan.

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<sup>121</sup> Based on the record evidence in this investigation, Commissioner Pinkert finds that regardless of whether nickel plate is a commodity product for purposes of the Bratsk/Mittal Steel analysis, nonsubject imports were not a significant factor in the U.S. market. Nonsubject import market share was \*\*\* percent in 2010, \*\*\* percent in 2011, and \*\*\* percent in 2012. CR/PR at Table IV-4. Moreover, nonsubject imports from Korea and Germany were used \*\*\* for automotive applications, whereas subject imports were used \*\*\* in battery applications. CR at IV-3, PR at IV-2. Thus, it is unclear whether and to what extent nonsubject producers could provide nickel plate to the U.S. market for battery applications. Commissioner Pinkert invites parties to comment on the applicability of Bratsk/Mittal Steel to this investigation.

## DISSENTING VIEWS OF COMMISSIONER DANIEL R. PEARSON

Based on the record in the preliminary phase of this investigation, I find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of diffusion-annealed, nickel-plated flat-rolled steel products (“nickel plate”) from Japan that are allegedly sold in the United States at less than fair value (“LTFV”).<sup>1</sup>

I join the Commission’s Views with respect to background, domestic like product, domestic industry, legal standards, and conditions of competition. I write separately, however, with respect to my analysis of reasonable indication of material injury and threat of material injury by reason of the subject imports. For the reasons discussed below, I find that there is no reasonable indication that an industry in the United States producing nickel plate is materially injured or threatened with material injury by reason of subject imports from Japan.

### I. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM JAPAN<sup>2</sup>

#### A. Volume of Subject Imports

In evaluating the volume of subject imports, section 771(7)(C)(I) of the Tariff 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.”<sup>3</sup>

During a period of fluctuating demand, the volume of subject imports fell from \*\*\* in 2010 to \*\*\* in 2011, before increasing to \*\*\* in 2012.<sup>4</sup> The total increase over the period of investigation, therefore, was just \*\*\* percent. Nonsubject imports, primarily from Korea, increased strongly between 2010 and 2012, but were at far lower levels than subject imports throughout the period.<sup>5</sup>

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<sup>1</sup> Material retardation is not an issue in this investigation. 19 U.S.C. §§ 1671b(a), 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996)

<sup>2</sup> Negligibility under 19 U.S.C. § 1677(24) is not an issue in this investigation. Record data indicate that during the most recent 12-month period for which data are available preceding the filing of the petition, imports from Japan accounted for 62.4 percent of total U.S. imports of nickel plate by quantity (based on official U.S. statistics). The volume of subject imports is thus well above the statute’s three percent negligibility level. CR at IV-6, PR at IV-3.

<sup>3</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>4</sup> CR/PR at table IV-2.

<sup>5</sup> Id.

The market share of subject imports of nickel plate showed the same pattern as the volume of imports – first declining, then increasing.<sup>6</sup> Subject import market share actually declined by \*\*\* percentage points over the period of investigation. The domestic industry’s market share declined irregularly throughout the period, falling \*\*\* points overall between 2010 and 2012.<sup>7</sup> Over the 3-year period, any net increase in the market share of total imports reflected the increased share of nonsubject imports. Between 2011 and 2012, the gain corresponding to the market share loss of the domestic industry was shared by subject imports and nonsubject imports, with subject imports gaining \*\*\* percentage points, and nonsubject imports gaining \*\*\* percentage points.

Although the absolute level of the volume of subject imports, ranging between \*\*\* tons annually over the 3-year period, is significant, I do not find the increase in volume of the subject imports, either absolutely or relative to domestic consumption or production, to be significant. Similarly, while subject imports accounted for \*\*\* of the domestic nickel plate market during the period of investigation, which is not insubstantial, I do not find that the slight decrease in subject import market share constitutes a change that is significant. As noted, subject imports increased by less than \*\*\* percent over the period of investigation, and subject imports actually lost market share during the period. I am mindful that the statute is worded in the disjunctive when describing how I should evaluate the significance of subject import volume.<sup>8</sup> Nevertheless, in assessing whether there is a reasonable indication of material injury to a U.S. industry by reason of subject imports I place more emphasis on trends in subject import volume and market share than on the absolute level of these indicators. In that regard, although subject import volume and market share both increased toward the end of the period of investigation (between 2011 and 2012), for reasons outlined below I do not find that these increases contributed materially to the condition of the domestic industry.

In light of the above, I find that the volume of subject imports is significant, but not in relation to U.S. consumption or production.

## **B. Price Effects of the Subject Imports**

In evaluating the price effects of the subject imports, section 771(7)(C)(ii) of the Tariff Act provides that the Commission shall consider whether –

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<sup>6</sup> The market share of subject imports first declined from \*\*\* percent in 2010 to \*\*\* percent in 2011, before increasing to \*\*\* percent in 2012. CR/PR at table IV-4.

<sup>7</sup> The domestic industry’s market share first rose from \*\*\* percent in 2010 to \*\*\* percent in 2011, before falling to \*\*\* percent in 2012. CR/PR at table IV-4.

<sup>8</sup> The statute provides, in relevant part, “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.” 19 U.S.C. § 1677(7)(C)(i) (emphasis supplied).

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>9</sup>

I concur with my colleagues in finding that there is a moderately high degree of substitutability between the domestic like product and the subject imports. Considerations of product quality, however, appear to be paramount, particularly in light of the rigorous qualification requirements imposed on nickel plate suppliers by purchasers.<sup>10</sup> Thus, differences between products other than price may often be significant considerations in sales of nickel plate.<sup>11</sup>

The Commission collected quarterly pricing data on five nickel plate products of varying thicknesses and nickel coatings.<sup>12</sup> Pricing data accounted for \*\*\* percent of Thomas Steel's U.S. shipments of nickel plate in 2012 and \*\*\* percent of 2012 U.S. shipments of imports of nickel plate from Japan.<sup>13</sup> Pricing data were reported by Thomas and three importers.<sup>14</sup> The Commission has broad coverage of pricing practices in this industry as, for the data on quarterly price comparisons, staff was able to develop meaningful price comparisons for virtually all quarters for all products.

These data show a mixed pattern of underselling and overselling, with underselling predominating. For the five products collectively, subject imports of nickel plate undersold the domestic like product in 45 of 58 quarterly price comparisons.<sup>15</sup> For product 1, which represents \*\*\* and was the product \*\*\*, the underselling and overselling margins were mixed and showed no particular trend.<sup>16</sup> For the other four nickel plate products, underselling margins involving subject imports generally tended to be \*\*\*, and tended to occur \*\*\*.<sup>17</sup> Indeed, for products 2, 3, and 4, in 2012 when subject imports were increasing, overselling

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<sup>9</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>10</sup> CR at II-15-II-20; PR at II-8-10.

<sup>11</sup> CR/PR at table II-4. Petitioner Thomas Steel Strip Corporation (Thomas) reported that non-price factors are \*\*\* important in making purchasing decisions. I find this characterization hard to square with Thomas's own description of the qualification procedures imposed upon it and other nickel plate suppliers by U.S. battery manufacturers. *See, e.g.*, Hearing Transcript (Tr.) at 23 (Mr. Hartman).

<sup>12</sup> CR at V-10, PR at V-6.

<sup>13</sup> CR at V-12, PR at V-7.

<sup>14</sup> CR at V-11, PR at V-7.

<sup>15</sup> CR/PR at table V-7.

<sup>16</sup> CR/PR at table V-1.

<sup>17</sup> CR/PR at tables V-2-V-5.

occurred in the majority \*\*\* of quarterly observations.<sup>18</sup> Underselling margins for product 5 were \*\*\* throughout the period, but this product was sold \*\*\*.<sup>19</sup> In light of these considerations, I do not find underselling to be significant.

Moreover, I do not find persuasive evidence of price depression by reason of subject imports. U.S. prices of three of the five selected products increased overall during the period of investigation, including prices for product 1, the product sold \*\*\*.<sup>20</sup> Product prices (except for product 5) did fall between 2011 and 2012. This trend, combined with the fact that subject imports also increased over that period, could lead me to find that imports were the cause of that price depression. The record indicates, however, that a portion of the price of nickel plate products is a raw material adjustment, which is an element that changes based on the prices for nickel and other inputs.<sup>21</sup> As prices of nickel, coking coal, and iron ore were all falling during 2012, it is likely that these trends may account for any declines in the price of the final product that occurred in 2012.<sup>22</sup> Consequently, it is impossible to gauge whether subject imports were a cause of any declines in prices occurring between 2011 and 2012.

Similarly, I cannot find any indication that Thomas's prices were suppressed by reason of subject imports. Thomas alleged \*\*\* instances of lost revenue totaling \$\*\*\*, but \*\*\* of these allegations were confirmed.<sup>23</sup> Moreover, although Thomas's ratio of cost of goods sold to net sales increased steadily over the period of investigation, particularly between 2011 and 2012 when subject imports were increasing, I do not find that this increase necessarily indicates that prices were suppressed by reason of subject imports.<sup>24</sup> The increase in the COGS/net sales ratio in 2012 reflects the fact that Thomas's net sales \*\*\* its total COGS.<sup>25</sup> These trends likely reflect the relationship between the prices Thomas can charge for nickel plate (which are based on index prices for nickel, coking coal, and iron ore, all of which declined in 2012), and the costs it faces for hot-rolled coil (which it concedes do not necessarily track with those published

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<sup>18</sup> CR/PR at tables V-2-V-4. For these products, underselling margins in 2012 were very low, ranging from \*\*\* to \*\*\* percent. Overselling margins in 2012 were somewhat higher, ranging from \*\*\* to \*\*\* percent.

<sup>19</sup> CR/PR at table V-5. Quarterly sales volumes of this product by Thomas were \*\*\* than \*\*\* short tons per quarter.

<sup>20</sup> CR/PR at figure V-4.

<sup>21</sup> CR at V-5; PR at V-4.

<sup>22</sup> CR/PR at figures V-1-V-3.

<sup>23</sup> CR/PR at table V-8.

<sup>24</sup> Thomas's ratio of cost of goods sold to net sales increased from \*\*\* percent in 2010 to \*\*\* percent in 2011, and again to \*\*\* percent in 2012. CR/PR at table C-1.

<sup>25</sup> Thomas's total cost of goods sold fell from \$\*\*\* in 2011 to \$\*\*\* in 2012, or by \*\*\* percent. The value of Thomas's net sales fell from \$\*\*\* in 2011 to \$\*\*\*, or by \*\*\* percent.



indices).<sup>26</sup> Again, it is impossible to see how increases in subject imports played any role in these divergent trends and their effect on Thomas's operations.

Finally, with regard to Thomas's allegations of lost sales, \*\*\*<sup>27</sup> \*\*\*<sup>28</sup> \*\*\*<sup>29</sup> \*\*\*.<sup>30</sup> There is no evidence in this preliminary phase that nickel plate is a commodity product that is so sensitive to price that an underselling margin of \*\*\* would cause such a large volume of sales to shift from one supplier to another. In fact, the evidence is to the contrary. In particular, the importance and rigorous nature of the qualification processes for nickel plate, coupled with evidence of significant differences in reject rates between subject import suppliers and the U.S. industry, suggest that the \*\*\* sales were lost for reasons other than price.<sup>31</sup>

For all of these reasons, I do not find that the subject imports of nickel plate had significant adverse effects on prices for the domestic like product.

### C. Impact of the Subject Imports<sup>32</sup>

In examining the impact of subject imports, section 771(7)(C)(iii) of the Tariff Act provides that the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry."<sup>33</sup> These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>34</sup>

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<sup>26</sup> Thomas's postconference brief at 32.

<sup>27</sup> CR/PR at table V-9. Thomas alleged a total of \$\*\*\* in lost sales, and the \*\*\* allegations that were confirmed amounted to approximately \$\*\*\*.

<sup>28</sup> *Id.* According to \*\*\*, the Japanese producer's price was \$\*\*\* per short ton, compared with Thomas's price of \$\*\*\* per short ton.

<sup>29</sup> CR/PR at table V-1.

<sup>30</sup> CR/PR at table V-9.

<sup>31</sup> CR at II-15-20, PR at II-8-10; postconference brief of Metal One America, Inc., Nippon Steel & Sumitomo Metal Corporation, and Toyo Kohan Co., Ltd. (Japanese respondents' postconference brief) at Exhibit 1, p. 4 (affidavit of Mark Codde).

<sup>32</sup> Commerce initiated an antidumping duty investigation based on estimated dumping margins ranging from 56.50 percent to 77.70 percent. CR at I-6; PR at I-4 (citing 78 Fed. Reg. at 23,905, Apr. 23, 2013).

<sup>33</sup> 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.").

<sup>34</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos.

(continued...)

The domestic industry's production, sales, capacity utilization, and employment levels all decreased overall between 2010 and 2012, and the industry also lost market share over that period.<sup>35</sup> Over the 3-year period, hourly wages rose, but total hours worked dropped and productivity was essentially flat.<sup>36</sup> Moreover, the industry was profitable in 2010 and 2011 as subject import shipments declined; on the other hand, the industry lost money in 2012, a year in which shipments of subject imports increased.<sup>37</sup>

In general, most of the data depict an industry that was improving until 2012, when some exogenous event occurred to cause the industry's condition to deteriorate. It is obvious from the record that this event was \*\*\*. This was an extremely large loss of sales volume, amounting to \*\*\* in a market of just over \*\*\*.<sup>38</sup> In a narrow sense, therefore, it is clear that subject imports had a significant impact on Thomas's business.

Even so, I do not find a sufficient causal link between subject imports and Thomas's current financial condition. In my view, the statute requires that we examine more than the question of whether sales volumes were lost to subject imports, but rather that we also examine the question of why such volumes were lost. As discussed above, in the case of the lost \*\*\* sales, the record does not permit me to conclude that the sales were lost because of the lower price of the subject imports. Rather, given the \*\*\* involved, it is likely that \*\*\* preference for subject import supply was due to non-price factors such as product quality. As for Thomas's financial performance in 2012, I find the variance analysis to be particularly instructive. This analysis shows that, over the 3-year period, the largest component of the negative variance in operating income was the cost/expense variance, which dwarfed much smaller negative price and volume variances.<sup>39</sup> This is consistent with a conclusion that the industry's losses during the period stemmed primarily from \*\*\* rather than from reduced prices or volume losses. Hence, Thomas's operating income loss in 2012 was likely caused by

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<sup>34</sup> (...continued)

701-TA-386, 731-TA-812-813 (Preliminary), USITC Publication 3155 at 25 n.148 (Feb. 1999).

<sup>35</sup> From 2010 to 2012, the domestic industry's share of the nickel plate market declined by \*\*\* percentage points, from \*\*\* percent in 2010 to \*\*\* percent in 2012. Similarly, its production decreased by \*\*\* percent, its sales quantity declined by \*\*\* percent, and the number of production and related workers producing nickel plate fell by \*\*\* percent. CR/PR at table C-1.

<sup>36</sup> Hourly wages rose irregularly from \$\*\*\* per hour in 2010 to \$\*\*\* per hour in 2012. Total hours worked were \*\*\* hours in 2010, \*\*\* hours in 2011, and \*\*\* hours in 2012. Productivity was \*\*\* short tons per 1,000 hours in 2010, increased in 2011 to \*\*\* short tons per 1,000 hours, then declined to \*\*\* short tons per 1,000 hours in 2012. CR/PR at table III-6.

<sup>37</sup> Shipments of subject imports fell in 2011 to \*\*\* short tons from their 2010 level of \*\*\* short tons. Such shipments then increased in 2012 to \*\*\* short tons. Thomas's operating income margins were \*\*\* percent in 2010, \*\*\* percent in 2011, and \*\*\* percent in 2012. CR/PR at table C-1.

<sup>38</sup> CR/PR at tables V-9 & C-1.

<sup>39</sup> CR/PR at table VI-2. Over the 3-year period, the overall negative operating income variance of \$\*\*\* was made up of negative price and volume variances of \$\*\*\* and \$\*\*\*, respectively, which are dwarfed by the negative net cost/expense variance of \$\*\*\*.

the same divergent trends in nickel plate prices and hot-rolled steel costs that caused a simultaneous \*\*\* increase in its COGS/sales ratio.

For the above reasons, I do not find that there is a reasonable indication that subject imports are having an adverse impact on the domestic industry. I find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of material injury by reason of subject imports of nickel plate and no likelihood exists that contrary evidence will arise in a final investigation.

## **II. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM JAPAN**

Section 771(F) of the Act directs the Commission to determine whether there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>40</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”<sup>41</sup> In making my determination, I have considered all factors that are relevant to this investigation.<sup>42</sup> Based on an evaluation of the relevant statutory factors, I find

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<sup>40</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>41</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990) (citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992) citing H.R. Rep. No. 98-1156 at 174 (1984).

<sup>42</sup> These factors are as follows:

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,

(II) 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,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a  
(continued...)

that there is no reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of nickel plate from Japan that are allegedly sold in the United States at less than fair value.

The Commission received questionnaire responses from two of the three Japanese firms believed both to produce and export nickel plate, and from four U.S. importers of nickel plate.<sup>43</sup> These responses accounted for approximately \*\*\* percent of overall production of nickel plate in Japan in 2012 and 95 percent of total imports from Japan under the HTS numbers under which the large majority of imports of nickel plate are believed to be imported.<sup>44</sup> Of the two reporting Japanese producers, Toyo Kohan and NSSMC, Toyo Kohan was by far the larger, accounting for \*\*\* percent of reported exports to the United States and \*\*\* percent of production in Japan in 2012.<sup>45</sup>

With specific regard to the statutory factors, capacity to produce the subject product in Japan increased irregularly from 2010 to 2012, and is expected to increase still further in 2013 and 2014.<sup>46</sup> Capacity utilization in 2012 was fairly low, at \*\*\* percent.<sup>47</sup> The excess capacity in 2012, at around \*\*\* tons, represents a little less than \*\*\* percent of apparent U.S.

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<sup>42</sup> (...continued)

significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the 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.

\* \* \*

(IX) 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).

19 U.S.C. § 1677(7)(F)(I). Statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved in these investigations. No argument was made that the domestic industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, which would implicate statutory threat factor (VIII).

<sup>43</sup> CR at VII-3, PR at VII-2-3; CR/PR at IV-1.

<sup>44</sup> Id.

<sup>45</sup> Questionnaire responses of Toyo Kohan and NSSMC.

<sup>46</sup> CR/PR at table VII-1. Capacity to produce nickel plate in Japan increased irregularly from \*\*\* short tons in 2010 to \*\*\* short tons in 2012, and is projected to rise further to \*\*\* short tons in 2013 and 2014.

<sup>47</sup> Id.

consumption in that year.<sup>48</sup> At first glance, this level of excess capacity would appear to pose a threat to Thomas's operation, but I find it significant that the level of excess capacity was also substantial earlier in the period (particularly in 2011) and at that time the Japanese industry did not increase exports rapidly to the United States.<sup>49</sup>

The Japanese industry became more export-oriented over the 3-year period, with a greater share going to the U.S. market in 2012 than in 2010, with a similar pattern shown by shipments going to non-U.S. markets.<sup>50</sup> The home market appears to be \*\*\* shrinking as a destination for Japanese nickel plate and is expected to continue to do so, while shipments to non-U.S. markets are projected to account for \*\*\* of total shipments in 2014.<sup>51</sup> Although these trends might at first suggest a potential for increased exports to the U.S. market, I note that although the Japanese industry's share of shipments going to the U.S. market increased, the share going to non-U.S. markets increased as well, and record evidence indicates that the demand outlook for nickel plate may be more positive in Asian markets than in the U.S. market.<sup>52</sup>

There was a steady increase in subject imports held in inventory in the United States over the period 2010-2012, and those inventories were fairly high as a ratio to preceding-period shipments.<sup>53</sup> Respondents testified, however, that such inventories are customer-specific and it is impossible to switch inventory from one customer to another.<sup>54</sup> Further, Japanese producers reported little apparent scope for product-shifting and there are no barriers to exports of Japanese nickel plate anywhere in the world.<sup>55</sup>

In addition, there is no evidence that imports of nickel plate from Japan are entering the U.S. market at prices that are likely to have a significant depressing or suppressing effect on domestic prices. Underselling occurred during the period of investigation, but underselling

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<sup>48</sup> Excess capacity in the Japanese industry was \*\*\* short tons in 2012, compared with apparent U.S. consumption of \*\*\* short tons. CR/PR at tables VII-1 and C-1.

<sup>49</sup> CR/PR at table VII-1. Excess capacity in the Japanese industry was \*\*\* short tons in 2010, and \*\*\* short tons in 2011.

<sup>50</sup> CR/PR at table VII-1. The share of Japanese producers' shipments going to the U.S. market increased overall from \*\*\* percent in 2010 to \*\*\* percent in 2012. Similarly, the share of such shipments going to non-U.S. export markets increased from \*\*\* percent in 2010 to \*\*\* percent in 2012.

<sup>51</sup> CR/PR at table VII-1. The share of Japanese producers' shipments going to the home market declined steadily from \*\*\* percent in 2010 to \*\*\* percent in 2012, and is expected to continue this \*\*\* decline to \*\*\* percent by 2014. In contrast, shipments to non-U.S. export markets are expected to climb to \*\*\* percent of total shipments by 2014.

<sup>52</sup> CR at II-14, PR at II-7-8.

<sup>53</sup> CR/PR at table VII-2. U.S. importers' inventories of subject imports from Japan rose \*\*\* from \*\*\* short tons in 2010 to \*\*\* short tons in 2012. As a ratio to preceding-period shipments, such inventories climbed irregularly from \*\*\* percent in 2010 to \*\*\* percent in 2012.

<sup>54</sup> Japanese respondents' postconference brief at 44.

<sup>55</sup> CR at II-7, PR at II-4; CR at VII-9, PR at VII-4.

margins generally declined toward the end of the period, and, as discussed above, there is no evidence of price depression or suppression by reason of subject imports. Finally, because subject imports actually declined in terms of market share and increased only marginally in volume over the period of investigation, there is no evidence of a significant rate of increase in the volume or market penetration of imports of nickel plate from Japan indicating the likelihood of substantially increased imports. What is more, \*\*\* indicated that its shipments to \*\*\* are essentially \*\*\*, and therefore no additional imminent surges in imports \*\*\* would occur in any event.<sup>56</sup>

In considering whether there are any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports of the subject merchandise, I observe that Thomas is currently going through a difficult period occasioned by, among other factors, the loss of an important account, but that the nature of the nickel plate market is such that Thomas may well be able to gain back some or all of that business (and retain existing business) in the near- to medium-term. Even with the temporary loss of \*\*\*, Thomas \*\*\*.<sup>57</sup>

Accordingly, I find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of a threat of material injury by reason of subject imports from Japan, and no likelihood exists that contrary evidence will arise in a final investigation. Hence, I determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of nickel plate from Japan that are allegedly sold in the United States at less than fair value.

### **III. CONCLUSION**

For the reasons stated above, I find that there is no reasonable indication that the domestic industry producing nickel plate is materially injured or threatened with material injury by reason of subject imports from Japan.

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<sup>56</sup> CR at VII-8 n.19, PR at VII-4 n.19.

<sup>57</sup> CR/PR at table II-2.

## PART I: INTRODUCTION

### BACKGROUND

This investigation results from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by Thomas Steel Strip Corporation (“Thomas Steel”), Warren, Ohio, on March 27, 2013, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (“LTFV”) imports of diffusion-annealed, nickel-plated flat-rolled steel products (“diffusion-annealed, nickel-plated steel”) <sup>1</sup> from Japan. The following tabulation provides information relating to the background of this investigation. <sup>2 3</sup>

Effective date	Action
March 27, 2013	Petition filed with Commerce and the Commission; institution of Commission investigation (78 FR 19734, April 2, 2013)
April 17, 2013	Commission’s conference
April 23, 2013	Commerce’s notice of initiation (78 FR 23905)
May 10, 2013	Commission’s vote
May 13, 2013	Commission’s determination
May 20, 2013	Commission’s views

### STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

#### Statutory criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

*shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the*

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<sup>1</sup> See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to this investigation.

<sup>2</sup> Pertinent *Federal Register* notices are referenced in app. A, and may be found at the Commission’s website ([www.usitc.gov](http://www.usitc.gov)).

<sup>3</sup> A list of witnesses appearing at the conference is presented in app. B of this report.

*determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

*In evaluating the volume of imports of merchandise, 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.*

. . .

*In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether. . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.*

. . .

*In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

### **Organization of report**

*Part I* of this report presents information on the subject merchandise, alleged dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV* and *V* present the volume of subject imports and pricing of domestic and imported products, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.



## MARKET SUMMARY

The principal application for diffusion-annealed, nickel-plated steel is for the fabrication of cans and end caps of alkaline and lithium batteries. The U.S. producer of diffusion-annealed, nickel-plated steel is Thomas Steel, while leading producers of diffusion-annealed, nickel-plated steel outside the United States include Toyo Kohan Co., Ltd. and Nippon Steel & Sumitomo Metal Corporation (“NSSMC”) of Japan, Hille & Müller GmbH of Germany, and TCC Steel (“TCC”) of Korea. The leading U.S. importers of diffusion-annealed, nickel-plated steel from Japan are Metal One America, Inc. (“Metal One”) and Nippon Steel Trading America, Inc. (“Nippon Trading”). Leading importers of diffusion-annealed, nickel-plated steel from the two known nonsubject countries (Germany and Korea) include \*\*\*. U.S. purchasers of diffusion-annealed, nickel-plated steel include firms that \*\*\*, produce cans for batteries, and produce automotive fuel lines. Leading purchasers include Cly-Del, Panasonic Energy Corporation of America (“PECA”), and H&T Waterbury, as well as battery manufacturers.<sup>4</sup>

Apparent U.S. consumption of diffusion-annealed, nickel-plated steel approached 52,000 short tons (\$114 million) in 2012. Thomas Steel is the only known company producing this product in the United States. Thomas Steel’s U.S. shipments of diffusion-annealed, nickel-plated steel totaled \*\*\* short tons (\$\*\*\*) in 2012, and accounted for\*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value. U.S. imports from subject sources totaled\*\*\* short tons (\$\*\*\*) in 2012 and accounted for\*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value. U.S. imports from nonsubject sources totaled \*\*\* short tons (\$\*\*\*) in 2012 and accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value.

## SUMMARY DATA AND DATA SOURCES

A summary of data collected in this investigation is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on the questionnaire response of one firm, Thomas Steel, that accounted for all U.S. production of diffusion-annealed, nickel-plated steel during 2012. U.S. imports are based on questionnaire responses that accounted for the vast majority of imports from subject and nonsubject sources.<sup>5</sup>

## PREVIOUS AND RELATED INVESTIGATIONS

Although diffusion-annealed, nickel-plated steel has not been the sole product subject to any prior countervailing or antidumping duty investigations in the United States, it has been included in proceedings concerning corrosion-resistant carbon steel flat-rolled products

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<sup>4</sup> See Part II for further details.

<sup>5</sup> Petitioners and Respondents view the questionnaire data as representative of U.S. imports. Conference transcript, pp. 43-44 (Cannon) and 148 (Wood).

(“CORE”).<sup>6</sup> The Commission instituted in 1980 antidumping duty investigations on this broader product covering six countries. In 1982, the Commission instituted antidumping duty investigations covering seven countries and countervailing duty investigations covering nine countries. The Commission in 1984 also instituted antidumping duty investigations covering seven countries and countervailing duty investigations covering three countries. In 1992, the Commission instituted antidumping duty investigations covering nine countries and countervailing duty investigations covering seven countries.<sup>7</sup> With the recent revocation of the orders on CORE from Germany and Korea,<sup>8</sup> there are at this time no outstanding antidumping duty orders or countervailing duty orders on CORE in place.<sup>9</sup>

In addition, diffusion-annealed, nickel-plated steel, with certain exclusions, as a subset of coated steel (which also included CORE) was covered under the most recent steel safeguard measures on certain carbon and alloy steel.<sup>10</sup>

### **NATURE AND EXTENT OF ALLEGED SALES AT LTFV**

On April 23, 2013, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigation on diffusion-annealed, nickel-plated steel from Japan.<sup>11</sup> Commerce has initiated an antidumping duty investigation based on estimated dumping margins ranging from 56.50 to 77.70 percent for diffusion-annealed, nickel-plated steel from Japan.

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<sup>6</sup> *Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 58 FR 44163, August 19, 1993.

<sup>7</sup> For further detail see *Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea, Inv. Nos. 701-TA-350 and 731-TA-616 and 618 (Third Review)*, USITC Publication 4388, pp. I-13-I-15.

<sup>8</sup> *Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders*, 78 FR 16832, March 19, 2013.

<sup>9</sup> On February 14, 2007, Commerce revoked antidumping duty orders on CORE including from Japan. *Revocation Pursuant to Second Five – Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Canada, Japan, and France*, 72 FR 7010, February 14, 2007. Prior to this, certain diffusion-annealed, nickel-plated steel specifications were excluded from these orders through subsequent scope or change of circumstances rulings.

<sup>10</sup> For further information see *Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea, Inv. Nos. 701-TA-350 and 731-TA-616 and 618 (Third Review)*, USITC Publication 4388, p. I-16.

<sup>11</sup> *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Initiation of Antidumping Duty Investigation*, 78 FR 23905, April 23, 2013.

## THE SUBJECT MERCHANDISE

### Commerce's scope

Commerce has defined the scope of this investigation as follows:

*The diffusion-annealed, nickel-plated flat-rolled steel products included in this investigation are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (i.e., "diffusion-annealed"); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this investigation, "nickel-based alloys" include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.<sup>12</sup>*

### Tariff treatment

Based upon the scope set forth by Commerce, information available to the Commission indicates that the merchandise subject to this investigation is classifiable under the following provisions of the 2013 HTS: 7210.90.60 and 7212.50.00. The Column-1 General rate of duty is "Free."<sup>13</sup>

## THE PRODUCT

### Description and applications

Diffusion-annealed, nickel-plated steel is a flat-rolled steel product, plated or coated with nickel or with a nickel-base alloy and subsequently annealed. Annealing after nickel-plating causes the formation of a thin layer of iron-nickel alloy between the steel substrate and the nickel coating, which prevents the nickel coating from flaking or separating from the substrate during fabrication operations. The principal application for diffusion-annealed, nickel-plated steel is for the fabrication of cans and end caps of alkaline and lithium batteries. Diffusion-annealed, nickel-plated steel is used for that purpose because of its strength, its formability, which permits the forming of deep cans, and because of the resistance of the nickel coating to corrosion by the electrolyte in the batteries. Additionally, the diffusion of iron from the

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<sup>12</sup> *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Initiation of Antidumping Duty Investigation*, 78 FR 23905, April 23, 2013.

<sup>13</sup> Imports may also be classified under HTSUS statistical reporting numbers 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. The Column-1 General rate of duty for these additional reporting numbers is "Free."

substrate through the nickel coating to the outer surface of the strip enhances the electrical conductivity between the electrolyte and the metal can. Battery cans and end caps accounted for more than 90 percent of U.S.-produced and imported diffusion-annealed, nickel-plated steel during 2012.<sup>14</sup> Because of its resistance to corrosion from motor fuel additives, diffusion-annealed, nickel-plated steel is also used for the manufacture of fuel, power-steering, and other automotive fluid lines.

### Manufacturing processes

The manufacture of diffusion-annealed, nickel-plated steel begins with the receipt of hot-rolled, low-carbon steel strip. For battery applications, the hot-rolled steel must have been manufactured to “consistently high standards of steel cleanliness ( . . . ), excellent shape and a low crown profile.”<sup>15</sup> The hot-rolled strip is uncoiled and processed through a pickling line in which the surface of the strip is cleaned by acid to remove surface oxide. The cleaned steel is next slit into multiple coils of suitable width for further processing. It is then reduced to its ordered thickness in a series of passes in a cold-rolling mill.<sup>16</sup> The steel is next processed through electrolytic cleaning to remove oils and contamination from the cold-rolling process, followed by electroplating with nickel.<sup>17</sup> Nickel alloy coatings are produced \*\*\*.<sup>18</sup>

After nickel plating, the steel is annealed. Annealing is a process applied to cold-reduced flat-rolled steel products to restore ductility lost in cold reduction.<sup>19</sup> It involves heating steel to a temperature at which recrystallization occurs, followed by controlled cooling.<sup>20</sup> In the case of diffusion-annealed, nickel-plated steel, annealing also causes the formation, through diffusion of nickel and iron atoms, of a thin layer of nickel-iron alloy between the steel substrate and the nickel coating. The presence of the diffused alloy layer improves the adherence of the nickel coating to the substrate and prevents their separation during fabrication of battery cans, end caps, and other finished products. The diffused alloy layer also enhances the electrical conductivity between the electrolyte in a battery and the can.

One method of annealing diffusion-annealed, nickel-plated steel is batch annealing, in which the coils of steel are subjected to a long heat-treating cycle by varying the temperature

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<sup>14</sup> Questionnaire responses. Subject imports of diffusion-annealed, nickel-plated steel from Japan were exclusively for battery applications. Japanese respondents’ postconference brief, p. 40.

<sup>15</sup> Petitioner’s postconference brief, p. 47. Cleanliness requirements include the minimization of the number of non-metallic inclusions and the control of their shape and size.

<sup>16</sup> The cold-rolling mill may be a reversing mill in which several reduction passes of the strip are made in back-and-forth directions, or a tandem mill comprising several individual mill stands through which the strip passes consecutively.

<sup>17</sup> Electrolytic cleaning and electroplating may be combined in a single processing line.

<sup>18</sup> USITC staff interview with \*\*\*, April 8, 2013.

<sup>19</sup> Lankford, William T., Jr., Norman L. Samways, Robert F. Craven and Harold E. McGannon, eds. *The Making, Shaping and Treating of Steel, Tenth Edition*. Pittsburgh: Association of Iron and Steel Engineers, 1988. p. 1110.

<sup>20</sup> Lankford, et al. *The Making, Shaping and Treating of Steel, Tenth Edition*. pp. 1110-1111.

within a furnace that surrounds them. An alternative method, continuous annealing, requires the steel to be uncoiled and passed in single thickness through one or more furnaces. The heat-treating cycle is determined by the temperature distribution within the furnaces and the rate at which the steel passes through the furnaces.

After annealing, diffusion-annealed, nickel-plated steel is rolled on a temper mill. Temper rolling reduces the thickness of the steel very slightly, but has the primary purpose of improving the shape (flatness) of the steel, establishing the surface roughness (by using rolls of suitable roughness) and suppressing yield-point elongation (a property that is present in the as-annealed state for almost all steel and that could result in defects during fabrication.)<sup>21</sup>

Finishing operations on diffusion-annealed, nickel-plated steel may include slitting to ordered width and packaging for shipment.<sup>22</sup>

### DOMESTIC LIKE PRODUCT ISSUES

No issues with respect to the domestic like product have been raised in this investigation. The petitioner proposes that the Commission define the domestic like product as co-extensive with the scope in this investigation.<sup>23</sup> Respondents also propose that the Commission define the domestic like product as co-extensive with the scope in this investigation for the purposes of the preliminary phase of this investigation.<sup>24</sup>

The petitioner contends that while diffusion-annealed, nickel-plated steel is a subset of CORE, there is a clear dividing line between the diffusion-annealed, nickel-plated steel and other CORE products.<sup>25</sup> The following discussion compares diffusion-annealed, nickel-plated steel with the broad universe of CORE products.

Diffusion-annealed, nickel-plated steel is more narrowly defined than CORE to include only coated or plated steel in which the plating material is nickel or nickel alloy, while CORE can include several other plating materials such as zinc and aluminum.<sup>26</sup> Furthermore diffusion-annealed, nickel-plated steel requires annealing to take place after the coating or plating is applied, whereas some types of CORE are annealed prior to plating.<sup>27</sup> Thomas Steel, the only U.S. producer of diffusion-annealed, nickel-plated steel,<sup>28</sup> produces \*\*\* on the same production lines as diffusion-annealed, nickel-plated steel. Thomas Steel also produces cold-rolled and

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<sup>21</sup> Lankford, et al. *The Making, Shaping and Treating of Steel, Tenth Edition*. p.1118.

<sup>22</sup> Petition, p. 11.

<sup>23</sup> Conference transcript, pp. 41 and 84 (Cannon) and Petitioner's postconference brief, p. 4.

<sup>24</sup> Conference transcript, p. 155 (Wood and Schaefer).

<sup>25</sup> Petition, pp. 34-39.

<sup>26</sup> Petition, p. 36. See also, *Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea, Inv. Nos. 701-TA-350 and 731-TA-616 and 618 (Third Review)*, USITC Publication 4388, March 2013, pp. 1-28-29 ("Steel coated with zinc (galvanized), aluminum, or any of several zinc-aluminum alloys comprise almost all of the product at issue (i.e. CORE).")

<sup>27</sup> *Ibid.*, p. 1-29.

<sup>28</sup> There are approximately 18 firms that produce CORE in the United States. *Ibid.*, p. 1-34.

nickel-zinc coated products but does not produce galvanized or aluminum coated or plated steel.

Unlike CORE, which has a variety of end uses including in the manufacture of automobile bodies, in appliances, and in commercial and residential buildings and other construction applications,<sup>29</sup> diffusion-annealed, nickel-plated steel is used primarily for batteries applications. No substitute products were reported for use in batteries. The only substitute products reported for diffusion-annealed, nickel-plated steel were \*\*\* for use in automotive fuel lines. In addition, as described further in Part II diffusion-annealed, nickel-plated steel is mainly sold to battery end-users; CORE, in contrast, is sold to automotive, construction, and other end users, as well as to steel service centers and distributors (28.7 percent in 2010, 29.0 percent in 2011, and 27.7 percent in January-June 2012).<sup>30</sup> Finally, there is a difference between CORE prices (average unit values for U.S. producers' U.S. shipments were \$834 in 2010, \$929 in 2011, and \$920 in January-June 2012)<sup>31</sup> and diffusion-annealed, nickel-plated steel (average unit values for the U.S. producer's shipments were \$\*\*\* in 2010, \$\*\*\* in 2011, and \$\*\*\* in 2012).

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<sup>29</sup> *Ibid.*, p. I-28.

<sup>30</sup> *Ibid.*, pp. II-1-II-2.

<sup>31</sup> *Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea, Inv. Nos. 701-TA-350 and 731-TA-616 and 618 (Third Review)*, USITC Publication 4388, p. IV-3

## PART II: SUPPLY AND DEMAND INFORMATION

### U.S. MARKET CHARACTERISTICS

The major applications for diffusion-annealed, nickel-plated steel in the United States include battery manufacturing (approximately 95 percent of consumption) and automotive fuel line manufacturing (approximately 5 percent of consumption).<sup>1</sup> Within battery manufacturing, about 90 percent of the consumption of diffusion-annealed, nickel-plated steel is for alkaline battery manufacturing, and 10 percent is for lithium battery manufacturing.<sup>2</sup>

There are three major U.S. battery producers: Duracell, Energizer, and Rayovac. \*\*\* ranked U.S. battery makers in terms of size, indicating that Duracell was the largest, followed by Energizer, and then Rayovac.<sup>3</sup> In 2012, however, Energizer announced upcoming closures of production facilities in Maryville, Missouri and St. Albans, Vermont, as well as “streamlining” its plant in Asheboro, North Carolina.<sup>4</sup>

Because diffusion-annealed, nickel-plated steel must be first made into a “can” or “end cap” (henceforth, “cans”) before being used to encase a battery, battery manufacturers sometimes purchase cans from can stampers, i.e., metal stamping firms that take diffusion-annealed, nickel-plated steel and convert it into cans. However, battery makers also purchase diffusion-annealed, nickel-plated steel directly, and then convert it into cans within their own facilities.<sup>5</sup>

Battery makers are often associated with particular can stampers. Thomas Steel described can stamper Cly-Del as typically producing cans for Duracell, can stamper H&T Waterbury as typically producing cans for Energizer, and can stamper PECA as typically producing cans for Rayovac.<sup>6</sup> PECA stated that possible reasons for these close associations include the lengthy qualification process for diffusion-annealed, nickel-plated steel; the uniqueness of each battery producer’s production process (and concomitant need for producer-specific material); and the process improvement made possible by working closely with only one supplier.<sup>7</sup> \*\*\*.<sup>8</sup>

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<sup>1</sup> Conference transcript, p. 16 (Hartman).

<sup>2</sup> Conference transcript, p. 48 (Hartman).

<sup>3</sup> \*\*\* ranked PECA between Energizer and Rayovac, but staff does not believe that PECA has manufactured batteries in the United States since 2008.

<sup>4</sup> Petition, exhibit 27.

<sup>5</sup> Petition, exhibit 10, pp. 1-2.

<sup>6</sup> Petitioner’s conference exhibits, slide 3.

<sup>7</sup> PECA postconference brief, p. 3.

<sup>8</sup> Petition, exhibit 10, appendix B.

## CHANNELS OF DISTRIBUTION

U.S. producers and importers sold mainly to battery end users (i.e., both battery producers and can stampers), as shown in table II-1. In contrast, \*\*\* were for \*\*\* products. \*\*\*.

**Table II-1**

**Diffusion-annealed, nickel-plated steel: U.S. producers' and U.S. importers' U.S. shipments by channels of distribution, 2010-12**

\* \* \* \* \*

## GEOGRAPHIC DISTRIBUTION

Diffusion-annealed, nickel-plated steel is sold to a relatively small number of purchasers in geographically concentrated areas. U.S. producer Thomas reported selling diffusion-annealed, nickel-plated steel to \*\*\*. Importers of Japanese product reported selling to \*\*\*, while importers of product from nonsubject countries reported selling to \*\*\*. For Thomas Steel, \*\*\* of its sales of diffusion-annealed, nickel-plated steel were shipped \*\*\*, with \*\*\* of its sales shipped \*\*\*. Metal One shipped \*\*\* of its Japanese product \*\*\*, and \*\*\*, while Nippon Trading shipped \*\*\* of its Japanese product \*\*\*.

## SUPPLY AND DEMAND CONSIDERATIONS

### U.S. supply

#### Domestic production

Based on available information, the U.S. producer of diffusion-annealed, nickel-plated steel has the ability to respond to changes in demand with moderately large changes in the quantity of shipments of U.S.-produced diffusion-annealed, nickel-plated steel to the U.S. market. The main contributing factor to the moderately large degree of responsiveness of supply is the availability of recently (before 2010) idled capacity. However, responsiveness is somewhat constrained by the lack of alternative markets, limited inventories, and limited ability to produce alternatives to diffusion-annealed, nickel-plated steel.

#### *Industry capacity*

Thomas Steel reported capacity utilization in the range of \*\*\* to \*\*\* percent over 2010-12, with the lowest capacity utilization in 2012. At the staff conference, Thomas Steel reported that its capacity utilization before 2009 was sometimes substantially higher, in the range of 76.3 to 86.2 percent.<sup>9</sup> Thomas Steel \*\*\* increased capacity since 2010.

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<sup>9</sup> Conference transcript, public exhibit of Thomas Steel, p. 11.



When asked if it had had any difficulty in supplying any of its customers since January 1, 2010, Thomas Steel noted an incident in \*\*\* in which \*\*\* increased its demand \*\*\*.

### ***Alternative markets***

Exports represented \*\*\* percent or less of Thomas Steel's shipments by quantity during the period 2010 through 2012.

### ***Inventory levels***

For Thomas Steel, inventories were less than \*\*\* percent of total shipments during 2010 through 2012, rising to their highest level in 2012. At the conference, Thomas Steel noted that it tends to hold larger inventories than can stampers of diffusion-annealed, nickel-plated steel.<sup>10</sup>

### ***Production alternatives***

Thomas Steel also produced \*\*\* on the same equipment that it used to produce diffusion-annealed, nickel-plated steel. However, it produced this product in volumes representing \*\*\* percent or less of its total production, including diffusion-annealed, nickel-plated steel.

### ***Subject imports***

Based on available information, producers of diffusion-annealed, nickel-plated steel from Japan have the ability to respond to changes in demand with moderately large changes in the quantity of shipments of diffusion-annealed, nickel-plated steel to the U.S. market. The main contributing factors to the moderately large degree of responsiveness of supply are the availability of some unused capacity and the existence of substantial alternate markets, constrained by moderate inventories and a somewhat limited ability to produce alternate products to diffusion-annealed, nickel-plated steel.

### ***Industry capacity***

Japanese producers' capacity rose \*\*\* percent from 2010 to 2012, and is forecast to rise an additional \*\*\* percent in 2013, due to increased capacity \*\*\*.<sup>11</sup> \*\*\*. Japanese capacity utilization fell from \*\*\* percent in 2010 to \*\*\* percent in 2012.

No importers of Japanese diffusion-annealed, nickel-plated steel reported an inability to supply diffusion-annealed, nickel-plated steel since January 1, 2010. \*\*\* submitted a study that

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<sup>10</sup> Conference transcript, p. 90 (Hartman).

<sup>11</sup> Japanese respondents' postconference brief, pp. 43-45.

stated that Japanese diffusion-annealed, nickel-plated steel production was \*\*\* metric tons in 2012, with \*\*\* metric tons used for battery production.<sup>12</sup>

### ***Alternative markets***

Japanese producers sell a large but declining share of their shipments to the Japanese market. A large, and growing (from \*\*\* in 2010 to \*\*\* in 2012), percentage of their shipments is sold to other non-U.S., non-Japanese markets. Sales to the U.S. market ranged from \*\*\* to \*\*\* percent of Japanese producers' shipments during 2010 through 2012.

### ***Inventory levels***

Japanese producers' inventories ranged from \*\*\* to \*\*\* percent of shipments during the period 2010 to 2012.

### ***Production alternatives***

Japanese producers reported \*\*\* production alternatives for their production of diffusion-annealed, nickel-plated steel. Petitioners stated that Toyo Kohan and Nippon Steel could convert tin mill facilities to production of diffusion-annealed, nickel-plated steel, and added that U.S. imports of diffusion-annealed, nickel-plated are priced at \$2,000 per ton while U.S. imports of tin mill products are priced at \$1,200 per ton.<sup>13</sup> \*\*\*.

### ***Nonsubject imports***

Thomas Steel characterized global capacity, including U.S., Japanese, and nonsubject country production, as substantially higher than global demand.<sup>14</sup> Duracell described Tata (Thomas Steel's parent company) as the world's dominant supplier of diffusion-annealed, nickel-plated steel.<sup>15</sup>

No importers of diffusion-annealed, nickel-plated steel from nonsubject countries (product that is \*\*\*) reported an inability to supply diffusion-annealed, nickel-plated steel since January 1, 2010.

## **U.S. demand**

Based on available information, the overall demand for diffusion-annealed, nickel-plated steel is likely to experience moderately small changes in response to changes in price. The main

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<sup>12</sup> Petition, exhibit 11, \*\*\*, p. 2.

<sup>13</sup> Conference transcript, pp. 10 (Cannon) and 25 (Hartman).

<sup>14</sup> Conference transcript, p. 25 (Hartman).

<sup>15</sup> Conference transcript, p. 124 (Medeiros).

contributing factors are the limited range of substitute products and the likely moderate cost share of diffusion-annealed, nickel-plated steel in its principal end-use product, batteries.

### **Demand characteristics**

As discussed earlier, most demand for diffusion-annealed, nickel-plated steel comes from producers of alkaline batteries. Among alkaline batteries, as much as 84 percent of production may come from size AA and AAA batteries; other common sizes are C, D, and AAAA (used in 9-volt batteries).<sup>16</sup>

### **Apparent consumption**

Apparent U.S. consumption of diffusion-annealed, nickel-plated steel was modestly (\*\*\*) percent) lower in 2012 than in 2010 (after rising \*\*\* percent over 2010-11 and falling \*\*\* percent over 2011-12). According to Thomas Steel, U.S. consumption dropped by about 20 percent in 2008 when PECA ceased producing batteries in the United States, but has remained relatively stable since then.<sup>17</sup>

### **End uses**

Diffusion-annealed, nickel-plated steel is used in alkaline batteries, lithium batteries, and automotive fuel lines, although the majority of material is used for alkaline batteries. At the conference, Thomas Steel stated that in automotive applications, its primary competitor is “another Asian supplier” and not Japanese producers.<sup>18</sup> Japanese respondents also stated that neither Toyo Kohan nor NSSMC had supplied any Japanese diffusion-annealed, nickel-plated steel for U.S. automotive fuel line applications.<sup>19</sup>

When asked specifically whether the diffusion-annealed, nickel-plated steel that they sold in the United States was sold to lithium-battery makers, \*\*\* stated that it was. \*\*\* elaborated that it supplies \*\*\*.

### **Cost share**

Market participants differed in their assessment of how much diffusion-annealed, nickel-plated steel accounts for the cost of the final products that it is used in. Thomas Steel stated that diffusion-annealed, nickel-plated steel is \*\*\* percent of the cost of an alkaline battery cell, \*\*\* percent of the cost of a lithium battery cell, and \*\*\* percent of the cost of an automotive fuel line. Metal One reported that diffusion-annealed, nickel-plated steel is \*\*\*

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<sup>16</sup> Petition, exhibit 30, p. 4.

<sup>17</sup> Conference transcript, p. 32 (Jarvis).

<sup>18</sup> Conference transcript, p. 83 (Hartman).

<sup>19</sup> Japanese respondents’ postconference brief, p. 40.

percent of the cost of an alkaline battery cell and \*\*\* percent of the cost of a lithium battery cell.<sup>20</sup>

### **Substitute products**

There are few substitutes for diffusion-annealed, nickel-plated steel. \*\*\* stated that there are no substitutes for diffusion-annealed, nickel-plated steel.<sup>21</sup> However, \*\*\* listed \*\*\* as potential substitutes in automotive fuel lines.

### **Business cycles**

Thomas Steel explained that the business cycle for diffusion-annealed, nickel-plated steel differs from that of other steel products because diffusion-annealed, nickel-plated steel is more similar to a finished steel product, and has a different set of customers from other steel products. Thus, Thomas Steel stated that diffusion-annealed, nickel-plated steel is generally less susceptible to wider economy business cycles than are other steel products.<sup>22</sup>

\*\*\* described the business cycle for diffusion-annealed, nickel-plated steel as consisting of higher demand from June through November. It attributed higher demand during these months to higher battery demand due to the increased risk of summer electrical storms and battery-maker's anticipation of Christmas demand. At the conference, Duracell described a similar business cycle.<sup>23</sup>

\*\*\* also described business cycles for diffusion-annealed, nickel-plated steel. \*\*\* described the business cycle as following demand for batteries. \*\*\* indicated that one major business cycle determinant for diffusion-annealed, nickel-plated steel is the \*\*\*.

### **Demand trends**

While batteries remain ubiquitous with U.S. and global consumers, the outlook for U.S. battery demand and production (and thus U.S. demand for diffusion-annealed, nickel-plated steel) is flat or unchanged. In a public interview from February 2012, Duracell President Stassi Anastassov described global demand for alkaline batteries growing "very rapidly" as they replaced older zinc batteries.<sup>24</sup> However, \*\*\* while consumers continue to own a large number

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<sup>20</sup> Nippon Trading estimated that diffusion-annealed, nickel-plated steel is \*\*\* percent of the cost of \*\*\*.

<sup>21</sup> Battery cans can be made with nickel plate that is not diffusion-annealed (post-plated nickel), and at least some Chinese battery cans are. These Chinese-produced battery cans may be sold mostly to the Chinese market. Conference transcript, pp. 150-51 (Nguyen and Yamashita). No questionnaire respondent named post-plated nickel as a substitute for diffusion-annealed, nickel-plated steel.

<sup>22</sup> Conference transcript, p. 59 (Hartman).

<sup>23</sup> Conference transcript, p. 185 (Nguyen).

<sup>24</sup> He also described the typical American household as having 39 to 40 devices using a battery. Petition, exhibit 7, pp. 3-8.

of battery-using devices, the switch to longer-lasting alkaline cells, as well as increased device design to use smaller batteries, has led to a slight decline in demand for batteries.<sup>25</sup>

In general, questionnaire respondents were more optimistic about demand for diffusion-annealed, nickel-plated steel outside the United States than within the United States, and sometimes described U.S. battery makers as under competitive pressure from imported batteries, with concomitant effects on U.S. demand for diffusion-annealed, nickel-plated steel.<sup>26</sup> \*\*\* estimated that approximately \*\*\* percent of total U.S. demand for alkaline batteries is met by imports.<sup>27</sup>

### ***The United States***

\*\*\* described U.S. demand for diffusion-annealed, nickel-plated steel as declining due to increased imports of batteries (the ultimate end use), purchasers requiring a decreased thickness (gauge) of the product, and yield improvements by can stampers. It added that, since 2010, the thinner required gauges along with a shift toward AA and AAA batteries (and away from other batteries that required heavier gauges of diffusion-annealed, nickel-plated steel) had meant that each ton of product was used in lower thicknesses than before.<sup>28</sup>

\*\*\* described demand as having fluctuated because \*\*\*. \*\*\* described demand as not changing, attributing the lack of change to a “stagnant” battery market and \*\*\*. \*\*\* stated that its customers have described their demand for diffusion-annealed, nickel-plated steel as increasing only one to two percent per year, held back by the increased importation of batteries under private labels. It added that Energizer has closed one battery plant in Europe and two in the United States, consolidating production in lower-cost facilities, including some in Asia. It also stated that can stamper \*\*\*.

Additionally, with regard to demand for diffusion-annealed, nickel-plated steel for the automotive sector, petitioners described longer automotive warranties and the use of more corrosive fuels such as ethanol as driving more automotive-sector demand for diffusion-annealed, nickel-plated steel.<sup>29</sup>

### ***Outside the United States***

\*\*\* described demand for diffusion-annealed, nickel-plated steel outside of the United States as having increased since January 1, 2010. \*\*\* described increased demand from Asia, with \*\*\* adding that its customers have told it that demand in Asia and Africa is rising at \*\*\*

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<sup>25</sup> \*\*\*.

<sup>26</sup> See also conference transcript, p. 166 (Nguyen and Medeiros).

<sup>27</sup> \*\*\*.

<sup>28</sup> See also petition, exhibit 28, \*\*\*. Regarding the use of thinner diffusion-annealed, nickel-plated steel in batteries, at the conference, PECA described thinner product as more difficult to produce and more difficult for can makers to use, as thicker product can hide defects more easily than thinner product. Conference transcript, pp. 173, 183 (Walton).

<sup>29</sup> Conference transcript, p. 16 (Hartman).

percent per year. It added that the largest battery producers are focusing their growth strategies on these markets. At the conference, Metal One indicated that future demand increases will mostly occur in Asia.<sup>30</sup> However, \*\*\* described demand outside of the United States as unchanged since January 1, 2010.

## **SUBSTITUTABILITY ISSUES**

The degree of substitution between domestic and imported diffusion-annealed, nickel-plated steel depends upon such factors as relative prices, quality (*e.g.*, grade standards, reliability of supply, defect rates, *et cetera*), and conditions of sale (*e.g.*, price discounts/rebates, lead times between order and delivery dates, payment terms, product services, *et cetera*). Based on available data, staff believes that there is moderately high degree of substitutability between domestically produced diffusion-annealed, nickel-plated steel and diffusion-annealed, nickel-plated steel imported from subject sources, depending on the role of quality-related factors (concerns raised by PECA) with Thomas Steel's product, and on how much Japanese material can be qualified at particular U.S. purchasers.

### **Lead times**

U.S. diffusion-annealed, nickel-plated steel is generally available at a shorter lead time than Japanese product for sales produced to order. \*\*\* reported that \*\*\* of \*\*\* 2012 sales of diffusion-annealed, nickel-plated steel were produced to order, with lead times of \*\*\* days. \*\*\* stated that \*\*\* percent of its 2012 sales of Japanese diffusion-annealed, nickel-plated steel were from inventory, with lead times of \*\*\* days. \*\*\* stated that \*\*\* percent of its 2012 sales of Japanese diffusion-annealed, nickel-plated steel were from inventory, with lead times of \*\*\* days. The remaining sales produced to order had lead times of \*\*\* days. It further explained that receiving material from Japan takes between \*\*\* depending on the purchaser, \*\*\*.

### **Product qualification**

#### **Qualification process**

Producers, importers, and purchasers described the qualification process for diffusion-annealed, nickel-plated steel as long, expensive,<sup>31</sup> and thorough. Thomas Steel described its customers as "highly demanding" and noted that they perform periodic audits of Thomas Steel's facilities as well as working with Thomas Steel to improve the quality of its product.<sup>32</sup> PECA explained that battery makers' interest in thorough qualification stems from the

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<sup>30</sup> Conference transcript, p. 144 (Philipson).

<sup>31</sup> For example, see P&G postconference brief, p. 17.

<sup>32</sup> Conference transcript, p. 22 (Hartman).

complexity of a battery along with issues of performance and liability.<sup>33</sup> PECA also stated that battery producers require requalification of battery materials that have not been used for some time.<sup>34</sup> Purchasers also described their desire to maintain dual-sourcing on product restrained somewhat by the cost of qualifying new suppliers.<sup>35</sup> They further indicated that qualification was more difficult for new suppliers than for established suppliers, and described needing to update qualification when products changed.<sup>36</sup>

\*\*\* reported that U.S. purchasers \*\*\* qualify their suppliers of diffusion-annealed, nickel-plated steel. Their qualification process includes purchasing samples of product and using it to make end caps and cans, which are then used to make batteries. The batteries are then tested for cell performance, shelf-life, and leakage. \*\*\* stated that these purchasers certify a supplier's diffusion-annealed nickel-plated steel only after this "thorough" process is complete.

\*\*\* also reported that end users of diffusion-annealed, nickel-plated steel require qualification of their suppliers. \*\*\* described qualification for battery applications as involving \*\*\* more material supplied, rising from \*\*\* to as much as \*\*\*.<sup>37</sup> It continued that the total time for these qualifications can be \*\*\*. \*\*\* described both can stampers and battery makers as requiring qualification. \*\*\* stated that sample product is submitted, and then the purchaser uses it to \*\*\*.

### **Qualification of Japanese material by U.S. purchasers**

Parties disagreed over how much Japanese material is qualified at U.S. purchasers. At the conference, Metal One stated that it is not qualified to provide product to one large purchaser of diffusion-annealed, nickel-plated steel, and is only qualified to provide a limited number of products to another purchaser.<sup>38</sup> However, Thomas Steel stated that both it and Toyo Kohan are qualified or capable of being qualified in short order at all the major U.S. battery producers. It added that Toyo Kohan, while not technically qualified at Energizer, is invited to bid, just as Thomas Steel is invited to bid on some PECA requests even though Thomas Steel is not qualified for every PECA product.<sup>39</sup> It further stated that NSSMC is qualified at all the major Asian manufacturers and has additional U.S. qualifications pending.<sup>40</sup> \*\*\*.<sup>41</sup>

Over the course of this preliminary phase, producers, importers, and purchasers submitted information on which suppliers are qualified at which purchasers. These submissions

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<sup>33</sup> Conference transcript, p. 183 (Walton).

<sup>34</sup> Conference transcript, p. 132 (Walton).

<sup>35</sup> Conference transcript, pp. 177-78 (Medeiros and Nguyen) and 181 (Jacobsen).

<sup>36</sup> Conference transcript, p. 180 (Nguyen) and p. 183 (Walton).

<sup>37</sup> See also \*\*\* postconference brief, \*\*\* and \*\*\* postconference brief, \*\*\*. At the conference, Thomas Steel also described a qualification process in which material supplied rises as the process continues. See conference transcript, p. 23 (Hartman).

<sup>38</sup> Conference transcript, p. 143 (Philipson).

<sup>39</sup> Conference transcript, p. 24 (Hartman).

<sup>40</sup> Conference transcript, p. 26 (Hartman), and petitioner's postconference brief, exhibit 9.

<sup>41</sup> Japanese respondents' posthearing brief, p. 38.

are summarized in table II-2. Note that table II-2 is a summary of the statements of various respondents, and not a staff assessment of how much qualification affects competition between U.S. and subject imports.<sup>42</sup>

**Table II-2**  
**Diffusion-annealed, nickel-plated steel: supplier qualifications at purchasers, as reported by producers, importers, and purchasers.**

\* \* \* \* \*

Thomas Steel stated that even when purchasers have not formally qualified a supplier of diffusion-annealed, nickel-plated steel, they may invite the supplier to bid. It pointed to \*\*\*.<sup>43</sup>

### **Qualification of Thomas Steel's product by PECA**

At the conference, PECA described ceasing its purchases of product from Thomas Steel after its sister company ceased alkaline battery production in 2008. It added that Thomas Steel is not currently qualified to supply PECA with diffusion-annealed, nickel-plated steel, although it continues to try to qualify Thomas Steel's product. PECA also stated that it preferred using Japanese product due to its lower defect rate, as much as fourteen times lower than that of Thomas Steel during the time it had purchased from both Thomas Steel and Toyo Kohan.<sup>44</sup> However, Thomas Steel stated that it had improved to a 0.3 percent rejection rate on its shipments of diffusion-annealed, nickel-plated steel.<sup>45</sup>

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<sup>42</sup> Metal One also submitted descriptions of its qualification history with the firms above, usually describing these firms as demanding lower prices from Metal One to match Thomas Steel's prices. See Metal One Postconference supplemental information, pp. 1-3.

<sup>43</sup> Petitioner's postconference brief, pp. 13-14.

<sup>44</sup> Conference transcript, pp. 126-131 (Walton), PECA postconference brief, answers to staff questions, p. 7, and PECA's postconference brief, attachment 1.

<sup>45</sup> Conference transcript, p. 39 (Hartman), p. 189 (Cannon), and see also petitioner's postconference brief, p. 24.



## Pending qualifications

When asked if it had any pending qualifications, \*\*\* stated that it has a pending qualification with \*\*\* to provide diffusion-annealed, nickel-plated steel to \*\*\*. It added that \*\*\*. In response to the same question, \*\*\* answered that it currently supplies material to \*\*\*.

## Product comparisons

At the conference, parties disagreed over whether U.S. product had had difficulty meeting purchasers' quality standards relative to Japanese product. Petitioners stated that they had a 0.3 percent rejection rate on their shipments of diffusion-annealed, nickel-plated steel.<sup>46</sup>

Table II-3 presents data on reported interchangeability of diffusion-annealed, nickel-plated steel based on the source.

**Table II-3**  
**Diffusion-annealed, nickel-plated steel: degree of interchangeability of product produced in the United States and other countries**

\* \* \* \* \*

In further comments, \*\*\* stated that quality is the major determining factor in assessing interchangeability. It described the material requirements for diffusion-annealed, nickel-plated steel as "extremely high," and that material not meeting such requirements could impose costs on can stampers and battery makers that would not warrant use of the material at any cost.

Table II-4 presents data on differences in product other than price of diffusion-annealed, nickel-plated steel based on the source.

**Table II-4**  
**Diffusion-annealed, nickel-plated steel: differences other than price in product produced in the United States and other countries**

\* \* \* \* \*

In further comments, \*\*\*.

At the conference, purchaser Duracell described the need for dual sourcing, Thomas Steel's reluctance to sign a confidentiality agreement in 2010, and Thomas Steel's (or Tata's) continued unwillingness to sign Duracell's "standard" warranty and indemnification agreements, as reasons it sought alternate sources of supply.<sup>47</sup> \*\*\*.<sup>48</sup>

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<sup>46</sup> Conference transcript, p. 189 (Cannon).

<sup>47</sup> Conference transcript, pp. 122-23 (Medeiros).

<sup>48</sup> Petitioner's postconference brief, p. 17.



## PART III: U.S. PRODUCER'S PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented in *Part I* of this report and information on the volume and pricing of imports of the subject merchandise is presented in *Part IV* and *Part V*. Information on the other factors specified is presented in this section and/or *Part VI* and (except as noted) is based on the questionnaire response of one firm that accounted for the all of U.S. production of diffusion-annealed, nickel-plated steel during 2012.

### U.S. PRODUCER

The Commission sent U.S. producer questionnaires to three firms based on information contained in the petition. Petitioner Thomas Steel provided useable data on its productive operations.<sup>1</sup> Staff believes that this response represents all U.S. production of diffusion-annealed, nickel-plated steel.<sup>2</sup>

Table III-1 lists the U.S. producer of diffusion-annealed, nickel-plated steel, its production location, position on the petition, related and/or affiliated firms, total production in 2012, and share of total production.

**Table III-1**  
**Diffusion-annealed, nickel-plated steel: U.S. producer of diffusion-annealed, nickel-plated steel, position on the petition, production locations, production, and share of reported production**

Firm	Position on petition	U.S. production location	Related and/or affiliated firms in the United States	2012 production ( <i>short tons</i> )	Share of production ( <i>percent</i> )
Thomas Steel	Petitioner	Warren, OH	None <sup>1</sup>	***	100.0

<sup>1</sup> Thomas Steel is owned by Tata Steel, Ltd. (India), and is related through this parent firm to producer Hille and Mueller GmbH (Germany).

*Source:* Compiled from data submitted in response to Commission questionnaires.

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<sup>1</sup> The other two firms, \*\*\*, reported no production of diffusion-annealed, nickel-plated steel since January 1, 2010.

<sup>2</sup> The petitioner asserts that it is the only U.S. producer. Petitioner's postconference brief, p. 5. The Japanese Respondents also state that the Petitioner is the only U.S. producer. Japanese respondents' postconference brief, p. 7.

As indicated in table III-1, Thomas Steel is related to a foreign producer of diffusion-annealed, nickel-plated steel in Germany.<sup>3</sup> In addition, as discussed below, the U.S. producer has not directly imported the subject merchandise or purchased the subject merchandise from U.S. importers.

### U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Table III-2 and figure III-1 present U.S. producer Thomas Steel’s production, capacity, and capacity utilization. While Thomas Steel’s capacity remained stable during 2010-12, its production rose in 2011 compared with 2010, and declined in 2012, ending \*\*\* percent lower than in 2010. Thomas Steel reported that the increase in 2011 was as a result of obtaining some business back from competitors and increased demand resulting from major storms.<sup>4</sup> The decline in production between 2011 and 2012 is attributed by Thomas Steel to the replacement of a large volume of its shipments to a major customer by Japanese producer Toyo Kohan, which it lost in December 2011.<sup>5</sup> Thomas Steel stated that it views capacity utilization of 62-63 percent as break even and requires in excess of 70 percent to enable the firm to invest in equipment.<sup>6</sup> In addition, 95 percent capacity utilization is considered by the firm as full capacity, particularly for scheduling purposes, given the long lead times.<sup>7</sup>

**Table III-2**  
**Diffusion-annealed, nickel-plated steel: U.S. producer’s production, capacity, and capacity utilization, 2010-12**

\*       \*       \*       \*       \*       \*       \*

**Figure III-1**  
**Diffusion-annealed, nickel-plated steel: U.S. producer’s production, capacity, and capacity utilization, 2010-12**

\*       \*       \*       \*       \*       \*       \*

Reported constraints in the manufacturing process for the U.S. producer include \*\*\*.

Thomas Steel reported producing or anticipated producing other products (\*\*\*) on the same equipment, machinery, and using the same production and related workers employed to produce diffusion-annealed, nickel-plated steel. The production of this other product accounted for less than \*\*\* percent of total production during 2010-12. Thomas Steel also produces a

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<sup>3</sup> Tata Steel, Plating Production Sites found at [http://www.tatasteeleurope.com/en/company/activities/plating/production\\_sites/](http://www.tatasteeleurope.com/en/company/activities/plating/production_sites/), retrieved on April 23, 2013.

<sup>4</sup> Conference transcript, p. 44 (Hartman).

<sup>5</sup> Conference transcript, pp. 33-34 (Jarvis) and p. 8 (Cannon).

<sup>6</sup> Conference transcript, p. 45 (Jarvis).

<sup>7</sup> Conference transcript, p. 57 (Jarvis).

small quantity of nickel-zinc coated or plated steel in the same facility as diffusion-annealed, nickel-plated steel, but this steel is not diffusion annealed or produced on the same production lines as diffusion-annealed, nickel-plated steel.<sup>8</sup>

Thomas Steel reported that \*\*\* and that for the first time ever it shut down its plant for one week in April 2013 due to a lack of orders.<sup>9</sup>

### U.S. PRODUCER'S U.S. SHIPMENTS AND EXPORTS

Table III-3 presents U.S. producer's U.S. shipments, export shipments, and total shipments. U.S. producer's U.S. shipments, in terms of both quantity and to a greater degree value, followed a similar pattern to U.S. producer's production, increasing in 2011 and declining in 2012, ending lower than in 2010 by \*\*\* percent and \*\*\* percent, respectively. As noted above, Thomas Steel attributed its decline in U.S. shipments in 2012, particularly in the third and fourth quarters, to the loss of 80 percent of the AA can business for a major customer and an inability to obtain significant offers from another customer, PECA.<sup>10</sup> Thomas Steel had \*\*\* internal consumption and \*\*\* transfer to related firms, accounting for less than \*\*\* percent of total U.S. shipments in any given year during 2010-12. Thomas Steel also had \*\*\* export shipments over this period, accounting for less than \*\*\* percent of total shipments.

**Table III-3**  
**Diffusion-annealed, nickel-plated steel: U.S. producer's U.S. shipments, exports shipments, and total shipments, 2010-12**

\* \* \* \* \*

Table III-4 presents the U.S. producer's actual and expected production based on its order books. Based upon order books, Thomas Steel projects its production to be \*\*\* short tons in first half of 2013 and \*\*\* short tons in the second half of 2013.

**Table III-4**  
**Diffusion-annealed, nickel-plated steel: U.S. producer's order books, by quarter, January 2013-December 2013**

\* \* \* \* \*

### U.S. PRODUCER'S INVENTORIES

Table III-5 presents Thomas Steel's end-of-period inventories and the ratio of these inventories to its production, U.S. shipments, and total shipments in 2010, 2011, and 2012.

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<sup>8</sup> Petition p. 38.

<sup>9</sup> Conference transcript, pp. 34 and 96 (Jarvis) and email from \*\*\*, May 2, 2013.

<sup>10</sup> Petitioner's postconference brief, p. 3.

Thomas Steel’s inventories increased by \*\*\* percent between 2010 and 2011 and declined by \*\*\* percent between 2011 and 2012, ending \*\*\* percent higher compared with 2010. The firm’s ratio of inventories to production, to U.S. shipments, and to total shipments increased in each year between 2010 and 2012. Thomas Steel noted that the bulk of the inventories of diffusion-annealed, nickel-plated steel are held by itself rather than its customers, due to the longer lead times necessary to produce diffusion-annealed, nickel-plated steel compared with producing a battery can or automotive fuel line.<sup>11</sup> Thomas Steel also reported that it holds in inventory a certain amount of safety stock on a short-term basis, which is adjusted for seasonal demand.<sup>12</sup>

**Table III-5**  
**Diffusion-annealed, nickel-plated steel: U.S. producer’s inventories, 2010-12**

\*       \*       \*       \*       \*       \*       \*

### U.S. PRODUCER’S IMPORTS AND PURCHASES

Thomas Steel \*\*\* imported or purchased diffusion-annealed, nickel-plated steel since January 1, 2010.

### U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-6 shows U.S. producer’s employment-related data during 2010-12. The number of PRWs increased by \*\*\* (\*\*\*) percent) in 2011 and declined by \*\*\* (\*\*\*) percent) in 2012, ending with \*\*\* fewer PRWs (\*\*\*) percent) than in 2010.<sup>13</sup> Thomas Steel attributed the decline in employment in 2012, as it did with production and shipments, to the lost sales volume to a major customer.<sup>14</sup> Total hours worked followed a similar pattern to the number of PRWs, ending in 2012 \*\*\* percent lower than in 2010. Hours worked per PRW, wages paid, hourly wages, productivity, and unit labor costs all ended higher in 2012 than in 2010.

**Table III-6**  
**Diffusion-annealed, nickel-plated steel: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2010-12**

\*       \*       \*       \*       \*       \*       \*

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<sup>11</sup> Conference transcript, p. 89 (Hartman).

<sup>12</sup> Conference transcript, pp. 62 (Hartman) and 89-90 (Hartman).

<sup>13</sup> Petitioner Thomas Steel’s response to U.S. producer’s questionnaire and petitioner’s staff conference exhibits, exh. 5, slide 13.

<sup>14</sup> Conference transcript, pp. 8 (Cannon), 34 (Jarvis), and 38 (Jarvis).

## **PART IV: U.S. IMPORTS, APPARENT U.S. CONSUMPTION, AND MARKET SHARES**

### **U.S. IMPORTERS**

The Commission issued importer questionnaires to 51 firms believed to be possible importers of subject diffusion-annealed, nickel-plated steel, as well as to all possible U.S. producers of diffusion-annealed, nickel-plated steel.<sup>1</sup> Useable questionnaire responses<sup>2 3</sup> were received from four companies, representing more than 95 percent of total imports from Japan and more than 80 percent of total imports from all sources between 2010 and 2012 under HTS statistical reporting numbers 7212.50.0000 and 7210.90.6000, “basket” categories under which the large majority of imports of diffusion-annealed, nickel-plated steel are believed to be imported.<sup>4 5</sup> Table IV-1 lists all responding U.S. importers of diffusion-annealed, nickel-plated steel from Japan and other sources, their locations, and their shares of U.S. imports, in 2012.

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<sup>1</sup> The Commission issued questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have accounted for at least 90 percent of total imports under HTS statistical reporting numbers 7212.50.0000 and 7210.90.6000 in 2010-12, as well as 90 percent of total imports under other HTS subheadings under which diffusion-annealed, nickel-plated steel could have been imported during 2010-12.

<sup>2</sup> Thirty-four importers certified that they had not imported diffusion-annealed, nickel-plated steel from any country at any time since January 1, 2010. One additional importer, \*\*\*, reported that it imported a small amount (less than \$50,000) in 2010 under HTS statistical reporting number 7220.90.0015 to be used as a metal crimp in a zip tie, which it believed was not diffusion-annealed, nickel-plated steel and was misclassified. Imports by these firms under the listed HTS statistical reporting numbers 7212.50.0000 and 7210.90.6000 have been removed for purposes of the coverage calculation.

<sup>3</sup> Firms also reported importing products such as non-diffusion-annealed, nickel-plated steel, hot dipped galvanized coils, and electrolytic copper plated steel under these two HTS statistical reporting numbers.

<sup>4</sup> Petition, p. 15.

<sup>5</sup> Respondents assert that the questionnaire responses represent all of the subject imports. Japanese Respondents’ postconference brief, p. 8. The Petitioner notes that there are only two Japanese producers known to export to the United States. Petition, p. 22. The Commission received questionnaire responses from \*\*\* these producers’ U.S. importers.

**Table IV-1**  
**Diffusion-annealed, nickel-plated steel: U.S. importers, source of imports, U.S. headquarters, and shares of imports in 2012**

Firm	Headquarters	Source of imports	Share of imports		
			Japan	Other	Total
Hille & Mueller USA Inc.	Warren, OH	***	***	***	***
Nippon Steel Trading America	Pittsburgh, PA	***	***	***	***
Metal One America, Inc.	Rosemont, IL	***	***	***	***
Procon Metals, Inc.	Warren, OH	***	***	***	***
Total			100.0	100.0	100.0

Source: Compiled from data submitted in response to Commission questionnaires.

### U.S. IMPORTS

Table IV-2 and figure IV-1 present data for U.S. imports of diffusion-annealed, nickel-plated steel from Japan and all other sources. As shown in table IV-2, U.S. imports from Japan represent the vast majority of imports of diffusion-annealed, nickel-plated steel. Moreover, more than \*\*\* percent of U.S. imports from Japan were by Metal One, the exclusive U.S. importer for Japanese producer Toyo Kohan.<sup>6</sup> Nippon Trading, the other importer of subject merchandise, reported that its imports of subject merchandise, exclusively from Japanese producer NSSMC, are “limited and have there have been no significant changes since 2010.”<sup>7</sup>

**Table IV-2**  
**Diffusion-annealed, nickel-plated steel: U.S. imports by source, 2010-12**

\* \* \* \* \*

**Figure IV-1**  
**Diffusion-annealed, nickel-plated steel: U.S. imports by source, 2010-12**

\* \* \* \* \*

Imports from Japan, by quantity, declined by \*\*\* percent in 2011, reportedly due to \*\*\*.<sup>8</sup> In contrast, \*\*\*.<sup>9</sup> Imports from Japan increased by \*\*\* percent in 2012, ending \*\*\* percent higher than in 2010.

<sup>6</sup> Japanese respondents’ postconference brief, p. 8.

<sup>7</sup> Conference transcript, p. 145 (Hori) and Japanese Respondents’ postconference brief, p. 9.

<sup>8</sup> Email from \*\*\*, April 18, 2013.

<sup>9</sup> Email from \*\*\*, April 17, 2013.



Imports from Korea, \*\*\*.<sup>10</sup> \*\*\* imports from Japan are \*\*\* used in battery applications.<sup>11</sup> The increase in imports from Korea during 2010-12 were due to \*\*\*.<sup>12</sup> The imports from Germany were by \*\*\*.<sup>13</sup>

### NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.<sup>14</sup> Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible. Imports from Japan accounted for 62.4 percent of the quantity of merchandise entered into the United States during March 2012-February 2013 under HTS statistical reporting numbers 7212.50.0000 and 7210.90.6000. Based on questionnaire data, imports from Japan accounted for \*\*\* percent of total imports of diffusion-annealed, nickel-plated steel, by quantity, during 2012.

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<sup>10</sup> Petition, p. 60, Conference transcript, p. 149 (Yamashita), and email from \*\*\*, April 16, 2013.

<sup>11</sup> Japanese respondents' postconference brief, p. 35.

<sup>12</sup> Email from \*\*\*, April 16, 2013.

<sup>13</sup> \*\*\* response to the Importer's questionnaire and email from \*\*\*, April 22, 2013.

<sup>14</sup> Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

## APPARENT U.S. CONSUMPTION

Table IV-3 and figure IV-2 present data on apparent U.S. consumption and U.S. market shares for diffusion-annealed, nickel-plated steel over the period 2010-12.<sup>15 16</sup> Apparent U.S. consumption was approximately unchanged between 2010 and 2012, although it increased between 2010 and 2011, and declined in 2012, in terms of both quantity and with greater variance, value. From 2010 to 2012, the quantity of apparent U.S. consumption decreased by \*\*\* percent, while the value of apparent U.S. consumption in 2012 was nearly identical to the 2010 value.

**Table IV-3**

**Diffusion-annealed, nickel-plated steel: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2010-12**

\* \* \* \* \*

**Figure IV-2**

**Diffusion-annealed, nickel-plated steel: Apparent U.S. consumption, by sources, 2010-12**

\* \* \* \* \*

Both the U.S. producer's shipments and U.S. shipments of imports from Japan were lower in 2012 than in 2010, by \*\*\* percent and \*\*\* percent, respectively. However, they followed different year-on-year trends. The U.S. producer's shipments increased by \*\*\* percent between 2010 and 2011 and declined by \*\*\* percent in 2012, while U.S. shipments of imports from Japan declined by \*\*\* percent between 2010 and 2011 and increased by \*\*\* percent in 2012. The decrease in U.S. shipments of imports from Japan \*\*\*. U.S. shipments of imports from Korea increased from \*\*\* short tons in 2010 to \*\*\* short tons in 2012, primarily due to \*\*\*.<sup>17</sup>

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<sup>15</sup> One importer, \*\*\*, reported that its shipment data do not reconcile due to transit rejects and yield loss.

<sup>16</sup> The petitioner asserts that while there is an increase in exports to the United States reported by Japanese producers, U.S. shipments of imports from Japan do not reflect this increase in 2012, as it takes 30 days or more for exports to arrive in the United States. In addition, there is an additional lag between the arrival of imports and the shipment of these imports as the importers hold inventories. Petitioner's postconference brief, p. 5.

<sup>17</sup> Email from \*\*\*, April 16, 2013.

## U.S. MARKET SHARES

U.S. market share data are presented in table IV-4 and figure IV-3. The U.S. producer's market share declined by \*\*\* percentage points between 2010 and 2012, increasing by \*\*\* percentage points between 2010 and 2011 and decreasing by \*\*\* percentage points in 2012. The share accounted for by imports from Japan was \*\*\* percentage points lower in 2012 than in 2010, following an opposite trend to the U.S. producer's market share, declining by \*\*\* percentage points between 2010 and 2011 then increasing by \*\*\* percent in 2012. The share accounted for by imports from all other sources, mainly \*\*\*, increased from \*\*\* percent in 2010 to \*\*\* percent in 2012, or by \*\*\* percentage points. As noted earlier in this report, imports from Korea were for use in \*\*\*.<sup>18</sup>

**Table IV-4**  
**Diffusion-annealed, nickel-plated steel: U.S. consumption and market shares, 2010-12**

\* \* \* \* \*

**Figure IV-3**  
**Diffusion-annealed, nickel-plated steel: Apparent consumption, by sources, 2010-12**

\* \* \* \* \*

Both the U.S. producer's market share and the share accounted for by imports from Japan were lower in 2012 than in 2010, by \*\*\* percentage points and \*\*\* percentage points, respectively. However, they followed different trends year-on-year.

## RATIO OF IMPORTS TO U.S. PRODUCTION

Table IV-5 presents data on the ratio of U.S. imports to U.S. production. The ratio of imports from Japan to U.S. production followed a similar trend to U.S. imports from Japan, declining by \*\*\* percentage points in 2011 and increasing by \*\*\* percentage points in 2012, ending \*\*\* percentage points higher than in 2010.

**Table IV-5**  
**Diffusion-annealed, nickel-plated steel: Ratio of U.S. imports to U.S. production, 2010-12**

\* \* \* \* \*

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<sup>18</sup> Email from \*\*\*, April 16, 2013 and Japanese respondents' postconference brief, p. 35.



## **PART V: PRICING DATA**

### **FACTORS AFFECTING PRICES**

#### **Raw material costs**

Raw materials accounted for between \*\*\* and \*\*\* percent of the U.S. producer's costs of goods sold during 2010-12, and are thus a substantial portion of the total cost of diffusion-annealed, nickel-plated steel. Metal One described diffusion-annealed, nickel-plated steel prices as closely correlated with its principal raw materials: hot-rolled steel and nickel.<sup>1</sup>

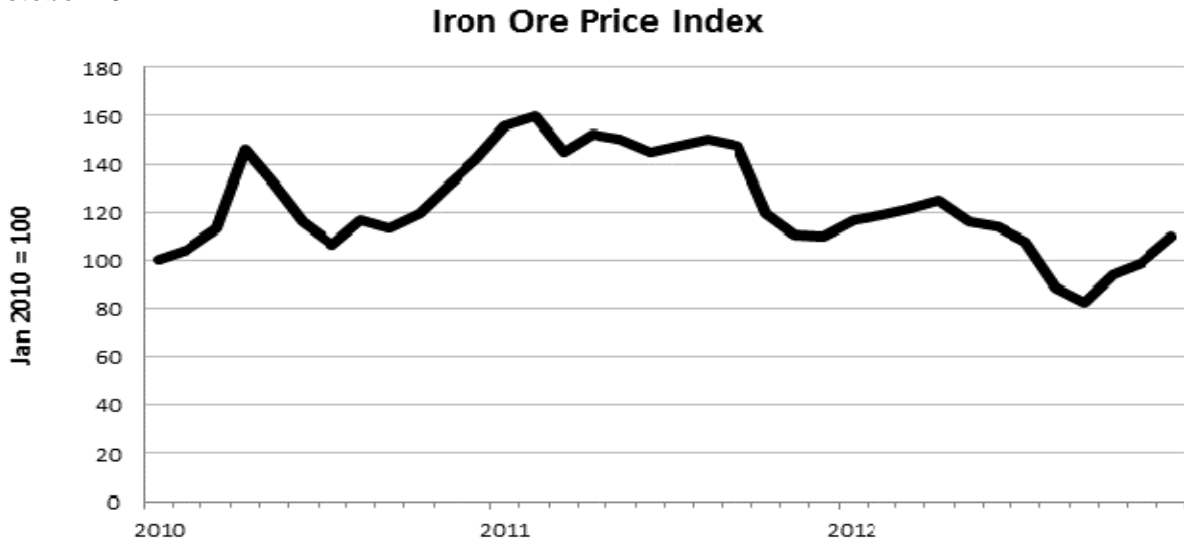
In its questionnaire, \*\*\* indicated that the main raw materials used to produce diffusion-annealed, nickel-plated steel were hot-rolled sheet coil (produced, in turn, by integrated steel mills from iron ore and coking coal) and electrolytic nickel. It added that reduced prices of these raw materials over the last two years had led to reduced prices of diffusion-annealed, nickel-plated steel. \*\*\* described hot-rolled sheet prices as increasing between 2010 and 2011, and then remaining high in 2012. It added that it forecast that 2013 raw material prices will \*\*\*. \*\*\* stated that nickel prices had seen dramatic upswings in the past, and that Thomas Steel's successful nickel-hedging, \*\*\*, were barriers to entry for other market participants that would need to purchase nickel at higher prices. \*\*\* also described nickel prices as having fluctuated in recent years, and \*\*\*.

Trends in the prices of iron ore, coking coal, and nickel are presented in figures V-1 to V-3.

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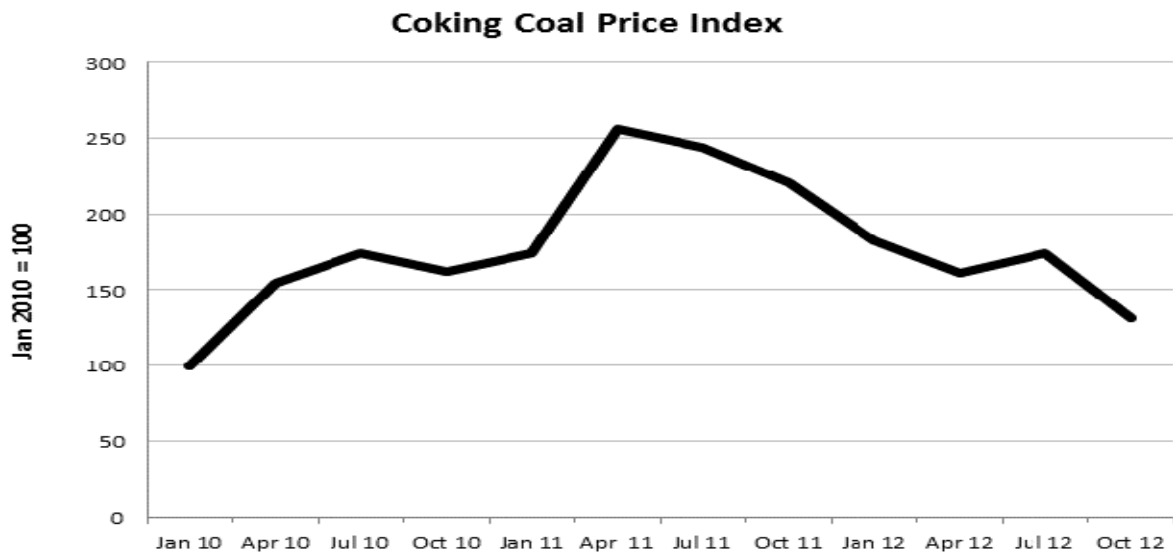
<sup>1</sup> Conference transcript, p. 143 (Philipson).

**Figure V-1**  
**Diffusion-annealed nickel-plated steel: Trends in the prices of raw material iron ore, April 2010-October 2012**



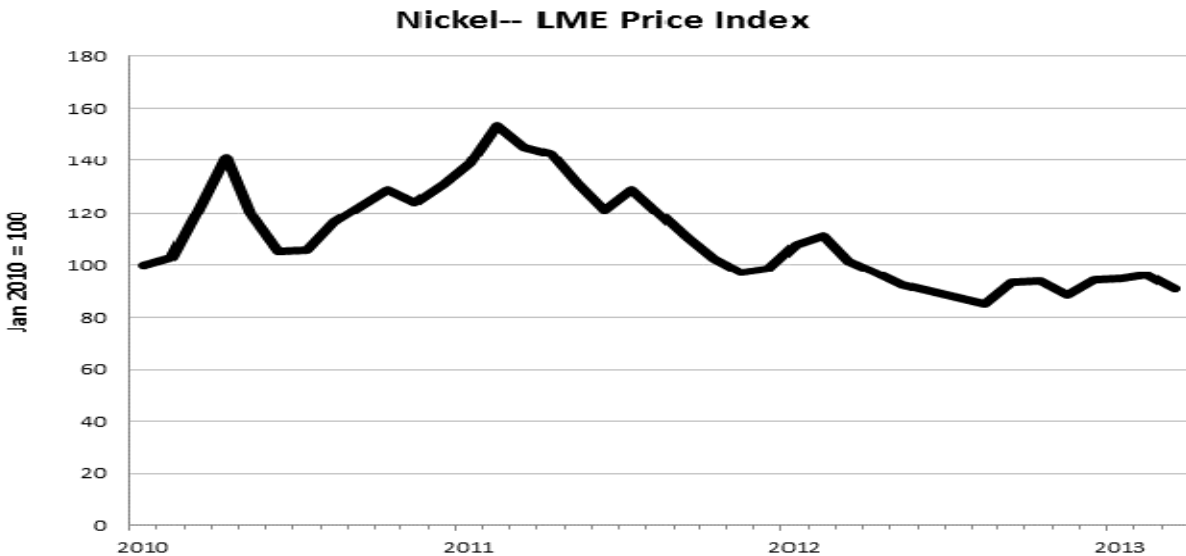
Source: Data from Platt's (f.o.b. Australia) submitted by \*\*\*, and staff calculations.

**Figure V-2**  
**Diffusion-annealed nickel-plated steel: Trends in the prices of raw material coking coal, January 2010-October 2012**



Source: Data from Platt's (f.o.b. Australia) submitted by \*\*\*, and staff calculations.

**Figure V-3**  
**Diffusion-annealed nickel-plated steel: Trends in the prices of raw material nickel, January 2010-March 2013**



Source: Data from LME, and staff calculations.

### **U.S. inland transportation costs**

Thomas Steel reported that U.S. inland transportation costs for diffusion-annealed, nickel-plated steel were \*\*\* percent of the total delivered cost. Metal One reported transportation costs of \*\*\* percent for its product from Japan, and Nippon Trading reported transportation costs of \*\*\* percent for its product from Japan.

\*\*\* arrange transportation for \*\*\* product, while \*\*\* arrange transportation for their customers. Importers of Japanese product \*\*\*.

## **PRICING PRACTICES**

### **Pricing methods**

#### **Level of price negotiations**

As discussed in Part II, sales of diffusion-annealed, nickel-plated steel may go directly to battery makers or may go through can stampers first. Even when such sales go to can stampers, \*\*\*. However, Thomas Steel also stated that \*\*\*.<sup>2</sup>

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<sup>2</sup> Petition, exhibit 10, p. 2.

Petitioners stated that \*\*\*.<sup>3</sup> \*\*\*. \*\*\*.<sup>4</sup>

Additionally, can stampers may negotiate prices for diffusion-annealed, nickel-plated steel on a global, rather than U.S.-only, basis. P&G, which owns Duracell, stated that it negotiates prices for diffusion-annealed, nickel-plated steel for its global operations, including sales through U.S. can stampers such as Cly-Del.<sup>5</sup>

## Pricing formulas

Producers and importers of diffusion-annealed, nickel-plated steel described prices as often based on a formula that incorporates the prices of raw materials. \*\*\* described diffusion-annealed, nickel-plated steel prices as typically being quoted using a formula that includes a base material price with an adjustment for selected raw materials, possibly including nickel, iron ore, and coking coal.<sup>6</sup> \*\*\* elaborated that its \*\*\* based on \*\*\* adjustments for nickel, from the London Metal Exchange (LME) price for nickel, and \*\*\* hot band adjustments, from the prices of iron ore and coking coal from \*\*\*.<sup>7</sup>

Metal One and Duracell attributed the use of this formula to decisions by Tata Steel, the parent company of Thomas Steel, in 2010.<sup>8</sup> Duracell also stated that the formula may protect Tata Steel's European producers of hot-rolled steel (then supplied to Thomas Steel) rather than assist U.S. production of diffusion-annealed, nickel-plated steel.<sup>9</sup> However, Thomas Steel stated that at least one of its customers required it to provide bids on a bid sheet that specified base prices and raw material costs, so that the customer could compare base prices between Thomas Steel and other bidders.<sup>10</sup> It added that adjustments have been used by the diffusion-annealed, nickel-plated steel industry (as well as the broader steel industry) for many years, although the specific formula used now started in 2008.<sup>11</sup> It also added that \*\*\*.<sup>12</sup>

Three importers reported that their prices for diffusion-annealed, nickel-plated steel were not set with a formula that incorporated adjustments for raw materials, but \*\*\* stated that \*\*\* prices were. \*\*\* stated that \*\*\* informed \*\*\* that adjustment pricing was a commodity-cost pass-through developed by Thomas Steel, and allowed for raw material cost transparency. \*\*\* added that the adjustment pricing \*\*\*.<sup>13</sup>

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<sup>3</sup> Petitioners' postconference brief, p. 45.

<sup>4</sup> Petitioners' postconference brief, p. 45.

<sup>5</sup> Conference transcript, p. 113 (Medeiros).

<sup>6</sup> See questionnaire responses of the firms as well as \*\*\*. Other raw materials, such as \*\*\*, may also have adjustment mechanisms. See petition, exhibit 24, p. 18.

<sup>7</sup> See questionnaire response of the firm as well as \*\*\*.

<sup>8</sup> Conference transcript, pp. 11 (Schaefer) and 116 (Medeiros).

<sup>9</sup> Conference transcript, p. 117 (Medeiros).

<sup>10</sup> Conference transcript, pp. 17-18 (Hartman).

<sup>11</sup> Conference transcript, p. 67 (Hartman) and petitioner's postconference brief, pp. 11-12.

<sup>12</sup> Petitioner's postconference brief, p. 12.

<sup>13</sup> However, \*\*\*. Petition, exhibit 10, p. 5.



## Price negotiations

Negotiations typically center around allocating a portion of a purchaser's forecasted purchases. For example, at the conference, battery maker Duracell described allocating shares of its purchases on the basis of those accepted bids.<sup>14</sup> (Other examples of negotiating allocations of purchases can be seen later in this chapter, in the Lost Sales section). Thomas Steel stated that while contracts do not fix quantities, its customers supply forecasts of quantities to assist with Thomas Steel's planning.<sup>15</sup>

Duracell also added that its decisions are focused on the total delivered price, and not the base price only.<sup>16</sup>

Thomas Steel described the small number of suppliers of diffusion-annealed, nickel-plated steel as meaning that it often knew which firms it was competing against in negotiations.<sup>17</sup>

In questionnaire responses, Thomas Steel stated that it negotiated \*\*\* basis. Thomas Steel added that it also negotiated \*\*\*<sup>18</sup> \*\*\*. It also submitted a \*\*\* in which it \*\*\*.<sup>19</sup>

Thomas Steel reported that \*\*\* percent of its sales were \*\*\*, while \*\*\* percent were \*\*\*. \*\*\*.

Among importers, importers of Japanese product (\*\*\*) reported using \*\*\*, while importers of nonsubject product (\*\*\*) reported using \*\*\*. For their sales of product from Japan, \*\*\* reported that at least \*\*\* percent of their sales were made \*\*\*, although \*\*\* reported that \*\*\* percent of its sales were \*\*\*. \*\*\* described their contracts as \*\*\* contracts that \*\*\*. However, \*\*\*.<sup>20</sup>

## Other provisions

Some of \*\*\* also include a \*\*\*. This \*\*\* covers \*\*\*, about \*\*\* percent of \*\*\* sales of diffusion-annealed, nickel-plated steel. \*\*\* did not report using such provisions, although \*\*\* stated that \*\*\* does have this provision. However, \*\*\* added that it \*\*\*.

Additionally, Thomas Steel noted that while nickel costs are mostly neutral from its perspective, it will hedge nickel prices for customers that request it, although some customers do not do so.<sup>21</sup>

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<sup>14</sup> Conference transcript, p. 170 (Medeiros). See also \*\*\*.

<sup>15</sup> Conference transcript, p. 17 (Hartman).

<sup>16</sup> Conference transcript, p. 174 (Medeiros).

<sup>17</sup> Conference transcript, p. 64 (Hartman).

<sup>18</sup> See \*\*\*.

<sup>19</sup> Petition, exhibit 24.

<sup>20</sup> Japanese respondents' postconference brief, p. 37 and exhibit 5.

<sup>21</sup> Conference transcript, p. 92 (Jarvis).

## Sales terms and discounts

The typical payment terms for both \*\*\* were net \*\*\* days, while \*\*\* uses net \*\*\* days. \*\*\* typically \*\*\* prices on \*\*\* basis \*\*\*. \*\*\* prices on \*\*\* basis.

In addition to early payment discounts, \*\*\* reported having some volume discounts based on annual volumes. Three importers, including \*\*\*, reported using no discounts. However, \*\*\*.

## PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly data for the total quantity and net f.o.b. value of selected diffusion-annealed nickel plated steel products shipped to unrelated U.S. customers. Data were requested from January 2010 through December 2012. Pricing data for the following products were requested.<sup>22</sup>

**Product 1.**-- Diffusion-annealed, nickel-plated steel, 0.010 inch, plus or minus 0.0004 in. (0.244 mm to 0.264 mm) thickness, with nickel plate 1.25 micron minimum one side and .625 micron minimum opposite

**Product 2.**-- Diffusion-annealed, nickel-plated steel, 0.008 inch, plus or minus 0.0004 in. (0.193 mm to 0.213 mm) thickness, with nickel plate 1.25 micron minimum one side and .625 micron minimum opposite

**Product 3.**-- Diffusion-annealed, nickel-plated steel, 0.008 inch, plus or minus 0.0004 in. (0.193 mm to 0.213 mm) thickness, with nickel plate 1.8 micron minimum one side and .375 micron minimum, but less than .625 micron, opposite

**Product 4.**-- Diffusion-annealed, nickel-plated steel, 0.0135 inch, plus or minus 0.0005 in. (0.330 mm to 0.356 mm) thickness, with nickel plate 1.0 micron minimum one side and 1.0 micron minimum opposite

**Product 5.**-- Diffusion-annealed, nickel-plated steel, 0.0153 inch, plus or minus 0.0005 in. (0.376 mm to 0.401 mm) thickness, with nickel plate 1.0 micron minimum one side and 1.0 micron minimum opposite

Product 1 is used for \*\*\*. Product 2 is used for \*\*\*. Product 3 is used for \*\*\*. Product 4 is used for \*\*\*.<sup>23</sup> PECA also described product 4 as a newer product replacing product 5, an older product.<sup>24</sup>

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<sup>22</sup> All products come from the petition, with minor modifications based on discussions with staff. See email from James Cannon, counsel for the petitioner, March 28, 2013.

<sup>23</sup> Emails from \*\*\*.

<sup>24</sup> Conference transcript, p. 132 (Walton).

Thomas Steel reported data for \*\*\* from the United States. Metal One reported data for \*\*\* from Japan. Nippon Trading reported data for \*\*\* from Japan. \*\*\*.<sup>25</sup> Hille & Mueller reported data for \*\*\* from Germany, and noted that its data were for \*\*\*.<sup>26</sup>

The pricing products do not specify a width, and thus products may be slit at a slitter or by the supplier itself. \*\*\*. However, Thomas Steel and Metal One indicated that they do not use slitters.<sup>27</sup> Duracell explained that slitting was not common in the diffusion-annealed, nickel-plated steel market because slitting and other steel service is usually best performed on products with large volumes, not like the smaller volumes in the diffusion-annealed, nickel-plated steel market.<sup>28</sup>

Quantity data reported by these firms accounted for approximately \*\*\* percent of the U.S. producer's 2012 shipments of diffusion-annealed, nickel-plated steel and \*\*\* percent of U.S. shipments of 2012 subject imports from Japan.

**Table V-1**  
**Diffusion-annealed nickel-plated steel: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarters, January 2010-December 2012**

\* \* \* \* \*

**Table V-2**  
**Diffusion-annealed nickel-plated steel: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by quarters, January 2010-December 2012**

\* \* \* \* \*

**Table V-3**  
**Diffusion-annealed nickel-plated steel: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by quarters, January 2010-December 2012**

\* \* \* \* \*

**Table V-4**  
**Diffusion-annealed nickel-plated steel: Weighted-average f.o.b. prices and quantities of domestic and imported product 4 and margins of underselling/(overselling), by quarters, January 2010-December 2012**

\* \* \* \* \*

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<sup>25</sup> \*\*\*.

<sup>26</sup> See \*\*\*.

<sup>27</sup> Conference transcript, pp. 66 (Hartman) and 186 (Walton).

<sup>28</sup> Conference transcript, p. 186 (Nguyen).

**Table V-5**

**Diffusion-annealed nickel-plated steel: Weighted-average f.o.b. prices and quantities of domestic and imported product 5 and margins of underselling/(overselling), by quarters, January 2010-December 2012**

\* \* \* \* \*

**Figure V-4**

**Diffusion-annealed nickel-plated steel: Weighted-average prices and quantities of domestic and imported products 1-5, by quarters, January 2010-December 2012**

\* \* \* \* \*

**Price trends**

Table V-6 summarizes price trends in the pricing products, by country and by product. Over the first to last quarters of available data, prices rose for three of five U.S. pricing products and for four of five Japanese pricing products.

**Table V-6**

**Diffusion-annealed, nickel-plated steel: Summary of weighted-average f.o.b. prices for products 1-5 from the United States, Japan, and Germany**

\* \* \* \* \*

**Price comparisons**

Table V-7 presents the number of instances of underselling and overselling, along with average margins and the range of margins. Japanese products undersold U.S. products in approximately three times as many instances as they oversold U.S. products.

**Table V-7**

**Diffusion-annealed nickel-plated steel: Instances of underselling/overselling and the range and average of margins, January 2010-December 2012**

\* \* \* \* \*

At the conference, parties disagreed over whether U.S. or Japanese product was less expensive. Metal One described purchasers telling it that its prices were not the lowest, and were sometimes “not competitive” with Thomas Steel, which Metal One described as the industry price leader.<sup>29</sup> However, Thomas Steel stated that it lost volume and needed to lower prices in 2011 and 2012 due to pressure from lower-priced imports from Toyo Kohan. It elaborated that Toyo Kohan especially targeted the large-volume business of diffusion-annealed, nickel-plated steel for AA batteries, large volumes that Thomas Steel stated that it needs to cover its fixed costs.<sup>30</sup> On the other hand, purchaser Duracell attributed Thomas

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<sup>29</sup> Conference transcript, pp. 137-38, 143 (Philipson).

<sup>30</sup> Conference transcript, pp. 26-28 (Hartman).

Steel's falling prices in 2011 and 2012 to the pricing formula used, as prices of the commodities in the formula began to fall. It also disputed that Thomas Steel had lost much share of Duracell's purchases.<sup>31</sup>

### LOST SALES AND LOST REVENUE

The Commission requested U.S. producers of diffusion-annealed nickel-plated steel to report any instances of lost sales or revenue they experienced due to competition from imports of diffusion-annealed, nickel-plated steel from Japan during January 2010 to December 2012.

\*\*\*.

The allegations of lost sales and lost revenue cover \*\*\*.<sup>32</sup>

Thomas Steel's \*\*\* lost sales allegations totaled \$\*\*\* and involved \*\*\* short tons of diffusion-annealed nickel-plated steel. The \*\*\* lost revenue allegations totaled \$\*\*\* and involved \*\*\* short tons of diffusion-annealed, nickel-plated steel. Staff contacted \*\*\* purchasers and a summary of the information obtained follows in tables V-8 and V-9, and the ensuing discussion.

**Table V-8**  
**Diffusion-annealed nickel-plated steel: U.S. producers' lost revenue allegations**

\* \* \* \* \*

**Table V-9**  
**Diffusion-annealed nickel-plated steel: U.S. producers' lost sales allegations**

\* \* \* \* \*

\*\*\*

\*\*\*.<sup>33</sup> \*\*\*.

\*\*\*.<sup>34</sup> \*\*\*.<sup>35</sup> \*\*\*.<sup>36</sup>

\*\*\*.<sup>37</sup>

\*\*\*

\*\*\*.

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<sup>31</sup> Conference transcript, pp. 118-20 (Medeiros).

<sup>32</sup> See petition, exhibit 10.

<sup>33</sup> See also \*\*\*. \*\*\*.

<sup>34</sup> \*\*\*.

<sup>35</sup> \*\*\*.

<sup>36</sup> \*\*\*.

<sup>37</sup> See \*\*\*.

\*\*\*

\*\*\*.

\*\*\*.

\*\*\*

\*\*\*.

## PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

### BACKGROUND

Part VI presents Thomas Steel's financial results on diffusion-annealed, nickel-plated steel, reported on the basis of generally accepted accounting principles (GAAP). As indicated in Part I of this report, Thomas Steel was the only U.S. producer of this product during 2010-12. Although the company's fiscal year ends March 31, Thomas Steel reported its financial results for calendar-year periods consistent with the trade information provided in Part III.<sup>1</sup>

As noted in Part I of this report, hot-rolled steel is a primary input in the production of diffusion-annealed, nickel-plated steel. Although Thomas Steel purchases non-battery grade hot-rolled steel from unrelated domestic sources, it sources the majority of its overall hot-rolled steel, including all battery grade steel, from a Dutch affiliate, Tata Steel IJmuiden BV.<sup>2</sup> In its U.S. producer questionnaire response and with regard to purchases of hot-rolled steel from Tata Steel IJmuiden BV, Thomas Steel confirmed that it complied with the Commission's questionnaire instructions requesting the elimination of profit or loss on inputs purchased from related firms.<sup>3</sup>

### OPERATIONS ON DIFFUSION-ANNEALED, NICKEL-PLATED STEEL

Table VI-1 presents Thomas Steel's financial results on diffusion-annealed, nickel-plated steel during 2010-12. A variance analysis of these financial results is presented in table VI-2.<sup>4</sup>

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<sup>1</sup> Petitioner's postconference brief, p. 45. With respect to Thomas Steel's overall operations, \*\*\*. Thomas Steel's U.S. producer questionnaire, response to question III-5.

<sup>2</sup> Tata Steel IJmuiden BV is an integrated flat steel producer in the Netherlands with two blast furnaces and two hot-rolling mills, along with cold-rolling, galvanizing and tinplating facilities. *Tata plans capacity increase and cost savings at IJmuiden*, Metal Bulletin Daily, September 16, 2011, p. 20. As described by Thomas Steel, the supply relationship with this facility began prior to ownership affiliation and extends back to the mid-1970s. Thomas Steel reportedly had a number of battery grade steel suppliers from the second half of the 1980s to the early 1990s. The current facility, which was purchased by Tata Steel in 2007, along with Thomas Steel as part of the Corus Group acquisition, ultimately \*\*\*. Petitioner's postconference brief, p. 47.

<sup>3</sup> Thomas Steel's U.S. producer questionnaire, response to question III-8.

<sup>4</sup> The Commission's variance analysis is calculated in three parts: sales variance, cost of goods sold (COGS) variance, and sales, general and administrative (SG&A) expenses variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the COGS and SG&A variances) and a volume (quantity) variance. The sales or cost variance is calculated as the change in unit price/cost times the new volume, while the volume variance is calculated as the change in volume times the old unit price/cost. Summarized at the bottom of table VI-2, the price variance is from sales, the cost/expense variance is the sum of those items from COGS and SG&A, respectively, and the net volume variance is the sum of the price, COGS, and SG&A volume variances.

**Table VI-1**

**Diffusion-annealed, nickel plated steel: Results of operations of U.S. producer, 2010-12**

\* \* \* \* \*

**Table VI-2**

**Diffusion-annealed, nickel plated steel: Variance analysis on the operations of U.S. producer, 2010-12**

\* \* \* \* \*

### Revenue

Because the majority of revenue reflects U.S. commercial sales, relevant tables below present revenue as a single line item.<sup>5</sup> As discussed in Part V of this report, the company primarily sold diffusion-annealed, nickel-plated steel during 2010-12 using a base price and adjustment mechanism formula. \*\*\*.<sup>6</sup> With respect to hedging activity, Thomas Steel reported that it provides a raw material hedging option to its customers which is limited to the nickel component.<sup>7</sup>

Sales of diffusion-annealed, nickel-plated steel, in terms of both sales volume and value, were at their highest level of the period in 2011 followed by a decline to their lowest level in 2012. The revenue section of the table VI-2 variance analysis indicates that, while sales volume and price variances were directionally the same (both positive between 2010-11 and then both negative between 2011 and 2012), their relative importance varied from period to period; i.e., the positive price variance was substantially more important in terms of explaining the increase in total revenue between 2010 and 2011. In contrast, the decline in revenue between 2011 and 2012 resulted from negative volume and price variances, which were of similar magnitudes (see sales section of table VI-2 variance analysis).

With regard to the pattern of price variances, Thomas Steel indicated that between 2010-11 the increase in average sales value primarily reflected higher raw material costs, while between 2011-12 the decline in average sales value primarily reflected “the need to cut prices in the face of import competition.”<sup>8</sup> As a general matter and given the directional trend of the

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All things being equal, a stable overall product mix generally enhances the utility of the Commission’s variance analysis. As described by Thomas Steel and with respect to the pattern of revenue during 2010-12, “generally price movements are due to price levels not product mix. \*\*\*. Ibid.

<sup>5</sup> A relatively small share of Thomas Steel’s reported revenue represents transfers and exports. Although not separately presented in table VI-1, the average sales values of transfers were somewhat higher compared to those of commercial sales. With regard to this pattern, Thomas Steel stated that “the Hille & Mueller USA transfer(s) have higher prices due to product mix. Over 30 percent of the transfers are for material \*\*\*. Petitioner’s postconference brief, p. 46.

<sup>6</sup> Petitioner’s postconference brief, p. 47.

<sup>7</sup> As described by Thomas Steel, “the company provides the service to hedge nickel if \*\*\*. Petitioner’s postconference brief, p. 46.

<sup>8</sup> Ibid. As indicated in footnote 4, Thomas Steel stated that, while product mix did not change substantially during the period, the \*\*\*.



underlying commodities making up the pricing adjustment mechanism, average sales value also declined to some extent at the end of the period because the relevant pricing adjustment mechanism, which was generally positive (i.e., additive to the base price) in 2010 and 2011, was negative in 2012.<sup>9</sup>

With respect to period-to-period changes in sales volume, the large positive volume variance between 2010-11 was attributed generally to increased downstream battery sales related to storm activity and incremental business regained by Thomas Steel in that year.<sup>10</sup> Notwithstanding the subsequent elimination of this incremental business in 2012, Thomas Steel's negative volume variance between 2011 and 2012 appears to reflect, in large part, reduced sales of AA can material to a major customer.<sup>11</sup>

### **Cost of goods sold and gross profit**

As shown in table VI-1, raw material costs represent the majority of total COGS and ranged from a low of \*\*\*. Based on information submitted in the petition and consistent with Thomas Steel's U.S. producer questionnaire, primary raw material inputs reflect hot-rolled steel and nickel whose individual shares of total raw material cost remained within a relatively narrow range during 2010-12.<sup>12</sup>

While their shares do not appear to have changed substantially during 2010-12, the average cost of both hot-rolled steel and nickel increased in 2011. In contrast, while the average cost of nickel declined in 2012, the average cost of hot-rolled steel continued to increase somewhat.<sup>13</sup> While the decline in the nickel component in 2012 is generally consistent with the relevant price index (see Figure V-3 in Part V), the hot-rolled steel component reflects a different directional pattern in 2012 compared to the price indices for coking coal and iron ore (i.e., the primary raw material inputs for hot-rolled steel) (see Figure V-2 and Figure V-3). In its postconference brief, Thomas Steel described the three factors which it believes explain this apparent divergence: 1) published prices indices reflect market prices, as opposed to the actual cost of production recognized for accounting purposes; 2) there is a lag time, estimated to be 180 days, between the acquisition of the underlying primary raw materials used to

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<sup>9</sup> Conference transcript, pp. 95-96 (Cannon), p. 96 (Wilkes).

<sup>10</sup> Conference transcript, p. 44 (Hartman). \*\*\*.

<sup>11</sup> Conference transcript, pp. 28-29 (Hartman).

<sup>12</sup> As a share of reported raw material costs, hot-rolled steel ranged from \*\*\*. USITC auditor notes (preliminary phase).

<sup>13</sup> Based on information submitted in the petition and consistent with the company's U.S. producer questionnaire, the following average nickel and hot-rolled steel costs make up total raw material costs:

Item	2010	2011	2012
Nickel (per short ton)	\$***	\$***	\$***
Hot-rolled steel (per short ton)	\$***	\$***	\$***

Ibid. As confirmed by the company, lower of cost or market inventory adjustments are reflected in raw material costs to the extent recognized but were not separately identified in the U.S. producer questionnaire response. April 25, 2013 e-mail from counsel for Thomas Steel to USITC auditor.

produce hot-rolled steel and the production of diffusion-annealed, nickel plated steel.<sup>14</sup> As a result, declines in the underlying cost of coking coal and iron ore will not be reflected immediately in Thomas Steel's cost of production; and 3) in accordance with the Commission's U.S. producer cost methodology, \*\*\* from Thomas Steel's raw material costs.

With regard to the elimination of intercompany profit and losses on transferred inputs, in 2010 and 2011 specifically, \*\*\*.<sup>15</sup> \*\*\*.<sup>16</sup>

In order of importance, the smaller components of COGS are other factory costs (declining from \*\*\* percent of total COGS in 2010 to \*\*\* percent of COGS in 2012) and direct labor (declining from \*\*\* percent of total COGS in 2010 to \*\*\* percent of COGS in 2011). On an average basis (see table VI-1), direct labor reached its lowest level in 2011 which is the year when sales and production volume were at their highest. The absence of a similar pattern for other factory costs in 2011, which instead increased on an average basis between 2010-11, appears counterintuitive given the presumed positive impact of higher capacity utilization and increased fixed cost absorption in that year.<sup>17</sup> <sup>18</sup> As described by Thomas Steel, the increase in

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<sup>14</sup> In general, the 180-day estimate would encompass Tata Steel IJmuiden BV's acquisition of primary raw materials (coking coal and iron ore), conversion of these materials into hot-rolled steel, shipment of the hot-rolled steel to the U.S., and subsequent conversion (cold-rolling, plating, and annealing) at Thomas Steel to produce diffusion-annealed, nickel-plated steel. Petitioner's postconference brief, p. 32.

<sup>15</sup> Petitioner's postconference brief, pp. 32-33.

<sup>16</sup> \*\*\*. USITC auditor notes (preliminary phase).

<sup>17</sup> When considering total COGS and SG&A expenses, supplemental information provided by Thomas Steel indicates that, on a weighted average basis, approximately \*\*\* percent was variable and \*\*\* percent was fixed. Variable costs, in large part, reflect raw material costs but would also presumably include items such as energy used in manufacturing and consumables. The fixed components identified by Thomas Steel, which reportedly represent 75 percent of non-material costs, is made up of the following items: \*\*\*. Conference transcript, p. 34 (Jarvis). April 25, 2013 e-mail from counsel for Thomas Steel to USITC auditor. USITC auditor notes (preliminary phase).

<sup>18</sup> In contrast and as shown in table VI-1, average other factory costs in 2012 declined compared to 2011. All things being equal, this pattern is also counterintuitive given the relatively large decline in production and sales volume in 2012 and the presumed negative impact of reduced fixed absorption in that year. (Note: Average direct labor, which the company \*\*\*, increased in 2012 compared to 2011 which in general is consistent with the expected pattern.) With regard to factors which appear to help explain the pattern of Thomas Steel's lower average other factory costs in 2012, the following cost cutting measures were described by the company: an 8.5 percent reduction in the company's workforce, reduced maintenance, improved energy efficiency, outsourced shipping, IT support, and logistics. (Note: These costs/expenses are not all specific to other factory costs and in some instances, most notably deferred maintenance, are not sustainable for an extended period of time without negative operational consequences). Quality control programs during 2010-12 were also noted as activity which reduced costs and positively impacted the pattern of COGS in general. A Thomas Steel company official stated at the staff conference that "{t}aken together, our cost cuts reduce our break-even point. In fact, we have taken out fixed costs in order to mitigate the impacts of falling sales volume and revenues." Conference transcript, p. 34, pp. 38-39 (Jarvis).

2011 average other factory costs was related to \*\*\*.<sup>19</sup> As indicated in the capital expenditures section below, while the above-referenced \*\*\*.

Notwithstanding some variability in average direct labor and other factory costs, the deterioration in gross profit margin (total gross profit divided by total revenue) shown in table VI-1 primarily reflects consecutive increases in raw material costs which were only partially offset by higher average sales value in 2011 and then in effect magnified by a decline in average sales value in 2012. In addition to other relevant factors, such as reported reductions in underlying base prices and lower sales volume, the decline in 2012 gross profit margin also appears to reflect, to some extent, a timing difference between revenue (which incorporates a base price plus a pricing adjustment mechanism for changes in the current market price of primary inputs) and manufacturing cost (which reflects changes in the market price of primary inputs on a more delayed basis (see footnote 14)).<sup>20</sup>

### **SG&A expenses and operating income or (loss)**

Total SG&A expenses, the majority of which is classified as G&A, remained within a relatively narrow range throughout the period. Increasing revenue between 2010 and 2011 followed by decreasing revenue between 2011 and 2012, in conjunction with Thomas Steel's relatively static SG&A expenses, generally explains the pattern of fluctuating SG&A expense ratios (total SG&A expenses divided by total revenue). As shown in table VI-1, SG&A expense ratios declined to their lowest level in 2011 and then increased to their highest level in 2012.

According to Thomas Steel, "Primary expenses in G&A are salary: \*\*\*."<sup>21</sup> With respect to SG&A expenses in general, the company further stated that "{w}e control SG&A costs in absolute terms and therefore the impact of imports on sales value has an impact on the {SG&A expense} ratio. Normal {SG&A expense ratio} range is 13-15% and there is nothing unusual in the costs presented."<sup>22 23</sup>

Because the period-to-period variation in SG&A expense ratios was relatively minor (ranging from \*\*\* percent of sales in 2011 to \*\*\* percent of sales in 2012), SG&A expenses can generally be considered a secondary factor in terms of explaining the trend of Thomas Steel's operating results during 2010-12. In contrast, the deterioration of gross profit margin, largely reflecting progressively lower effective spreads between average sales value and average raw material cost, appears to be the primary explanatory factor.

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<sup>19</sup> Petitioner's postconference brief, pp. 47-48.

<sup>20</sup> When considering the relative importance of the base price and corresponding pricing adjustment mechanism, a Thomas Steel company official noted that "{t}he base price is far more important in terms of profitability." Conference transcript, p. 36 (Jarvis).

<sup>21</sup> Petitioner's postconference brief, p. 48. \*\*\*. Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> While SG&A expenses were at their lowest absolute level in 2012, the amount reported in that year includes \*\*\* related to severance. A smaller \*\*\* related to severance was also included in 2010 SG&A expenses. According to Thomas Steel, "{s}everances were in response to reduced volumes and prices and were aimed at reducing fixed employment costs. Salary reductions affected \*\*\*. Petitioner's postconference brief, p. 45.

**CAPITAL EXPENDITURES, RESEARCH AND DEVELOPMENT EXPENSES, TOTAL ASSETS, AND RETURN ON ASSETS**

Table VI-3 presents capital expenditures, research and development (R&D) expenses, total assets, and corresponding return on assets related to the Thomas Steel’s operations on diffusion-annealed, nickel-plated steel.

While capital expenditures were consistently lower than corresponding depreciation expense (see table VI-1), they increased to their highest level in 2011. As described by Thomas Steel, the increase in 2011 capital expenditures was related to \*\*\*.<sup>24</sup>

**Table VI-3**  
**Diffusion-annealed nickel plated steel: Capital expenditures, research and development expenses, total assets, and return on assets**

\* \* \* \* \*

As shown in table VI-3, total R&D expenses declined somewhat during the period. Although not specifying what reduced activity accounted for this decline, Thomas Steel stated that \*\*\*.<sup>25</sup>

**CAPITAL AND INVESTMENT**

The Commission requested that Thomas Steel describe any actual or potential negative effects of imports of diffusion-annealed, nickel plated steel from Japan on its growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. The company’s responses are presented below.

**Actual negative effects**

Thomas Steel \*\*\*.

**Anticipated negative effects**

Thomas Steel \*\*\*.

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<sup>24</sup> Petitioner’s postconference brief, p. 48.

<sup>25</sup> Petitioner’s postconference brief, p. 49.

## PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that—

*In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors<sup>1</sup>--*

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,*
- (II) 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,*
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,*
- (IV) 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,*
- (V) inventories of the subject merchandise,*

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<sup>1</sup> Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

- (VI) *the 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,*
- (VII) *in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),*
- (VIII) *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 domestic like product, and*
- (IX) *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).<sup>2</sup>*

Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries.

## **THE INDUSTRY IN JAPAN**

The Commission issued questionnaires to four Japanese firms believed to produce and/or export diffusion-annealed, nickel-plated steel. Two firms, Toyo Kohan<sup>2</sup> and NSSMC, indicated they were manufacturers of diffusion-annealed, nickel-plated steel. These two firms reported that they accounted for approximately \*\*\* of overall production of diffusion-annealed, nickel-plated steel in Japan in 2012 and approximately \*\*\* of all United States

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<sup>2</sup> Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

imports of diffusion-annealed, nickel-plated steel from Japan in 2012.<sup>3</sup> One firm, Katayama, reported only that it \*\*\*.<sup>4</sup> Another firm, Metal One, reported that it is only an exporter of \*\*\*.<sup>5</sup>

Table VII-1 presents information on the diffusion-annealed, nickel-plated steel operations of the responding producers in Japan. Japanese production capacity fluctuated during 2010-12 due to \*\*\*.<sup>6</sup> \*\*\*<sup>7</sup> Toyo Kohan, however, has had \*\*\* production capacity of diffusion-annealed, nickel-plated steel due to \*\*\*.<sup>8</sup>

**Table VII-1**  
**Diffusion-annealed, nickel-plated steel: Data for producers in Japan, 2010-12 and projected, 2013-14**

\* \* \* \* \*

Japanese production of diffusion-annealed, nickel-plated steel decreased from 2010 to 2011 \*\*\*.<sup>9</sup> Japanese exports to the United States also fell in 2011 as \*\*\*.<sup>10</sup> Japanese production of diffusion-annealed, nickel-plated steel partially recovered in 2012 \*\*\*.<sup>11</sup> The Japanese firms project \*\*\*.<sup>12</sup>

Total capacity utilization for Toyo Kohan and NSSMC dropped \*\*\*.<sup>13</sup> This trend follows the utilization of each producer. \*\*\*.<sup>14</sup> \*\*\*.<sup>15</sup>

NSSMC's end-of-period inventories \*\*\*.<sup>16</sup> Toyo Kohan's inventories showed \*\*\*.<sup>17</sup>

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<sup>3</sup> Foreign producer questionnaire responses, section II-10 nn. 4-5.

<sup>4</sup> Petitioners and respondents believe Katayama produces the subject product, but had no information on their U.S exports. Petition, p. 22; conference transcript, p. 149; email from \*\*\*, April 17, 2013.

<sup>5</sup> Email from \*\*\*, April 11, 2013; and conference transcript, p. 136 (Phillipson)

<sup>6</sup> Email from \*\*\*, April 17, 2013.

<sup>7</sup> Ibid.; respondents' joint postconference brief, p. 43.

<sup>8</sup> Toyo Kohan questionnaire response, section II-2 and II-4.

<sup>9</sup> Email from \*\*\*, April 23, 2013.

<sup>10</sup> Email from \*\*\*, April 23, 2013; email from \*\*\*, April 17, 2013.

<sup>11</sup> Ibid.

<sup>12</sup> Toyo Kohan questionnaire response, section II-10; NSSMC questionnaire response, section II-10.

<sup>13</sup> Ibid.

<sup>14</sup> Toyo Kohan questionnaire response, section II-10.

<sup>15</sup> NSSMC questionnaire response, section II-10.

<sup>16</sup> NSSMC questionnaire response, section II-10; email from \*\*\*, April 17, 2013.

<sup>17</sup> Toyo Kohan questionnaire response, section II-10.

## U.S. INVENTORIES OF IMPORTED MERCHANDISE

Table VII-2 presents data on U.S. importers' reported inventories of diffusion-annealed, nickel-plated steel. As a ratio to imports and to U.S. shipments of imports, inventories of imports from Japan increased between 2010 and 2012. As noted earlier in this report, importers of diffusion-annealed, nickel-plated steel from Japan sold all or virtually all from U.S. inventories. Respondents contend that it is not possible to use diffusion-annealed, nickel-plated steel produced for one customer to supply another.<sup>18</sup>

**Table VII-2**  
**Diffusion-annealed, nickel-plated steel: U.S. importers' inventories, 2010-12**

\* \* \* \* \*

## U.S. IMPORTERS' OUTSTANDING ORDERS

The Commission requested importers to indicate whether they imported or arranged for the importation of diffusion-annealed, nickel-plated steel from Japan and nonsubject sources after December 31, 2012. Table VII-3 presents the quantity and value of orders by four U.S. importers which indicated that they had imported or arranged for the importation of diffusion-annealed, nickel-plated steel from Japan and other sources.<sup>19</sup> Metal One reported that \*\*\*.<sup>20</sup>

**Table VII-3**  
**Diffusion-annealed, nickel-plated steel: U.S. importers' orders for delivery subsequent to December 31, 2012, by period**

\* \* \* \* \*

## ANTIDUMPING OR COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

No producer, importer, or foreign producer reported any countervailing or antidumping duty orders on diffusion-annealed, nickel-plated steel from Japan in third-country markets.

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<sup>18</sup> Japanese respondents' postconference brief, p.44.

<sup>19</sup> Metal One argues that its shipments to Duracell are fixed \*\*\*. Japanese respondents' postconference brief, pp. 36-37 and exh. 5. Duracell reported \*\*\*. P&G's postconference brief, exh. 8.

<sup>20</sup> Email from \*\*\*, April 18, 2013.



## INFORMATION ON NONSUBJECT COUNTRIES

Production of diffusion-annealed, nickel-plated steel appears to be limited to China, Germany, Japan, Korea, and the United States.<sup>21</sup> In Japan, there are three producers: the respondents, Toyo Kohan and NSSMC, and a third firm, Katayama, which is active in the Asian market, but which has not exported to the United States.<sup>22</sup> In Germany, Hille & Mueller, owned by the Tata Steel, the parent of Thomas Steel Strip, is a major supplier to the European market. In Korea, TCC is the only identified producer.<sup>23</sup> In China, a few small producers serve the China market.<sup>24</sup> Two such firms, Hymax-Smarthill and Hunan Toyo-Leed, were identified by the petitioner.<sup>25</sup> Hunan Toyo-Leed is a joint venture affiliate of Japanese respondent Toyo Kohan.<sup>26</sup>

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<sup>21</sup> Petition, p. 41.

<sup>22</sup> Katayama Special Industries, Ltd. stated in a questionnaire response that it \*\*\* Testimony at the Commission's staff conference indicated that Katayama is a producer of diffusion-annealed, nickel-plated steel and serves the domestic market in Japan with, perhaps, some exports to Asia. Conference transcript, p. 149 (Mr. Wood.) See also, slides to accompany the testimony of Thomas Strip Steel Corporation, p. 4.

<sup>23</sup> \*\*\*. Questionnaire response of \*\*\*.

<sup>24</sup> Conference transcript, p. 149 (Mr. Yamashita).

<sup>25</sup> Slides to accompany the testimony of Thomas Strip Steel Corporation, p. 4.

<sup>26</sup> Conference transcript, p. 149 (Mr. Yamashita).



**APPENDIX A**

***FEDERAL REGISTER* NOTICES**



The Commission makes available notices relevant to its investigations and reviews on its website, [www.usitc.gov](http://www.usitc.gov). In addition, the following tabulation presents, in chronological order, *Federal Register* notices issued by the Commission and Commerce during the current proceeding.

Citation	Title	Link
78 FR 19734, April 2, 2013	<i>Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation</i>	<a href="http://www.gpo.gov/fdsys/pkg/FR-2013-04-02/pdf/2013-07584.pdf">http://www.gpo.gov/fdsys/pkg/FR-2013-04-02/pdf/2013-07584.pdf</a>
78 FR 23905, April 23, 2013	<i>Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Initiation of Antidumping Duty Investigation</i>	<a href="http://www.gpo.gov/fdsys/pkg/FR-2013-04-23/pdf/2013-09572.pdf">http://www.gpo.gov/fdsys/pkg/FR-2013-04-23/pdf/2013-09572.pdf</a>



**APPENDIX B**  
**CALENDAR OF THE PUBLIC STAFF CONFERENCE**





## CALENDAR OF PUBLIC STAFF CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's staff conference:

**Subject:** Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan

**Inv. No.:** 731-TA-1206 (Preliminary)

**Date and Time:** April 17, 2013 - 9:30 a.m.

Sessions were held in connection with this preliminary-phase investigation in the ALJ Courtroom A (Room 100), 500 E Street, S.W., Washington, D.C.

### **OPENING REMARKS:**

Petitioner (**James R. Cannon, Jr.**, Cassidy Levy Kent (USA) LLP)  
Respondents (**Alexander H. Schaefer**, Crowell & Moring LLP)

### **In Support of the Imposition of Antidumping Duty Order:**

Cassidy Levy Kent (USA) LLP  
Washington, DC  
on behalf of

Thomas Steel Strip Corporation

**Jonathan Jarvis**, Vice President, Thomas Steel Strip Corporation

**Michael C. Hartman**, Director of Quality & Technical Services, Thomas Steel Strip Corporation

**Stephen Wilkes**, Director, U.S. Governmental & Regulatory Affairs, Thomas Steel Strip Corporation

**In Support of the Imposition of  
Antidumping Duty Order (continued):**

**Carl P. Moyer**, Director of Economic Analysis, Cassidy Levy  
Kent (USA) LLP

**James R. Cannon, Jr.** )  
 ) – OF COUNSEL  
**Thomas M. Beline** )

**In Opposition to the Imposition of  
Antidumping Duty Order:**

Covington & Burling LLP  
Washington, D.C.  
on behalf of

The Procter & Gamble Company (“P&G”)

**Brian Medeiros**, Senior Purchasing Manager of  
Specialty Steel, P&G

**Thuyen Minh Nguyen**, Purchases Group Manager of Steel, Metals,  
and Cells, P&G

**Linda Jacobsen**, Associate Director of External  
Manufacturing Purchases, P&G

**David Grace** ) – OF COUNSEL

**In Opposition to the Imposition of  
Antidumping Duty Order (continued):**

Crowell Moring  
Washington, D.C.  
on behalf of

Metal One America, Inc. (“Metal One”)

**Tsurutoshi Kamei**, Assistant Manager, Tin Mill Products Section,  
Flat Products Global Marketing Department, Metal One

**Shinsuke Katano**, General Manager, Int’l Division, Metal One

**Stephen Philipson**, Sales Manager, International Division,  
Metal One

**Alexander H. Schaefer** )  
 ) – OF COUNSEL  
**Jini Koh** )

Curtis, Mallet-Prevost, Colt & Mosle LLP  
Washington, D.C.  
on behalf of

Panasonic Energy Corporation of America

**Carl Walton**, Director of Operations, Panasonic Energy  
Corporation of America (Material Division)

**Miki Nakai**, Planning/Purchasing Manager, Panasonic  
Energy Corporation of America (Material Division)

**James P. Durling** )  
 ) – OF COUNSEL  
**Daniel L. Porter** )

**In Opposition to the Imposition of  
Antidumping Duty Order (continued):**

Gibson, Dunn & Crutcher LLP  
Washington, D.C.  
on behalf of

Nippon Steel & Sumitomo Metal Corporation (“NSSMC”)  
Toyo Kohan Co., Ltd. (“Toyo Kohan”)

**Motoko Yamashita**, Manager, Thin Sheet Sales Group,  
Toyo Kohan

**Kazuhiko Ishihara**, Group Leader, R&D Center, Toyo  
Kohan

**Yoshihiro Hori**, Executive Vice President and General  
Manager, NSSMC

**J. Christopher Wood** ) – OF COUNSEL

**REBUTTAL/CLOSING REMARKS:**

Petitioner (**James R. Cannon, Jr.**, Cassidy Levy Kent (USA) LLP)  
Respondents (**J. Christopher Wood**, Gibson, Dunn & Crutcher LLP;  
and **Daniel L. Porter**, Curtis, Mallet-Prevost, Colt & Mosle LLP)

**APPENDIX C**  
**SUMMARY DATA**



**Table C-1 is confidential in its entirety.**

