

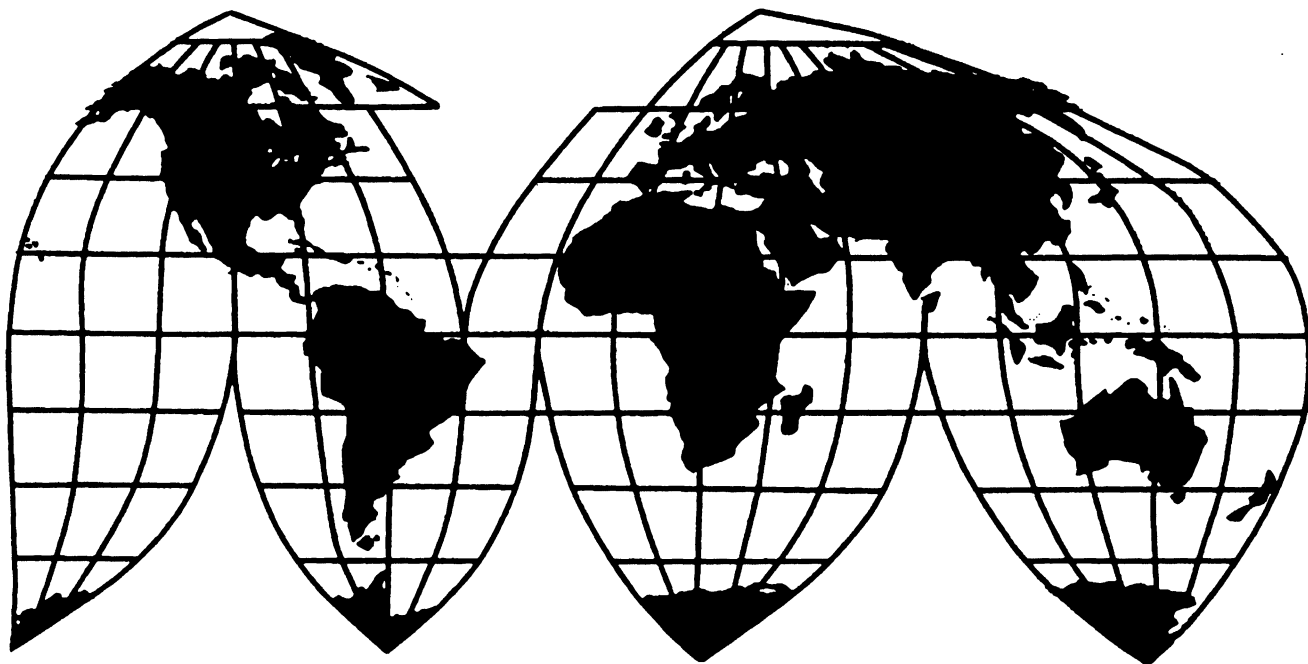
Tin-and Chromium-Coated Steel Sheet From Japan

Investigation No. 731-TA-860 (Remand)

Publication 3493

March 2002

U.S. International Trade Commission



Washington, DC 20436

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CONTENTS

	<i>Page</i>
VIEWS OF THE COMMISSION ON REMAND	1
I. BACKGROUND	1
II. PRICE EFFECTS OF THE SUBJECT IMPORTS	2
A. The Commission’s Prior Views	3
B. Commission’s Methodology for Making Price Comparisons	4
C. Underselling Methodology	7
D. Significance of Underselling	12
E. Price Sensitivity	14
F. Negotiating Practices	17
G. Correlation Between Subject Import Competition and Domestic Prices/Non-price Reasons for Purchasing Subject Imported Product	24
H. Lost Sales	27
III. CAUSATION	29
A. Overview	29
B. Domestic Delivery and Quality Problems	31
1. BWAY	32
2. Crown	33
3. Silgan	35
4. U.S. Can	36
C. Non-Subject Imports	39

CONTENTS

	<i>Page</i>
CONCLUSION	46
Table TCCSS-1 Firm-specific U.S. and Japanese final bid and volume data for Inv. No. 731-TA-860 (Final), Tin-and Chromium-coated Steel Sheet from Japan, 1997-2000	47
Table TCCSS-2 Weighted average U.S. and Japanese prices and margins of underselling, 1997-2000	48
Table TCCSS-3 Weighted average U.S. and Japanese discount rates and margins of underselling, 1997-2000	49
Table TCCSS-4 Firm-specific non-subject and Japanese final bid and volume data for Inv. No. 731-TA-860 (Final), Tin-and Chromium-coated Steel Sheet from Japan, 1997-2000	49
Table TCCSS-5 Weighted average Non-subject and Japanese prices and margins of underselling, 1997-2000	50
Table TCCSS-6 Weighted average Non-subject and Japanese discount rates and margins of underselling, 1997-2000	50

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VIEWS OF THE COMMISSION ON REMAND

By opinion and order dated December 31, 2001, Judge Jane A. Restani of the U.S. Court of International Trade remanded the Commission's determination in Tin- and Chromium-Coated Steel Sheet from Japan in Nippon Steel Corporation, et. al. v. United States, Court No. 00-09-00479, Slip Op. 01-154 (December 31, 2001). Upon consideration of the remand order the Commission determines that an industry in the United States is materially injured by reason of subject imports of tin- and chromium-coated steel sheet ("TCCSS") from Japan that the Department of Commerce ("Commerce") found to be sold in the United States at less than fair value ("LTFV").¹

I. BACKGROUND

In August 2000, the Commission determined that an industry in the United States is materially injured by reason of subject imports of tin- and chromium-coated steel sheet from Japan that the Department of Commerce found to be sold in the United States at less than fair value.² Japanese producers and exporters of the subject merchandise appealed the Commission's determination to the U.S. Court of International Trade ("Court").³ On December 31, 2001, the Court remanded the determination to the Commission, affirming the Commission's determination with regard to its volume findings but remanding the Commission's price effects determination and causation discussion for further explanation. Specifically, the Court directed the Commission to undertake the following actions with respect to its price effects findings:

¹ Chairman Stephen Koplan reaffirms his original dissenting views, finding that an industry in the United States is not materially injured or threatened with material injury by reason of subject imports of tin- and chromium-coated steel sheet from Japan that the Department of Commerce found to be sold in the United States at less than fair value. *See* Dissenting Views of Chairman Stephen Koplan, USITC Pub No. 3337, (Aug. 2000) at 21.

² Chairman Stephen Koplan and Commissioner Thelma J. Askey dissenting.

³ *See* Summons filed in United States Court of International Trade by Plaintiffs (September 26, 2000).

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- (1) to reconsider its underselling analysis to take into account inconsistencies in the manner in which the data are presented, e.g., prices versus bids;
- (2) to explain the Commission's methodology for making price comparisons for underselling;
- (3) to indicate the basis for calculating the yearly average margin of underselling and for concluding that such margins are significant;
- (4) to reassess its conclusions with respect to a correlation between subject import competition and domestic prices;
- (5) to reevaluate its price sensitivity finding in light of evidence in the record; and
- (6) to indicate the context within which the Commission bases its finding regarding lost sales.

In addition, the Court ordered the Commission to reassess causation to take into account:

- (1) the role of non price factors in purchasing decisions; and
- (2) the role of non-subject imports.⁴

We have considered the record as a whole in light of the instructions in the Court's opinion. Because the Court did not remand the issues of the domestic like product and industry, the conditions of competition, and the volume of subject imports, we determine to adopt our prior views regarding these issues.⁵ Below, we present our findings regarding the price effects and the impact of the subject imports.

II. PRICE EFFECTS OF THE SUBJECT IMPORTS

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether there has been significant price underselling by the imported

⁴ Slip Op. at 48.

⁵ Tin- and Chromium-Coated Steel Sheet from Japan, Investigation No. 731-TA-860 (Final), Publication 3337; Confidential Views of the Commission ("Commission Views") at 3-11; We identified a high degree of price sensitivity as a condition of competition in our prior views. *Id* at 8. We address this issue below.

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merchandise as compared with the price of the domestic like product, and whether 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.⁶

A. The Commission's Prior Views

In its original Views, the Commission found that the domestic TCCSS market is concentrated, with a small number of sellers and a relatively small number of purchasers. The domestic product and subject imports are generally considered interchangeable, and price is an important factor in purchasing decisions. While quality is also an important factor in purchasing decisions, contract bids are solicited only from qualified suppliers, making price and volume the focal point of contract negotiations. Price, usually in the form of discount rates off of a price list, is negotiated intensely, often down to the hundredths of one percent. Even though list prices increased slightly in 1997 and 1998, discount rates increased significantly in both years, resulting in a net decline in prices. This trend was magnified in 1999, since domestic producers were unable to increase the list price (as they had in the past) while discount rates continued to increase. Coinciding with this declining trend in pricing, the frequency and the magnitude of underselling by subject merchandise increased dramatically. At least some purchasers use this aggressive pricing in their negotiations with the domestic suppliers and consider Japanese supply to be an important factor affecting U.S. prices. Notwithstanding the characterization of the negotiating process as bifurcated (domestic supply first, then imports), negotiations with importers often take place simultaneously with domestic supply negotiations (although during contract negotiations purchasers typically do not disclose to their suppliers the identity of competing suppliers).⁷

⁶ 19 U.S.C. § 1677(7)(C)(ii).

⁷ This paragraph summarizes the Commission's Views on the price effects of subject imports as presented in Tin- and Chromium-Coated Steel Sheet from Japan, Investigation No. 731-TA-860 (Final), Publication 3337 (Aug. 2000), at 11-16.

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As noted in section I, the Court has requested additional analysis regarding the Commission's views on the price effects of the subject imports. Accordingly, we address below each of the issues identified by the Court in turn.

B. Commission's Methodology for Making Price Comparisons

The Court directed the Commission to explain why it based its pricing analysis on purchaser bid data and "why it chose to reject quarterly weighted average price calculations made in the preliminary determination."⁸ The Court observed that the Commission is not required to "conduct a price comparison analysis that accounts for variations in sales volumes" and that it possesses discretion to choose a methodology for analyzing underselling, but the Commission must explain the criteria for its selection of pricing data when the data it relies on is but a subset of all of the data collected.⁹

We have carefully considered the issues raised by the Court. Upon review, we observe the following. More than 90 percent of domestic sales and virtually all reported import sales are direct to the end users.¹⁰ Typical selling arrangements are through annually-negotiated contracts or purchasing agreements covering multiple product specifications.¹¹ In our original views, we observed that "TCCSS supply contracts are negotiated annually and establish both price and target quantities for the coming year. In negotiating prices, the domestic producers first establish a base-level price, based on an industry price list ***, and then offer to purchasers percentage discount rates from the list price. The domestic producers generally announce increases in the list price in October. During the negotiation process, the sellers (i.e.,

⁸ Slip Op. at 19.

⁹ Slip Op. at 19.

¹⁰ CR and PR at Table I-2. "CR" refers to the confidential Staff Report designated INV-X-160 (July 18, 2000) and revised by memoranda INV-X-164 (July 24, 2000) and INV-X-172 (July 26, 2000) as well as by corrections noted by the staff at the briefing and vote. "PR" refers to the Public Staff Report, USITC Pub. No. 3337.

¹¹ CR at V-4, PR at 3.

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the domestic producers and importers) and purchasers reach agreement on the applicable percentage discount to be deducted from the list price. Hence, the final pricing formula is based on the current list price minus the discount agreed to by the seller and the purchaser.¹² The suppliers and purchasers negotiate a single discount from a base price and the same discount is then applied to list prices for all the various specifications to arrive at transaction prices.¹³ Thus, the operation of the TCCSS market is driven in large part by the role of annual contracts established by competitive bids. Accordingly, the Commission sought pricing information in such a manner as to capture this important dynamic and to ensure the most complete data set possible.

The Commission in the preliminary phase of the investigation had collected product-specific pricing data that compared weighted average f.o.b. prices and quantities for U.S. producers with those for U.S. importers of TCCSS from Japan, but noted in its opinion the significant limitations of the pricing information gathered. Because of the large number of different specifications of tin mill products, the data gathered accounted for less than ten percent of U.S. produced TCCSS and less than five percent of the volume of subject imports. This limited data yielded a relatively small number of comparisons between imports and products sold by the domestic industry, although the data did show that the subject imports undersold domestic merchandise in a large majority of the comparisons.¹⁴

In the final phase of the investigation, the Commission initially proposed obtaining pricing data on the same basis as in the preliminary phase, i.e., weighted average f.o.b. prices and quantities for sales of both domestic product and imports. As is its practice, the Commission circulated draft questionnaires to the parties for comment. Respondents urged the Commission to collect bid price data from purchasers,

¹² Commission Views at 8.

¹³ Hearing Tr. at 33 (Barringer); Hearing Tr. at 114 (Riederer); Tr. at 263-264 (Klett).

¹⁴ Commission Views at 10-11; CR at V-3; PR at V-2.

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while petitioners suggested that the quarterly pricing analysis used by the Commission in the preliminary phase of the investigation be revised to encompass broader categories of tin mill products.¹⁵

In light of these comments and the Commission's assessment of the method by which prices are set for TCCSS, the Commission decided to collect purchaser contract and bid data to assess the price effects of the subject imports. The Commission was able to collect such purchaser data because, unlike in 45-day preliminary phase investigations, the Commission routinely sends questionnaires to purchasers in final phase investigations. The Commission collected initial and final price quotes and purchase volumes for the 1997 to 2000 contract years. The data reported by purchasers accounted for approximately 76 percent of U.S. producers' shipments of TCCSS and approximately 75 percent of U.S. shipments of subject imports from Japan in 1999.¹⁶ Thus, collecting bid price data enabled the Commission to achieve relatively comprehensive coverage of prices of Japanese and U.S. TCCSS. This coverage was a substantial improvement over the coverage obtained in the preliminary investigation, in which quarterly product-specific data accounted for less than ten percent of sales of the domestic and subject imported product.

In the public hearing the respondents commented on the "richness" of the pricing data in the final phase of this investigation:

In this case, the pricing information available is comprehensive. The Commission does not need to rely on sample pricing products, which may or may not be representative of the market, or on crude measures such as comparative average unit values. It has information which will permit it to compare the relative prices of domestic and imported products on a specification by specification basis and to determine changes in relative prices over time. . . .

You have more information to understand pricing dynamics in this case than in most cases that come before the Commission. So take advantage of the richness of the data that you have.¹⁷

¹⁵ See, e.g., *Comments of Japanese Respondents on Questionnaires to be Issued* at 3-4 (April 17, 2000), *Petitioner Comments on Draft Commission Questionnaires*, at 2 (April 14, 2000).

¹⁶ CR at V-9; PR at 6.

¹⁷ Hearing Tr. at 33-34 (Barringer); Hearing Tr. at 289 (Durling).

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According to respondents, focusing on discount rates negotiated during the bid process enables the Commission to make a “true apples to apples” comparison between the domestic product and subject imports that quarterly pricing data based on specific product types does not: “If there is an adverse impact from Japanese imports it will be reflected in the discount rate.”¹⁸

The collection of pricing data based on contract bids is not a departure from Commission practice and was not disputed by the parties. This methodology has been used in numerous other cases where it is appropriate and reflective of the dynamics of the product and market at issue. In those cases, as here, the underselling found by the Commission is reflected in the “underbidding.”¹⁹

C. Underselling Methodology

The Court raises several other questions regarding the Commission’s method for analyzing prices and underselling: (1) why it presented data in terms of discount rates for some purchasers and actual net prices for others; (2) why it based underselling on the number of bids irrespective of volume; and (3) why it counted Heinz’s three facilities and three product categories separately.

With respect to discount rates versus actual prices, the Commission presented and analyzed the data in the way that it was provided to it by the purchasers. Purchasers reported data in different ways: most large purchasers reported on a discount basis, although at least two large purchasers and several smaller ones reported on a net price basis.²⁰ Some purchasers provided both bid and final prices as

¹⁸ Hearing Tr. at 287, 289 (Durling).

¹⁹ See, e.g., *Clad Steel Plate from Japan*, Inv. No. 731-TA-739 (Final), USITC Pub. 2972 (June 1996); *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan*, Inv. Nos. 731-TA-736 and 737 (Final), USITC Pub. 2988 at 30-31 (Aug. 1996); *Vector Supercomputers from Japan*, Inv. No. 731-TA-750 (Final), USITC Pub. 3062 (Oct. 1997); *Engineered Process Gas Turbo-Compressor Systems from Japan*, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997); *Mechanical Transfer Presses from Japan*, Inv. No. 731-TA-429 (Final), USITC Pub. 2257 (Feb. 1990); *New Steel Rails from Canada*, Inv. Nos. 701-TA-297 and 731-TA-422 (Final), USITC Pub. 2112 (Sep. 1989).

²⁰ *** all reported prices based on discount rates, while *** reported prices based on average unit values. Compare CR and PR Tables V-1 through V-13 (reported pricing) with CR and PR Tables II-1 through II-2

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requested, while others reported only a single final price. Some purchasers reported prices per product type, and in the case of ***, per facility, while others did not. Thus, while staff attempted to standardize the data reported as much as possible, by, for example, converting prices per base box or metric ton into prices per short ton, complete standardization could not be achieved.²¹ The Commission's Staff Report thus presents the pricing tables on a customer-by-customer basis, as the data were reported to the Commission.²²

With respect to the other issues identified by the Court that are listed above, we first describe our original methodology and then explain how we have re-examined and revised our approach in this remand. Our prior views discussed two underselling comparisons. First, the Commission cited to the summary of price comparisons contained in the Staff Report at V-22. That summary, based on the customer-by-customer pricing tables that preceded the summary,²³ totaled and compared the final Japanese bids with final U.S. bids. The summary showed an overall total number of "underbids" or underselling of the U.S. product by the Japanese product. The summary revealed that over the entire period, Japanese underbids exceeded overbids, and the frequency of underbids increased in 1999 as compared to 1997 and 1998: "(i)n 1997, four Japanese bids out of thirteen undersold the domestic producers' bids. In 1998, seven out of sixteen bids undersold domestic bids. By 1999 that number had risen to 21 out of 25 bids."²⁴

Second, the Commission took a simple average of all winning bids of Japanese and U.S. suppliers for each year to arrive at an overall underselling margin. The Commission found that "the frequency and the magnitude of underselling by subject merchandise increased dramatically over the period of

(purchase volume).

²¹ CR at V-9; PR at V-6.

²² CR and PR Tables V-1 through V-13.

²³ CR and PR Tables V-1 through V-13.

²⁴ Commission Views at 12.

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investigation. In 1997 Japanese bids were generally not underselling domestic bids. In 1998 Japanese bids undersold domestic bids by 0.70 percent on average and by 1999, when subject import volume was greatest, the magnitude of underselling had risen to 5.77 percent on average."²⁵ Thus, the Commission found the underselling to be significant. In support of this finding the Commission cited to Table V-16, which was part of the Commission's record but was mis-cited as appearing in the Commission's Staff Report.²⁶

In response to the questions raised by the Court, we have re-examined and re-compiled the data on price comparisons. The table below contains revised figures on the number of bids in which Japanese prices were higher than all U.S. bids, within the range of U.S. bids, and lower than all U.S. bids. It lists the volume of purchases associated with the final bids. With respect to ***, that company's data present a unique challenge. Consistent with the manner in which it negotiated TCCSS contracts, *** provided separate data for its three facilities, as well as separate data for three different varieties of TCCSS.²⁷ Because the company's data were based on average unit values ("AUVs"), rather than discount rates, consolidation of the firm's data into single annual price figures posed the risk of masking price differences based on product mix or geographical considerations. In addition, *** reported data on the basis of a May-April fiscal year that straddles individual calendar years and does not conform to the calendar-year basis on which other purchasers reported data. Accordingly, in order to avoid giving undue weight to *** as

²⁵ Commission Views at 12 (footnotes omitted).

²⁶ Table V-16 was originally circulated to Commissioners from Staff on August 1, 2000, as "Table 1 – Requested by Commissioner Hillman for Inv. No. 731-TA-860 (Final), Tin- and Chromium-coated Steel Sheet from Japan." This table consolidated information presented in the Staff Report but also provided information regarding margins (where margin "is defined as (Average U.S. Price - Average Japanese Price)/Average U.S. Price; often called margin of underselling."). A subsequent renumbering of this table changed its designation to Table V-16, suggesting – erroneously – that the table appeared in the Staff Report. We regret the confusion that this obviously caused.

²⁷ *** was the only company for which product breakouts resulted in multiple comparisons; other companies with product breakouts either had a comparison for a single product, or no comparisons for Japanese and U.S. prices. 9

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compared to other purchasers, and to avoid difficulties in matching time periods, we have considered *** data separately.

We find that analyzing the data on this basis and taking into account relative volumes yields essentially the same results as those originally reported on p. V-22 of the Staff Report: *i.e.*, Japanese bids were often within the range of or higher than U.S. bids in 1997 and 1998, but were generally lower than U.S. bids in 1999. The instances of lower Japanese bids in 1999 represent higher volumes of subject imports than in previous years. Particularly noteworthy are the volumes (in parentheses on the chart) associated with Japanese bids that were below all U.S. bids for 1999 for all purchasers other than *** and for 1999/2000 for ***.²⁸

Bid Comparisons: Number of Japanese final bids and (total volume of final bids in short tons), 1997-2000					
Year	Below all U.S. bids	Within the range of all U.S. bids	Above all U.S. bids	No comparable final U.S. bid	Initial Japanese bid but no final Japanese bid
Purchasers other than ***					
1997	***	***	***	***	***
1998	***	***	***	***	***
1999	***	***	***	***	***
2000	***	***	***	***	***
Total	***	***	***	***	***
*** ²⁹					
1997	***	***	***	***	***
1998	***	***	***	***	***

²⁸ Both fiscal years 1999 and 2000 cover portions of calendar year 1999 for ***.

²⁹ As noted above, *** reported data on a *** fiscal year; thus its data reported for both 1999 and 2000 cover portions of calendar year 1999.¹⁰

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1999	***	***	***	***	***
2000	***	***	***	***	***
Total	***	***	***	***	***
Source: Compiled from tables V-1 through V-13; comparable to tabulation appearing at CR at V-22. Data do not include two final Japanese bids for which volume was “not available.”					

In addition, we have reconsidered our original calculation of an overall yearly underselling rate for Japanese product sold to all reporting purchasers. Because of the different manners in which purchasers reported data, and differences in product mix between purchasers, we find that calculating a single rate across all purchasers would not be appropriate.. Compilations of data for this remand are found in Tables TCCSS-1, TCCSS-2, and TCCSS-3 attached to this opinion. Table TCCSS-1 shows on a customer-by-customer basis the range of Japanese and U.S. bids for which a supplier was awarded volume in a given year, as well as the volume awarded. Tables TCCSS-2 and TCCSS-3 show, on a customer-by-customer basis, weighted average U.S. and Japanese final prices (Table TCCSS-2) or discount rates (Table TCCSS-3) (depending on how the customer reported its bids) and margins of underselling.

The data in these tables reveal the following. For those customers that purchased Japanese and U.S. product from 1997 to 1999, such as ***, underselling margins generally increased between 1997 and 1999. The margins for the larger customers who reported data to the Commission were as follows in 1999: *** percent.³⁰ For the largest purchasers – *** – the data indicate that (1) Japanese discount rates were higher in 1999 than the U.S. rates for the same customer; (2) Japanese prices were lower in 1999 than U.S. prices for the same customer; (3) the volumes of bids accepted from Japanese suppliers by every purchaser increased from 1997 to 1999; and (4) the volumes of bids accepted from domestic suppliers by every purchaser except Silgan decreased in 1999 compared to the volumes of bids accepted over prior periods.³¹

³⁰ Tables TCCSS -2 and TCCSS-3 (attached hereto).

³¹ Table TCCSS-1 (attached hereto). We note that purchaser *** aggregate purchasing volume for domestic producers increased in this period.

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D. Significance of Underselling

The Court indicated that the Commission offered no explanation for its finding that the underselling margins were significant.³² The Court observed that the Commission had not explained why the underselling margins were in the range likely to induce producers to switch suppliers. Furthermore, the Court stated that the Commission did not discuss whether any of the underselling by subject imports was merely a reflection of the premium attaching to the domestic like product by virtue of its lead time advantage in shipping.

We have re-examined the issue of the significance of the margins of underselling in light of the Court's opinion. We observe that, as the frequency and magnitude of the underselling or underbidding increased, particularly in 1999, individual suppliers in fact shifted volumes from domestic to Japanese sources. As a result, in the aggregate, the domestic industry's market share declined, from *** percent to *** percent. Most of this decrease can be attributed to imports from Japan, which increased their U.S. market share from *** percent to *** percent, while non-subject imports share increased from *** percent to *** percent.³³

Moreover, the parties do not dispute that the prices paid to domestic suppliers generally declined over the period examined. The record shows that, while list prices increased slightly in 1997 and 1998, discount rates increased significantly in both years, resulting in a decline in U.S. prices, and in 1999, the trend was magnified, given that domestic producers were not able to increase the list prices.

These data showing rising imports and falling U.S. prices support the view that the increased underselling was sufficient to have an effect on domestic sales and prices, especially in 1999. Other information confirms this effect. Purchasers generally reported to the Commission that the prices of subject imports in 1999 would have had to have been higher by amounts ranging from two to six percent

³² Slip Op. at 21.

³³ CR and PR Table C-1. The domestic industry share of the U.S. market fell to *** percent by the first quarter of 2000 while subject imports accounted for *** percent. *Id.*

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before they would have purchased domestic product instead, with responses of several large purchasers in the four to five percent range.³⁴ As noted in the preceding section, the margins of underselling for the larger customers were as follows in 1999: ***.³⁵ We thus find that the underselling margins revealed by the Commission's data are generally near or at the ranges found by responding purchasers to be significant in the sense that they would be likely to influence the purchasers to change suppliers.³⁶

With respect to the relationship between lead time advantage and price premiums, we note that domestic producers did enjoy an advantage over their Japanese competitors. Quicker product delivery can give purchasers more flexibility in modifying their purchase orders on shorter notice, which can translate into a price premium for domestic producers.³⁷ However, several factors mitigate the extent and significance of any such premium. As we stated earlier, the market for TCCSS is characterized by supply contracts negotiated annually to establish both price and target quantities. Thus, especially for product delivered later in the year, suppliers often know several quarters ahead of time how much TCCSS they are required to deliver to their customers and the impact of a lead time disadvantage can thus be minimized to some degree.³⁸ Mr. Yurco of U.S. Can testified at the conference during the preliminary phase of the investigation that on-time delivery of TCCSS from Japan was so good that it negated any advantage domestic suppliers may have had because of shorter lead times stating: "the Japanese found a way to

³⁴ Purchaser responses to question IV-8 of the purchaser questionnaire were as follows: *** We note that one company reported 0 percent *** and another reported 25 percent ***. A number of companies, often smaller sized purchasers, did not report a percentage. Some purchasers also commented on the importance of non-price factors. One larger producer, ***, did not answer the question as written but rather responded that in ***

³⁵ Tables TCCSS-2 and TCCSS-3 (attached hereto).

³⁶ In addition, the terms of at least one supplier contract indicate that a price increase of one percent may still be considered competitive, suggesting that margins above one percent are not considered competitive. Weirton-U.S. Can Supply Agreement, C.R. Doc 208, Pl. App. Tab 16 at Ex. 1.

³⁷ "Japanese imports, therefore, have historically been priced lower than U.S. supplies because of the flexibility U.S. can makers must give up when they use imported product." Conference Tr. at 70 (Lewis reading written statement of Robert Owen of Silgan).

³⁸ See, e.g., CR at V-4, 6.

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overcome the lack of a very reliable performance given the lengthy lead time. So they as a result have actually become for the items that we buy from them more reliable than some of the domestic mills, especially Weirton Steel."³⁹

Moreover, any lead time advantage enjoyed by domestic mills would be offset by the fact that purchasers uniformly rate Japanese TCCSS as superior in quality to domestic TCCSS. This quality advantage, standing alone, would weigh in favor of a premium for the subject imported product.⁴⁰ We further note that Japanese prices were generally within the range of domestic prices at the beginning of the period examined, suggesting that the domestic industry's alleged lead-time price premium did not exist in 1997.

Thus, while lead time differences may have a limited effect on relative prices of domestic and imported Japanese product, they do not explain all or most of the underselling observed in our data. Rather, the high degree of price sensitivity in the TCCSS market, described below, substantiates the significance of the underselling.

E. Price Sensitivity

In its opinion, the Court questioned the Commission's basis for concluding that the TCCSS market was price sensitive. On remand we provide further analysis of this issue. Questionnaire data indicate that price is a very significant factor to purchasers, although other factors appear to be very significant as well. Purchasers ranked "lowest price" as very important less frequently than six other factors, although all

³⁹ Conference Tr. at 87-88 (Yurco); Conference Tr. at 89 (Klett) (if Japanese suppliers say "they will be there on June 8th, they are there on June 8th, and he [Yurco] had trouble with some of the domestic suppliers with respect to that").

⁴⁰ CR and PR Table II-5 (seven of eight purchasers indicate that Japanese product is superior in quality to U.S. product; six of eight purchasers reach the same conclusion regarding product consistency). *See also* Hearing Tr. at 209 (Yurco) "Yes, absolutely. The Japanese have the superior product over the Europeans. And the U.S. mills, generally speaking, are inferior to both of those. The Japanese is very, very good in quality."; Hearing Tr. at 209-210 (Owen) "I would say that in general, while the Japanese have excellent quality, that we find the German quality is superior to -- I couldn't tell you without looking at data whether the Germans are superior to the Japanese, but it's real close. They're both very good, and much better than the U.S. producers." 14

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responding purchasers indicated that lowest price was at least somewhat important.⁴¹ Purchasers also indicated generally that they consider price to be the second or third most important factor used in purchasing decisions, after quality.⁴² Because contract bids are only solicited from qualified suppliers, purchasing decisions are sometimes, or even usually, based mainly on price.⁴³ This suggests that other factors considered very important by purchasers (such as availability, reliability of supply, and delivery time) do not serve to consistently distinguish potential suppliers, although pronounced differences in important factors such as quality may preclude the absolute lowest priced suppliers from winning sales.

The TCCSS market is characterized by long-term relationships established through a stringent qualification process. Purchasers begin by buying limited quantities from suppliers in order to assess quality, including product uniformity and the reliability of deliveries.⁴⁴ Only after the potential supplier has proven that it can deliver the desired quality and quantity in a steady and reliable manner does it become "qualified" to be part of a pool of suppliers.⁴⁵ Qualification times can range from several months to a few years.⁴⁶

⁴¹ CR and PR at Table II-4.

⁴² CR and PR Table II-3. Quality is clearly the most important factor used in purchasing decisions. Price was identified as second by 3 purchasers and third by 8 purchasers; service/technical support was identified as second by 4 purchasers and third by 1; availability was identified as second by 3 purchasers and third by 0; no other factor (product range, contract/relationship, delivery reliability/lead time, shipping cost, or supplier reliability/past experience) was identified by more than 2 purchasers as a "top three" consideration. *Id.*

⁴³ CR at II-10, PR at II-5 (eleven of sixteen reporting purchasers "sometimes" base their TCCSS purchasing decisions on price, four "usually" do so, and one "never" does so).

⁴⁴ CR at II-9 - II-10; PR at II-5 - II-6; *See also*, Staff Notes of Sandra Rivera telephone interview dated Tuesday, May 16, 2000; Hearing Tr. at 186 (Seanor).

⁴⁵ Hearing Tr. at 64 (Schagrin). "All of these non-price factors that are discussed-- quality, availability, delivery, product support services -- that all goes into the can company's decision as to whether or not an American supplier, a Japanese supplier or a European supplier is allowed to bid for their business. If you're not through the qualification process, which is determined by all these other non-price factors, you don't get a chance to offer your price."

⁴⁶ CR at II-9 - II-10; PR at II-5 - II-6.

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Once purchasers begin annual contract negotiations with their qualified suppliers, price and volume become the focus of the negotiations.⁴⁷ Purchaser documents indicate that very modest changes in the discount rate could mean the difference between winning or losing contracts.⁴⁸ None of these documents mentions non-price factors as having any significant role in contract negotiations. Price is negotiated intensely in annual contract negotiations, often down to the hundredths of one percent. Negotiations typically extend over a period of several months each year, often extending out well into the calendar year to which the newly negotiated prices are to apply.

Comments by *** in its questionnaire response further highlight the importance of price: *** One internal *** document in particular provides convincing evidence of the highly price sensitive nature of the TCCSS market. In that document *** contrasts *** discount rate of *** percent with other suppliers' larger discount rates of *** percent and higher and states that ***.⁴⁹ The *** percent difference in discount rate to which *** refers is equivalent to a price difference of *** percent.

Finally, the respondents highlighted the importance to the TCCSS market of purchaser consolidation and the formation of buying alliances among purchasers. Although we have found that such developments ultimately had a limited impact on prices during the period examined in this investigation, the fact that purchasers went so far as to establish buying alliances to improve their negotiating position only

⁴⁷ Purchaser testimony supports this finding. Bob Owen of purchaser Silgan stressed at the hearing that if a supplier does not meet the quality requirements of Silgan it will "disqualified." As such, a disqualified supplier will not be able to enter negotiations with Silgan in the next year's round of negotiations. Hearing Tr. at 199-200 (Owen) (Silgan disqualified domestic and Japanese suppliers for quality problems in 1999). Therefore, when a "qualified" supplier enters negotiations with a purchaser, the quality and reliability of that supplier's product have already been established, leaving price and volume the primary remaining factors to be negotiated.

⁴⁸ Final Determination at 14 n. 65, citing *inter alia*: (1) Letter from *** to *** (February 19, 2000), summarizing agreement on discount rates of *** percent and *** percent from 1999 and 2000 list prices, respectively. Petitioners' Posthearing Br. at Exhibit 27; (2) Internal *** Memorandum (from ***, dated August 6, 1998), summarizing *** proposal to increase the discount rate from *** percent to *** percent (the equivalent of a price change of 0.56 percent). Respondents' Posthearing Br. at Vol. IV.

⁴⁹ Respondents' Posthearing Br. at Vol. IV.

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serves to emphasize the central role of obtaining lower prices to the purchasers of TCCSS. Accordingly, based on the analysis above, we reaffirm our finding that the TCCSS market is highly price sensitive.

F. Negotiating Practices

The Court also questions the Commission's conclusion that subject imports affected domestic prices, in view of the way in which the price negotiations are structured. Specifically, the Court states that the Commission must address the evidence that supports purchasers' contention that negotiations with domestic and foreign producers run on separate tracks according to different procedures and criteria. The Court refers to: (1) "supply arrangements whereby domestic producers are obligated to match prices with only other domestic producers"; (2) "whether the acknowledged difference in lead-times causes purchasers to consider foreign supply 'supplementary', and allocate predetermined volumes to foreign and domestic supply sources"; and (3) "evidence showing that petitioner [Weirton] set its prices within a range established only by domestic prices."⁵⁰

We have re-examined this issue in light of the Court's instructions. We first reiterate the finding in our prior views that it is not generally the case that the negotiations with domestic suppliers take place first only to be followed by negotiations with foreign suppliers. Rather, there is substantial overlap in the time periods that the contracts with domestic and foreign suppliers were being negotiated.⁵¹ For example, in the first quarter 1999 the volume of imports from Japan increased substantially compared to the 1998 average

⁵⁰ Slip op. at 29-32.

⁵¹ Contract negotiations with domestic suppliers generally begin in the fall of one year for the following year's volumes. Conference Tr. at 73 (Peak). In late November 1997, *** contacted *** with a proposed basic agreement. Letter from ***, November 20, 1997, Respondents' Posthearing Br., July 7, 2000, Volume IV, Trading Company A; In November 1998, *** indicated that it was "pleased to confirm orders for BWAY Corporation 1999 annual requirements," Mitsui letter to Rourke of BWAY, dated November 9, 1998; Respondents' Posthearing Br., July 7, 2000, Volume IV, Customer C; *See also*, Supplemental Questionnaire Response of *** (July 25, 2000), attaching various documents, including: (1) an internal *** memorandum (from ***, dated October 18, 1999), ***, (2) internal *** memorandum (from ***, dated August 10, 1999), ***, and (3) internal *** memorandum (from ***, dated July 16, 1999), reporting that *** The July 16 memorandum also indicates that ***, *See also*, Final Determination at 19-20.

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quarterly rate; given applicable lead-times, the products delivered in first quarter 1999 must have been ordered in late 1998, well before completion of negotiations with domestic producers.⁵² The record evidence suggests that purchasers carefully consider historical industry-wide price data and develop negotiation strategies encompassing all of their suppliers, domestic and foreign, before entering into negotiations with domestic mills.⁵³ This finding is corroborated by domestic industry testimony at the Commission hearing.⁵⁴

In addition, the record indicates that, under the contract terms, while prices may be set, volumes are not; therefore, even after negotiations with domestic suppliers are concluded, purchasers can re-allocate volume to non-domestic suppliers during the year (without breaking the contract) based on the lower prices of imports.⁵⁵ Domestic producers testified that, even if a purchaser breached a contract, they were not

⁵² CR at Table C-1 (first-quarter 1999 imports of nearly 85,000 tons, compared to average quarterly 1998 imports of just over 60,000 tons; the average unit value of subject imports in the first quarter of 1999 (\$603.81) was well below the average unit value during 1998 (\$638.25)); Petitioner's Posthearing Brief at exhibit 24 (each of January, February, and March 1999 imports well above monthly fourth quarter 1998 imports).

⁵³ See e.g., *** statement that they were *** in order to provide a "favorable price variance." These mills were considered "foreign card" alternatives. Memo from ***, dated September 4, 1998, Respondents' Posthearing Br., July 7, 2000, Volume IV, Customer C. See *** See also, Memo from ***, dated October 3, 1998, Respondents' Posthearing Br., July 7, 2000, Volume IV, Customer C (In an October 1998 memorandum ***

⁵⁴ "The industry normally will announce some increase in price level sometime in October, the early part of November, as an industry indication . . . Normally those prices are not ever reached. I mean, the price levels announced in the marketplace are never obtained, and they're never obtained because of pressures that are brought on the producers, on the sellers, by *feedback of indications of supply available at cheaper prices, including imported product.*" (Emphasis added). Hearing Tr. at 118 (Riederer).

⁵⁵ Hearing Tr. at 76-78 (Riederer).

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likely to sue on and terminate the contract.⁵⁶ Import prices thus influence the prices in upcoming contract negotiations with domestic suppliers, which begin at the end of the year for the next year.

We have explained above our conclusion that the domestic TCCSS market is price sensitive and that purchasers have taken steps such as forming buying alliances in order to increase their price negotiating leverage. In such an environment, it would be natural, even expected, that purchasers, as rational business persons, would seek to use the possibility of purchasing foreign product at lower prices to leverage price concessions from domestic suppliers.

Indeed, there is evidence indicating that purchasers used the possibility of purchasing subject imports at lower prices in negotiations with domestic suppliers. An internal *** document from February 1998 shows that, in negotiations with domestic producer ***, *** of "increased interest from offshore suppliers (primarily Japan) with even more aggressive pricing." A second internal *** document, from ***, dated February 9, 1998, generally confirms this summary of the meeting.⁵⁷ These *** documents corroborate the affidavit of ***, Manager of Tin Mill Products at ***. *** stated that *** indicated to him in early 1999 that *** would be buying more from Japan because of lower Japanese prices and that *** needed to stay competitive with ***, which was purchasing significantly increased quantities of lower-priced Japanese product.⁵⁸ This, in turn, corroborates ***'s statement that *** informed him directly of the

⁵⁶ Hearing Tr. at 83 (Riederer); "Whether the terms of our contracts with can companies are written or oral, the bottom line is that in practical terms the steel producer simply cannot afford to enforce these contracts in Court as to either their volume or price terms. One expects customers to live up to both the volume and price terms during the course of these annual contracts, and usually they do, but customers are in the business to make money. If during the course of a contract they can purchase material of comparable quality delivered on time to their production facilities at a lower price than their agreed to domestic contract price, some will do so and reduce their domestic purchases. Some will not hesitate to come back to the domestic producer and ask that an additional price decrease be granted to maintain volume." Hearing Tr. at 82 (Scott); *See also*, Hearing Tr. at 127-128 (Riederer) (contract terms "frequently" not met by purchasers).

⁵⁷ *See* Respondents Posthearing Br. Vol. IV, "Customer A."

⁵⁸ Petitioner's Posthearing Brief at Exh. 20.

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company's intention to purchase Japanese product because of its low price.⁵⁹ In addition, Mr. Owen of purchaser Silgan testified at the hearing, in describing negotiations with domestic suppliers, that "whenever I mentioned a price, the sharp salesmen were always very quick to say is that a domestic or a foreign price? And certainly I answered truthfully, so they know the gap is there."⁶⁰ This testimony confirms that Silgan used import prices in negotiations with domestic suppliers, even if it did not identify them as import prices. Also, three (relatively small) purchasers of TCCSS confirmed petitioner's lost revenue allegations from December 1998, indicating that petitioner had to reduce its price to obtain the sales in the face of lower price offers for imports from Japan.⁶¹ Thus, the record indicates that purchasers used the availability of lower priced subject imports in their negotiations with domestic producers.

The ability of purchasers to use lower foreign prices to obtain more favorable domestic prices could be limited if it were generally understood that foreign product, because of longer lead-times, could only occupy a small residual or supplementary portion of the domestic market. The Court identifies this issue in its Opinion. Several purchaser representatives stressed this point.⁶²

In our view, delivery time issues do operate to limit the absolute amount of the domestic market that imports could realistically hope to obtain. For example, it would be unlikely, at least in the short term, for imports to reach a position of supplying a majority of the domestic market, given their generally longer lead times. This does not mean, however, that imports are so limited in potential as to be unable to have a significant impact on the market. Imports (both subject and non-subject) increased their market share by

⁵⁹ We note that Mr. Yurco testified before the Commission that negotiations with domestic and foreign suppliers are entirely separate, and that he would not use foreign price quotes to influence domestic prices. Tr. at 194-195. ***.

⁶⁰ Hearing Tr. at 207-208 (Owen).

⁶¹ CR and PR at Table V-15; CR at V-25, PR at V-9.

⁶² Hearing Tr. at 201 (Owen); Conference Tr. (Lewis, reading letter submitted by Owen); Conference Tr. 20 (Lewis); Conference Tr. at 76 (Yurco).

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more than *** percentage points from 1997 to 1999 (from *** to *** percent).⁶³ Imports increased market share by *** percentage points in first quarter 2000, compared to first quarter 1999, to account ultimately for nearly *** percent of the domestic market.⁶⁴ Imports of TCCSS from Japan alone held *** percent of the U.S. market by first quarter of 2000.⁶⁵ In a market with stagnant demand, market share shifts of this magnitude are significant. The substantial share of the market acquired by imports during the period we examined rebuts the notion that imports can only occupy a niche position in the U.S. TCCSS market and are therefore inherently incapable of impacting the overall pricing environment.

In our view, the steadily increasing import volume influenced the negotiation process for domestic producers. Imports, mainly subject imports, gained *** percentage points in market share from 1997 to 1998 alone. Subject imports grew by over 30 percent from 1997 to 1998, in a market that shrank by 5 percent. The record indicates that U.S. producers had excellent market knowledge, especially regarding the nature and volume of imports.⁶⁶ Thus, producers had information about the import volume increase during 1998 heading into negotiations for 1999 contracts. Moreover, domestic producers' negotiations for 1999 contracts dragged out well into 1999. As noted above, import volume had increased further starting in January 1999. Producers were faced with still higher import volumes at the time they were completing their annual contracts during the early months of 1999. Therefore, we find that in an industry with

⁶³ CR and PR Table C-1.

⁶⁴ CR and PR Table C-1.

⁶⁵ CR and PR Table C-1.

⁶⁶ Hearing Tr. at 120 (Schagrin). "Mr. Johnston and Mr. Hudok are out at these can makers' plants quite often, and so are the salespeople. There's a tremendous amount of knowledge, and then because of the import competition someone like Mr. Riederer or the CEO of the company, because it's so important, he gets from me every month the import statistics just as soon as they're put out, so I mean he can see what average Japanese price levels are doing." *See also*, Hearing Tr. at 113 (Riederer) "it is not our experience that our negotiations are independent of any external, external being any imported product whether it's Japanese or European or wherever it may come from. Latin American. It is not independent of our discussions and our contract negotiations. What happens in terms of those contract negotiations generally is a lot of information that is flowed to the company by the purchaser telling us what other people are doing, including the Japanese, including Europeans, and we are subjected to those kinds of indications of where prices are going. *See, e.g.*, Hearing Tr. at 195-195 (Yorco); Hearing Tr. at 205-208 (Seanor, Owen, and Rourke) 21

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relatively few players each possessing very good market knowledge, rapidly rising import volumes and declining domestic market share had a significant impact on the prices that domestic producers were willing to offer in their negotiations for 1999, the year in which domestic prices fell the most.

We have considered, but ultimately are not persuaded by, record facts that could suggest a more limited impact of subject imports on domestic prices. First, it is true that representatives of purchasers generally denied that foreign prices are brought into negotiations with domestic suppliers.⁶⁷ However, as noted above, a Weirton representative indicated that several purchasers informed him in negotiations of the intent to purchase low-priced product from Japan.⁶⁸ Other purchaser information described above (relating to U.S. Can, Silgan, and three purchasers who confirmed lost revenue allegations) also rebuts purchasers' assertions.

Second, Weirton was generally unable to produce documents from the period examined that link the price declines it experienced to subject imports. Moreover, as the Court observes, Weirton's internal pricing documents refer to competition with other domestic producers, not foreign producers. The absence of contemporaneous documentation of the role of imports in price negotiations supports respondents' and purchasers' view of the nature of price negotiations.

On the other hand, as noted in our prior views, purchasers failed to provide any documentation regarding their contract negotiations with importers of Japanese product even though they were asked to do so. Thus, for example, there is little contemporaneous documentary support for the assertion of some purchasers that the price deals they negotiate for subject imports are based on the prices they obtained in the negotiations with domestic suppliers. Moreover, purchasers often do not identify the identity of other suppliers with which they are negotiating, making it more difficult for a supplier to pinpoint its competition.

⁶⁷ See, e.g., Hearing tr. at 194-195 (Mr. Yurco), 205-208 (Mr. Seanor, Mr. Rourke, Mr. Owen).

⁶⁸ Affidavit of ***, Petitioner Posthearing Brief at Exhibit 20.

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Finally, we have considered the issue of supply agreements that refer to the expectation that the producer would be competitive with other domestic mills only. We have identified two such agreements on the record, both involving ***.⁶⁹ To the extent such agreements are typical in the industry, it appears that they have historical roots. One of the agreements on the record dates back to the end of 1994. It is not surprising that producers would commit to match only other domestic prices at that time, since it preceded the time during the period we examined in which imports made substantial market share gains (described above) to reduce the primary position of domestic producers in the U.S. market.⁷⁰ We acknowledge that such agreements could be read as supporting the view that the main competition of domestic producers is other domestic producers; however, the mere fact that a formal point of reference for domestic producers is prices of other domestic producers does not mean that the volumes and prices of imported products necessarily have no impact.

In summary, while there is some basis to conclude that a domestic producer's prices are determined largely through competition with other domestic firms, the record provides a solid foundation to conclude that subject import competition impacted to a significant degree. Purchasers' negotiations with domestic and foreign suppliers are to a significant degree concurrent. Subject imports steadily increased in volume and market share in each year of the period examined to reach substantial levels, which we find did not go unnoticed by domestic producers as they negotiated with purchasers. Purchasers had every incentive to seek to use the possibility of additional purchases of foreign product to improve their negotiating position

⁶⁹ Supply Agreement (Tin Mill Products), between *** and ***, dated December 29, 1994 ("The price for all Tin Mill Products sold by *** will be negotiated between the parties on an annual basis. *** is expected to be competitive with *** lowest price, through normal negotiations, for domestically produced Tin Mill Products of at least equal quality and at quantities at least equal to those remaining for sale and purchase hereunder, although +1% from that lowest price is considered to be competitive."); letter from ***, dated May 12, 1999 (purporting to *** copy submitted to the Commission by *** did not show a *** signature). The record does not indicate whether these types of agreements are typical.

⁷⁰ See *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731-TA-860 (Preliminary), USITC Pub. 3264 (Dec. 1999)(domestic market share in 1996 and 1997 was over *** percent).

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with domestic suppliers. Moreover, obtaining lower priced imports was in fact interjected into negotiations by at least some purchasers.

Therefore, for the foregoing reasons and the evidence discussed below, we find that foreign pricing had a significant and direct impact on domestic pricing.

**G. Correlation Between Subject Import Competition and Domestic Prices/
Non-price Reasons for Purchasing Subject Imported Product**

In its original views, the Commission observed that "(t)he evidence shows a clear trend of generally declining prices paid by purchasers over the period of investigation. Even though the list price increased slightly in 1997 and 1998, discount rates increased significantly in both years resulting in a net decline in prices. In 1999, this trend was magnified by the fact that domestic producers were not able to increase the list price while discount rates continued to increase."⁷¹

The Court directs the Commission to address evidence contravening the Commission's finding of a correlation between import pricing and domestic price declines. In particular, the Court indicates that: (1) one large purchaser obtained nearly half of its requirements from Japan, but apparently paid domestic suppliers higher prices than other purchasers; (2) a purchaser that bought no subject imports was able to secure price decreases from its domestic suppliers; and (3) a purchaser increased its prices to domestic suppliers in 1999 despite the introduction of lower-priced bids from Japanese suppliers.⁷² The Court indicates that, in the circumstances of this case, "the Commission must address the individual purchaser data in some manner."⁷³

In our view, the data on developments in price levels, underselling, and purchase volume detailed in the preceding sections go far in establishing the correlation between competition from subject imports and

⁷¹ Commission Views at 14-15.

⁷² Slip Op. at 24.

⁷³ Slip. Op. at 25.

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declining domestic prices. For the largest purchasers – *** – the data indicate that (1) Japanese discount rates were higher in 1999 than the U.S. rates for the same customer; (2) Japanese prices were lower in 1999 than U.S. prices for the same customer; (3) the volumes of bids accepted from Japanese suppliers by every purchaser increased from 1997 to 1999; and (4) the volumes of bids accepted from domestic suppliers by every purchaser except Silgan decreased in 1999 compared to the volumes of bids accepted over prior periods.⁷⁴

In response to the Court's instructions, we have reexamined the information pertaining to particular purchasers.⁷⁵ With respect to the prices paid by *** relative to other purchasers, we note that, because each purchaser has a distinctive product mix, a simple comparison of prices of different purchasers is problematic, since the product specifications used by one firm may not match those used by another firm. The variations between specifications, and therefore price, can be significant.⁷⁶ Thus, comparing the average annual price (essentially the AUVs) between purchasers is likely to be of limited probative value. Therefore, in our view the mere fact that *** paid higher prices than some other purchasers is not significant. It is more relevant to examine the evolution of a company's prices over time, since the product mix for individual companies does not tend to vary.⁷⁷

With respect to whether a purchaser that purchased no subject imports was able to secure price decreases from its domestic suppliers, we have considered carefully the case of ***. Ball's bid range (based on discount rates) for domestic TCCSS was *** percent in 1997, *** percent in 1998, and ***

⁷⁴ Table TCCSS-1 (attached hereto).

⁷⁵ Later, in the Causation section of these Views, we address the issues raised by the Court concerning possible non-price reasons for particular purchasers' sourcing of Japanese product.

⁷⁶ For example, simply comparing the unit values for purchases of chromium-coated steel sheet produced in the United States in 1999 results in a range of prices from *** per short ton to *** per short ton. CR and PR at Table II-2.

⁷⁷ Hearing Tr. at 113-114, 217-18.

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percent in 1999, with weighted average domestic discount rates of *** percent in 1997, *** percent in 1998, and *** percent in 1999.⁷⁸

We find that this trend reflects several influences. First, although *** did not purchase TCCSS from Japan until 1999, it competed in a market in which subject import volume was increasing rapidly, while prices paid by other purchasers – ***’s competitors – were declining. *** could not afford to settle at prices substantially at odds with its competition. Second, *** employed its own import strategy to lower bid prices. The company purchased substantial volumes of nonsubject imports, slowly displacing domestic sales. *** purchases of domestically produced TCCSS *** between 1997 and 1999, from *** short tons to *** short tons. During this same period, its purchases of TCCSS from Japan *** from *** short tons to *** short tons, while its purchases of imported TCCSS from all other countries *** from *** short tons to *** short tons.⁷⁹ During this same time period, the company ***.⁸⁰ Thus, by the end of the period examined, *** was *** and had qualified a Japanese supplier that had offered TCCSS at significant underselling margins (*** percent in 1999).⁸¹ In our view, Ball’s experience indicates that nonsubject imports also impacted domestic prices, but is in no way inconsistent with the conclusion, based on the experience of other purchasers, that subject imports had a significant impact as well.

With respect to whether a purchaser increased its prices to domestic suppliers in 1999 despite the introduction of lower-priced bids from Japanese suppliers, we have carefully considered the case of ***. *** purchases of domestically produced TCCSS *** between 1998 and 1999, from *** short tons to *** short tons. During this same period, its purchases of TCCSS from Japan *** from *** short tons to ***

⁷⁸ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-3 (weighted average discount rates). Weighted average data were reported separately for tin plate and for chromium products.

⁷⁹ Calculated from CR and PR at tables II-1 and II-2.

⁸⁰ *** questionnaire response at 8.

⁸¹ Appendix Table TCCSS-3. *** was for *** products only.

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short tons, while its purchases of imported TCCSS from all other countries ***.⁸² Bids for Japanese TCCSS *** bids for domestic TCCSS by a margin of *** percent in 1999.⁸³ The data, however, do not indicate that ***'s prices paid to domestic producers actually increased in 1999. *** in 1999. For each U.S. producer, these prices were ***.⁸⁴ As described below, in our discussion of quality and delivery issues, we find that price was a significant factor in *** purchase of subject imports, and that as it purchased more Japanese product at lower prices, U.S. prices were suppressed, even though U.S. volumes increased.

In sum, re-examination of the individual purchasers' data identified by the Court does not detract from, and provides some support for, our finding of a correlation between declining import prices and domestic prices.

H. Lost Sales

In its prior views, the Commission observed that "(t)he adverse effect of subject imports is also reflected in, among other things, confirmed lost revenues allegations made by ***. Four purchasers confirmed that *** either had been forced to reduce its price to these purchasers because of lower prices by sellers of Japanese TCCSS or had lost a sale outright."⁸⁵ In addition, the Commission contrasted the statements of certain purchasers (***) that denied lost sales allegations to their actual pattern of purchasing.⁸⁶

⁸² Calculated from CR and PR at tables II-1 and II-2. ***.

⁸³ Appendix Table TCCSS-2.

⁸⁴ CR and PR at Table V-2.

⁸⁵ Commission Views at 17.

⁸⁶ *** alleged that it lost *** short tons of sales to *** in 1999. *** contends that ***'s correspondence did not constitute a bid (although the company purchased a significant volume from *** in 1999). ***'s purchases of TCCSS from Japan increased from *** short tons in 1998 to *** short tons in 1999. 27

*** alleged that it lost *** short tons of sales to *** in 1999. *** contends that any domestic producer that

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The Court questions the accuracy of the confirmed lost sale concerning ***, stating that "the Commission does not indicate that there was in fact a competing import price for that sale."⁸⁷ The Court also directs the Commission to examine whether the total volume of TCCSS implicated in the lost sale allegations is significant.⁸⁸

We have reexamined the lost sales and revenues information to address the issues identified by the Court. *** alleged six instances of lost sales and four instances of lost revenues.⁸⁹ As noted above, although we have not considered lost sales allegations involving purchasers *** to be confirmed, we note that their purchasing histories are not entirely inconsistent with the allegations. We have re-examined the substantiated lost sale to ***, and find it consistent with that company's purchasing history. The allegation for *** involved a *** quote for 1999 delivery. Because *** reported its purchasing data on a ***, the most relevant data provided by *** are actually its *** purchases.⁹⁰ *** purchased *** short tons of Japanese TCCSS for its *** facility alone in fiscal year 2000, including *** short tons of chromium-coated steel. Japanese final bids for most of the TCCSS, including *** of the chromium-coated steel, were less than *** per ton, and were lower than prices offered by five domestic producers (one of which was ***). This is consistent with ***'s response that up to six domestic producers could have claimed the type of loss contained in the lost sale allegation.⁹¹

lost a bid in 1998 did so to another domestic producer. ***'s purchases of TCCSS from domestic sources fell from *** short tons in 1998 to *** short tons in 1999, and its purchases of TCCSS from Japan increased from *** short tons in 1998 to *** short tons in 1999.

*** alleged that it lost *** short tons of sales to *** in 1999. *** contends that it did not purchase chromium-coated steel sheet from Japan in 1998 and 1999. ***'s purchases of tin-plated steel sheet from Japan increased from *** in 1998 to *** short tons in 1999. Commission Views at 17 n. 72, (comparing CR at V-23-25 with CR at II-7-8).

⁸⁷ Slip Op. at 34-35.

⁸⁸ Slip Op. at 34.

⁸⁹ Allegations by *** were too vague to substantiate. See CR at V-24 n.33; PR at V-9 n.33.

⁹⁰ ***

⁹¹ CR at V-25; PR at V-9.

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Therefore, purchasers substantiated one instance of a lost sale (involving *** short tons). In addition, purchasers (***) substantiated three instances of lost revenues (involving *** short tons).⁹² In a market of *** million tons, we find confirmed lost sales/lost revenues of *** percent of the market to be significant.⁹³ We note in this regard that the ability of suppliers to identify particular lost sales events may be rendered more difficult by the fact that the TCCSS market is characterized by annual contracts in which volume is typically awarded to multiple suppliers, rather than by spot sales involving orders placed with single suppliers.⁹⁴

For all of the foregoing reasons, in addition to the reasons stated in our original Views, we find that imports have significantly undersold the domestic like product and have significantly suppressed and depressed U.S. prices.

III. CAUSATION

A. Overview

Section 771(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."⁹⁵ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and

⁹² CR and PR at Tables V-14 and V-15 (volume) and CR at V-24-25 (description); PR at V-9.

⁹³ All confirmed lost sales and revenue allegations date from December 1998 and thus likely pertain to the 1999 contract year. Apparent U.S. consumption of TCCSS in 1999 was 3.9 million short tons.

⁹⁴ Similarly, in the TCCSS market, a supplier may lose volume over the course of a contract as a purchaser shifts some volume to another company. A supplier may not identify this situation as a lost sale because the supplier still technically has a contract for a given amount.

⁹⁵ 19 U.S.C. § 1677(7)(C)(iii); *see also*, SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." *Id.* at²⁹ 885).

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research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."^{96 97}

In our prior views, we found that as the domestic industry suffered declining output, capacity utilization, employment, sales volume, sales prices, and market share, its financial performance deteriorated between 1997 and 1999. The worst results occurred in 1999, when annual subject import volume was at its peak. The domestic industry's operating losses widened throughout the period 1997-99. A slight improvement in the first quarter of 2000 merely reflected a marked decline in unit costs, rather than an increase in unit sales values.

Respondents repeatedly stressed purchasers' testimony and documents that raised delivery and quality issues with domestic suppliers. While some domestic producers' on-time performance was poor during the period examined, the Commission was not persuaded by respondents' inconsistent and contradictory testimony that purchasers turned to Japanese sourcing solely because of non-price reasons. Accordingly, the Commission concluded that the significant volume of subject imports at declining prices, and their frequent underselling of the domestic like product, had adversely affected the domestic TCCSS industry.⁹⁸

As noted in section I, the Court has requested additional analysis regarding the Commission's views on causation. The Court asked the Commission to determine whether two alternate sources of injury -- domestic delivery and quality problems, and nonsubject imports -- "preclude a finding that the subject

⁹⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁷ The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final antidumping duty margins are 95.29 percent and an all others rate of 32.52 percent. Final Determination, 65 Fed. Reg 39364 (June 26, 2000).

⁹⁸ This paragraph summarizes the Commission's views on the impact of subject imports and the issue of causation. Commission Views at 16-19. 30

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imports made a material contribution to the injury" (emphasis added).⁹⁹ We address below each of the issues identified by the Court in turn.

B. Domestic Delivery and Quality Problems

In its views, the Commission acknowledged that there was documentary evidence that showed certain domestic producers' on-time performance was poor during the period examined. The Commission also found that it was not persuaded by respondents' testimony that purchasers turned to Japanese sourcing solely because of non-price reasons. The Commission cites to testimony by a representative of U.S. Can during the preliminary conference claiming that U.S. Can shifted business away from Weirton to other domestic suppliers because of delivery problems.¹⁰⁰ The Commission found that this testimony was contradicted by record evidence indicating that U.S. Can shifted significant volumes of business away from Weirton and other domestic companies toward Japanese companies in 1998 and 1999.¹⁰¹

The Court indicates that during the preliminary conference, U.S. Can never claimed to have shifted business to other domestic firms, but in fact said that it had shifted to Japanese product. Thus, according to the Court, U.S. Can's testimony is not contradictory and the Commission had no basis for discounting it. As a result, the Court directs the Commission to discuss and evaluate record evidence suggesting that Weirton and other domestic producers experienced serious delivery problems during the period examined. The Commission is also directed to address whether Weirton satisfied its performance requirements in its

⁹⁹ Slip Op. at 36.

¹⁰⁰ Commission Views at 18.

¹⁰¹ See Internal *** memorandum from ***, dated February 2000. The Court points out that it was unable to assess the Commission's reasoning fully because in the Staff Report's Table describing U.S. Can's purchasing history, two sets of pricing data were inexplicably given for U.S. Steel, while Weirton is not listed at all. Slip Op. at 38. We regret the confusion that this error may have caused and note that the Staff Report was revised at the Commission's public vote held on August 2, 2000, to reflect that the second time "U.S. Steel" appears in Table V²¹ 3, which is found on page V-11 of the Staff Report, it should be "Weirton." Vote Tr. at 5.

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supply agreement with U.S. Can.¹⁰² In addition, the Court found that the Commission had failed to address the issue of allegedly poor domestic product quality and must do so as part of its remand determination in assessing the importance of non-price factors to purchasing decisions.

We address below the circumstances relating to four large purchasers who claimed to have switched from domestic to subject imported product because of quality or on-time delivery issues regarding domestic producers. We also address the specific issues identified by the Court with regard to U.S. Can. In each case, we conclude that low prices played an important role in the decision of the purchaser to increase its purchases of subject imports.¹⁰³

1. BWAY

BWAY's accepted bids for domestically produced TCCSS *** between 1997 and 1999, falling from *** short tons to *** short tons. During this same period, its accepted bids for TCCSS from Japan *** from *** short tons to *** short tons, while its accepted bids for imported TCCSS from all other countries *** from *** short tons to *** short tons.¹⁰⁴ The company's bid range (based on discount rates) for domestic TCCSS was *** percent in 1997, *** percent in 1998, and *** percent in 1999, with weighted average domestic discount rates of *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹⁰⁵ During this same period, the company's discount rate for TCCSS from Japan was *** percent in 1999 (the

¹⁰² Slip Op. at 40.

¹⁰³ We have discussed *** above in the section on Lost Sales, where we concluded that a substantial lost sale was confirmed by ***. In other words, *** confirmed that it purchased subject imports over domestic product for reasons of price. We have discussed the case of *** in the section regarding a correlation between subject imports and domestic prices.

¹⁰⁴ Appendix Table TCCSS-1 (domestic and Japanese volumes) and Appendix Table TCCSS-4 (nonsubject import volume). This company only reported actual purchase volumes (as opposed to bid volumes) for a single year. See CR and PR at tables II-1 and II-2.

¹⁰⁵ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-3 (weighted average discount rates).

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***), with a similar weighted average Japanese bid.¹⁰⁶ Thus, bids for Japanese TCCSS *** bids for domestic TCCSS by a margin of *** percent in 1999.¹⁰⁷

BWAY identified several reasons for its pattern of purchases during the period examined. Patrick Rourke, Vice President of Purchasing and Logistics, testified that "(t)he prices we have been able to obtain for our key raw material have been driven by our growth and our membership in the purchasing alliance. Our decision to purchase foreign tin plate was made strategically to broaden our portfolio of suppliers due to the quality and delivery problems we had experienced, and to supply our geographically diverse operations."¹⁰⁸ BWAY specifically singled out Weirton's on-time performance as a contributing factor for its purchasing decisions.¹⁰⁹

BWAY's characterizations of its purchasing actions are difficult to reconcile with the information on the record. Despite its reported concerns regarding Weirton's delivery time, BWAY ***.¹¹⁰ Despite its testimonial emphasis on quality concerns, the company's internal decision-making ***.¹¹¹ *** The company reported that it ***¹¹² BWAY ***.¹¹³ In short, its substantial increase in purchases of low-priced TCCSS from Japan appears to have been driven in large part by price considerations.

2. Crown

¹⁰⁶ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-3 (weighted average discount rates).

¹⁰⁷ Appendix Table TCCSS-3.

¹⁰⁸ Hearing Tr. at 192 (Rourke).

¹⁰⁹ According to Mr. Rourke, "(j)ust to cite one example, Weirton's on-time delivery performance was ranked 10 out of 11 suppliers from January through August of 1999. Due to these problems and our growing needs to obtain product throughout the country, BWAY made the strategic decision to diversify its sourcing including additional sourcing from abroad." Hearing Tr. at 190 (Rourke).

¹¹⁰ CR and PR at table V-1.

¹¹¹ *** Respondents' Posthearing Br., July 7, 2000, Volume IV, Customer C.

¹¹² BWAY questionnaire supplement of 5-16-00, page 7 of 17. *** was one of the added suppliers.

¹¹³ BWAY questionnaire supplement of 5-16-00, page 7 of 17.

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Crown's purchases of domestically produced TCCSS *** between 1998 and 1999, from *** short tons to *** short tons. During this same period, its purchases of TCCSS from Japan *** from *** short tons to *** short tons, while its purchases of imported TCCSS from all other countries ***.¹¹⁴ The company's price range (based on AUVs) for domestic TCCSS was *** in 1998 and *** in 1999, with weighted average prices of *** in 1998 and *** percent in 1999.¹¹⁵ During this same period, the company's price for TCCSS from Japan was *** in 1999 (the ***), with a similar weighted average Japanese price.¹¹⁶ Thus, bids for Japanese TCCSS *** bids for domestic TCCSS by a margin of *** percent in 1999.¹¹⁷

Crown identified several reasons for its pattern of purchases during the period examined. According to its questionnaire response, the company ***. Crown reported adding *** but ***.¹¹⁸

Crown's purchasing history is incomplete, but even the data provided by the company suggest that Crown ***. In addition, it did so despite qualifying *** for ***, and despite sourcing TCCSS from *** of the domestic mills in 1999.¹¹⁹ Moreover, had Crown's decision to purchase *** short tons of TCCSS from Japan been solely based on quality issues, we would have expected to see higher, or at least comparable prices for the TCCSS from Japan. Instead, the margin of underselling for Crown's purchases of TCCSS from Japan are ***. This suggests that, notwithstanding important quality considerations, price competition between TCCSS from Japan and the United States influenced Crown's purchasing decisions to a significant degree.

¹¹⁴ Calculated from CR and PR at tables II-1 and II-2. ***.

¹¹⁵ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-2 (weighted average prices).

¹¹⁶ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-2 (weighted average prices).

¹¹⁷ Appendix Table TCCSS-2.

¹¹⁸ Questionnaire response of Crown at 5 and 8.

¹¹⁹ Questionnaire response of Crown at 8; CR and PR at table V-2.

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3. Silgan

Silgan's purchases of domestically produced TCCSS *** between 1997 and 1999, *** from *** short tons to *** short tons. During this same period, its purchases of TCCSS from Japan *** from *** short tons to *** short tons, while its purchases of imported TCCSS from all other countries *** from *** short tons to *** short tons.¹²⁰ The company's bid range (based on discount rates) for domestic TCCSS was *** percent in 1997, *** percent in 1998, and *** percent in 1999, with weighted average domestic discount rates of *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹²¹ During this same period, the company's bid range for TCCSS from Japan was *** percent in 1997, *** percent in 1998, and *** percent in 1999, with weighted average Japanese discount rates of *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹²² Thus, bids for Japanese TCCSS *** bids for domestic TCCSS by margins of *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹²³

Silgan identified several reasons for its pattern of purchases during the period examined. According to Bob Owen, Director of Procurement, “(t)he small amount of tin mill products we import is primarily for specialized applications and is either not available from a U.S. producer or is of a quality level we cannot obtain from U.S. producers. We import from Japan, Europe and Canada.”¹²⁴ Indeed, Silgan contended that the increase in its purchases of TCCSS from Japan resulted from its acquisition of Campbell's Soup (which used “small quantities” of TCCSS produced by Nippon Steel because of its “superior quality”) and from certain “unique specifications” not available from U.S. domestic producers

¹²⁰ Calculated from CR and PR at tables II-1 and II-2. For purposes of analyzing volume, we have focused on the company's reported aggregate purchases, which appear to be substantially more complete than its bid data.

¹²¹ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-3 (weighted average discount rates).

¹²² Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-3 (weighted average discount rates).

¹²³ Appendix Table TCCSS-3.

¹²⁴ Hearing Tr. at 200 (Owen).

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(identifying 42-inch wide coils of tin-free steel).¹²⁵ Although Silgan terminated Weirton as a supplier in 1998 for failing to meet Silgan's quality and service requirements, Silgan asserted that Weirton's tonnage "(w)as not replaced by Japanese or other imports. It was shifted to other U.S. domestic suppliers."¹²⁶ Finally, Silgan observed that if it were to purchase TCCSS on the basis of price alone, it would source from such countries as Brazil, Korea, or Taiwan.¹²⁷

Despite the emphasis Silgan placed on non-price factors, the company's questionnaire response indicates that it purchased *** TCCSS specifications, *** of which it purchased from U.S. producers.¹²⁸ This suggests that while certain specifications may be unique to Japanese suppliers, *** are not unique and are, in fact, also purchased from U.S. producers.¹²⁹ Instead, much of the growth in Silgan's purchases of TCCSS from Japan appears to stem from its 1998 purchase of Campbell's Soup; ***. Moreover, while Silgan did *** and ***,¹³⁰ as discussed above, the company's purchases of increasingly low-priced Japanese TCCSS *** between 1997 and 1999. Finally, we do not find that Silgan's contention that it does not buy from Brazil, Korea, or Taiwan indicates that price competition is unimportant. Rather, it confirms Silgan's own ranking of purchasing priorities, which placed ***.¹³¹

4. U.S. Can

¹²⁵ Hearing Tr. at 201-202 (Owen).

¹²⁶ Hearing Tr. at 200-201 (Owen).

¹²⁷ Hearing Tr. at 204 (Owen).

¹²⁸ Silgan questionnaire response at 11. Silgan purchases *** of its specifications from Japanese suppliers.

¹²⁹ Silgan questionnaire response at 11. Indeed, Silgan notes that ***.

¹³⁰ See CR and PR at Table V-9.

¹³¹ Silgan questionnaire response at 8. As noted in our discussion of nonsubject imports, TCCSS from the three suppliers identified by Silgan is widely viewed as inferior in quality to TCCSS from Japan and comparable³⁶ to-inferior to the quality of TCCSS produced in the United States.

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U.S. Can's purchases of domestically produced TCCSS *** between 1997 and 1999, from *** short tons to *** short tons. During this same period, its purchases of TCCSS from Japan *** from *** short tons to *** short tons, while its purchases of imported TCCSS from all other countries *** from *** short tons to *** short tons.¹³² The company's range of discount rates for domestic TCCSS was *** percent in 1997, *** percent in 1998, and *** percent in 1999, with weighted average domestic discount rates of *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹³³ During this same period, the company's bids for TCCSS from Japan were *** percent in 1997, *** percent in 1998, and *** percent in 1999, with weighted average Japanese bids of *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹³⁴ Thus, bids for Japanese TCCSS *** bids for domestic TCCSS by margins of *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹³⁵

U.S. Can identified several reasons for its pattern of purchases during the period examined. According to Thomas J. Yurco (Vice President, Materials Management and Logistics), the company sought to reduce its dependency on "purely domestic-thinking suppliers" to make room for "globally oriented suppliers."¹³⁶ In addition, Mr. Yurco contended that, starting in the second half of 1998, Weirton's reliability "began to slide," a problem that worsened in 1999.¹³⁷ Indeed, Mr. Yurco cited delivery time and quality as the two reasons why U.S. Can was "forced" to reduce its volume from Weirton in 1999 and thereby fail to honor its volume commitment with Weirton in 1999.¹³⁸ Mr. Yurco observed, however, that

¹³² Calculated from CR and PR at tables II-1 and II-2.

¹³³ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-3 (weighted average discount rates).

¹³⁴ Appendix Table TCCSS-1 (bid ranges) and Appendix Table TCCSS-3 (weighted average discount rates).

¹³⁵ Appendix Table TCCSS-3.

¹³⁶ Hearing Transcript at 196, (Yurco).

¹³⁷ Hearing Transcript at 197 (Yurco). Moreover, mill outages at Bethlehem and a fire at Wheeling-Pitt compromised on-time delivery in 1999. *Id.*

¹³⁸ Hearing Tr. at 198-199 (Yurco).

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during the months when the company reduced the tonnage it received from Weirton, it also reduced the tonnage it received from Japan, and thus the company "did not favor the Japanese mills and take tons away from Weirton Steel."¹³⁹

We first address the issue of Mr. Yurco's hearing statements identified by the Court. The Court is correct that Mr. Yurco did not testify at the conference that U.S. Can had switched from Weirton to other domestic suppliers only, and he did indicate that U.S. Can increased its purchases of Japanese TCCSS. Mr. Yurco's representations to the Commission are not entirely unequivocal, however. ***¹⁴⁰ In addition, Mr. Yurco's meaning was unclear when he stated at the hearing that during the months in 1999 when the company reduced the tonnage it received from Weirton, it also reduced the tonnage it received from Japan, and thus the company "did not favor the Japanese mills and take tons away from Weirton Steel." In fact, the record indicates that in 1999 ***¹⁴¹

On the issue of on-time delivery, U.S. Can's questionnaire response indicates that Weirton's on-time delivery rate *** According to U.S. Can, the levels in mid-1998 and in 1999 ***¹⁴² Weirton's own figures show ***.¹⁴³

U.S. Can also claimed that deteriorating Weirton quality caused it to reduce its purchases from Weirton. Among the voluminous U.S. Can documents that it submitted to the Commission in Volume IV of Respondents' posthearing brief, ***¹⁴⁴*** Moreover, Weirton submitted a document provided to it by

¹³⁹ Hearing Tr. at 199, (Mr. Yurco).

¹⁴⁰ CR at V-24.

¹⁴¹ CR at Table V-3.

¹⁴² U.S. Can Questionnaire, Attachment F-1.

¹⁴³ Petitioners Posthearing Brief at Exhibit 8.

¹⁴⁴ Memo from Joe Grilli to D. McFadden, regarding Gillette Tinplate Purchases, dated 10/6/99.

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***¹⁴⁵ Accordingly, we do not find that the record supports the claim that poor Weirton quality was the basis for U.S. Can's shift to subject imports.¹⁴⁶

In addition, the actual purchasing pattern of U.S. Can raises questions about its asserted reasons for shifting to subject imports in 1999. For example, U.S. Can also claims that the on-time performance of Wheeling-Pitt and Bethlehem deteriorated, and yet ***¹⁴⁷ U.S. Can identified no quality or delivery issues with respect to domestic producer ***, and yet U.S. Can *** 1999 volume by nearly ***. ***

More generally, Japanese underbidding to U.S. Can ***.¹⁴⁸ U.S. Can indicated that it looked for a *** percent spread between domestic and imported product in order to purchase the latter.¹⁴⁹ In our view, U.S. Can's decision to buy *** of Japanese TCCSS is more consistent with the desire to take advantage of lower prices than a situation in which it was "forced"¹⁵⁰ to shift from a particular domestic source because of a performance defect.¹⁵¹

C. Non-Subject Imports

¹⁴⁵ Petitioners Posthearing Brief at Exhibit 8 (showing "unusable" rate falling from 4.88 percent in 1994 to 2.4 percent in 1999).

¹⁴⁶ With respect to the issue of shifting to more globally oriented suppliers, we observed in our prior views that Weirton exports to five countries in Europe, including Germany, the United Kingdom and Italy, where U.S. Can facilities are located, and Weirton's exports to Europe in 1999 exceeded the combined tonnage of all Japanese producers. *See* Commission Views at 26, note 98, *citing* Petitioners Posthearing Br. At 36. Moreover, among the U.S. Can documents that it submitted to the Commission in Volume IV of Respondents' posthearing brief, there is little or no reference to a company strategy to seek more globally-oriented suppliers.

¹⁴⁷ CR at Table V-3.

¹⁴⁸ Table TCCSS-3.

¹⁴⁹ See discussion above of the significance of underselling.

¹⁵⁰ Hearing Transcript at 199 (Mr. Yurco).

¹⁵¹ As described above, Mr. Gill of Weirton recounted a meeting in early 1999 at which Mr. Yurco indicated²⁹ that U.S. Can would be buying more from Japan because of lower prices.

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In our prior views, we found that non-subject imports were a significant factor in the domestic market during the period of investigation.¹⁵² The Commission nevertheless determined that "subject imports had a significant adverse effect on domestic prices distinct from any adverse price effects of non-subject imports."¹⁵³ In arriving at this conclusion, the Commission noted that "by 1999, the volume of imports from Japan alone nearly equaled the volume of imports from all other sources combined" and that high quality imports from Japan frequently undersold high quality non-subject imports and even undersold lesser quality non-subject imports as well.¹⁵⁴

The Court instructs the Commission on remand to revisit the issue of whether non-subject imports were responsible for the material injury suffered by the domestic industry. In the view of the Court, the Commission did not adequately explain its consideration of plaintiffs' argument that the principal competition was between non-subject imports that were sold exclusively into the Eastern United States and the domestic like product, the sales of which were also concentrated in the same geographic market. The Court also found fault with the Commission's analysis of subject import pricing vis-a-vis non-subject import price levels.¹⁵⁵

Although the Court agreed that imports from Japan accounted for some of the decline in market share held by the domestic industry and that the Commission's analysis was sufficient for the purposes of its finding that subject import volume is significant, the "Commission must still address whether non-subject imports constitute a predominant source of injury in light of the conditions of competition."¹⁵⁶

¹⁵² Commission Views at 22.

¹⁵³ Commission Views at 23.

¹⁵⁴ Commission Views at 22 comparing CR and PR Tables V-1 through V-13, with Table II-6.

¹⁵⁵ Slip Op. at 43-46.

¹⁵⁶ Slip Op. at 44.

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With regard to the pricing of non-subject imports, the Court notes that: (1) the Commission never indicates what, if any, quality differences exist in TCCSS products from different countries; (2) the Commission failed to specify whether it grouped non-subject imports for purposes of its analysis of price according to quality factors or the relative volumes shipped; and (3) the Commission failed to explain what consideration was given to the statements reflected in the staff report and purchaser testimony indicating that the domestic product, subject imports, and non-subject imports were largely interchangeable.¹⁵⁷ The Court also directs the Commission to address testimonial evidence indicating that if price were a significant factor in purchasing decisions, purchasers would turn to cheaper TCCSS "from Brazil, Korea, and Taiwan."¹⁵⁸ Further, according to the Court, dividing non-subject countries into ones that charge high prices and those that charge low prices, without a rationale for doing so, will likely cause the Commission to find a higher incidence of underselling of the former group than of the latter. Thus, the Court directs the Commission to explain the country grouping that was adopted for purposes of its price analysis and to address the issue of non-subject underselling.¹⁵⁹ Finally, the Court directs the Commission to construct, if possible, a table comparing Japanese prices directly to non-subject prices, in either aggregated or disaggregated form.

We incorporate by reference our purchaser by purchaser analysis discussed above in Section ___ and on the basis of that discussion find that there is material injury by reason of subject imports from Japan notwithstanding any injurious effects caused by nonsubject imports. We note that the discussion that follows regarding the pricing of nonsubject imports is of somewhat limited significance given the less extensive coverage relative to subject import bid data. Nevertheless, we find that this limited pricing information reinforces our determination of material injury by reason of subject imports.

¹⁵⁷ Slip Op. at 45-46.

¹⁵⁸ Slip Op. at 46.

¹⁵⁹ Slip Op. at 47.

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Upon re-examination of the record, we observe the following. First, with respect to whether and to what extent nonsubject imports were responsible for the material injury suffered by the domestic industry, we reiterate that while nonsubject imports accounted for a somewhat greater proportion of total U.S. market share than subject imports during most of the period of investigation,¹⁶⁰ subject imports' total market share increased at a substantially greater rate than that of nonsubject imports.¹⁶¹ Also, Japan was the largest single country import suppliers throughout the period reviewed.

We further find that, because nonsubject import competition was almost entirely concentrated in the eastern United States, and because the financial performance of U.S. mills primarily competing on the West Coast mirrored the poor performance of domestic mills competing on the East Coast, the rapid increase in subject import volume (entering both regions of the United States at comparable levels), combined with aggressive subject import pricing, made a material contribution to the injury experienced by the U.S. industry independent of any adverse effects nonsubject imports may have had. Approximately 25 percent of domestic shipments are sold on the West Coast of the United States and the import competition there is almost entirely attributable to imports from Japan. Nonsubject import competition may have contributed to the injury experienced by the domestic industry, but nonsubject imports only competed against 75 percent of domestic shipments. Imports from Japan competed against U.S. shipments nationwide. In support of this conclusion we note that the U.S. mill selling *** percent of its shipments on the West Coast experienced operating income *** million in 1997 to *** million in 1999 (a drop of ***).¹⁶² Its net sales *** in terms of value and volume between 1997 and 1999, and its gross profits *** million in

¹⁶⁰ Nonsubject imports' market share increased from *** percent in 1997 to *** percent by 1999. Subject imports' market share increased from *** percent in 1997 to *** percent by 1999. In interim 2000 nonsubject import market share was *** percent and subject import market share was ***percent. CR and PR at C-1.

¹⁶¹ CR and PR at Table IV-4.

¹⁶² Commission Views at 14 fn 63 *citing* CR and PR Table VI-3.

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1997 to *** million in 1999.¹⁶³ In addition, *** and the U.S. industry as a whole experienced declining shipments to the West Coast during the period of investigation just as they did throughout the country.¹⁶⁴ Therefore, because subject import volume increased in comparable amounts on the West and East Coasts and because Japanese mills pursued aggressive price competition against the *entire* U.S. industry, while nonsubject imports competed on the East Coast, we find the presence of nonsubject imports does not negate a finding of material injury by the subject imports.

Second, with respect to the pricing of nonsubject imports, in our prior views we examined the prices of TCCSS from a number of source countries. The Commission first compared final bids for TCCSS from Japan with final bids for TCCSS from ***.¹⁶⁵ Importantly, a majority of reporting purchasers considered the quality of TCCSS from each of the latter three countries to be superior to the quality of domestically produced TCCSS, just as a majority of reporting purchasers considered the quality of TCCSS from Japan to be superior to the quality of domestically produced TCCSS.¹⁶⁶ These comparisons suggest that TCCSS from Japan competed with TCCSS from these other high quality suppliers relatively infrequently (7 instances), and that suppliers of TCCSS from Canada, Germany, and the Netherlands usually submitted higher bids than the Japanese (5 of 7 instances).¹⁶⁷ TCCSS from Japan competed more frequently with other foreign suppliers (14 instances), which unlike Japanese suppliers were

¹⁶³ CR and PR Table VI-3.

¹⁶⁴ Commission Views at 14, n. 62, *citing* Investigations Memorandum INV-X-144, Table IV-2.

¹⁶⁵ *See* staff bid data compilation (revised on July 31, 2000).

¹⁶⁶ CR and PR Table II-6 (4/4, 2/3, and 3/3 purchasers consider *** quality, respectively, to be superior to U.S. quality) and Table II-5 (7/8 purchasers consider Japanese quality to be superior to U.S. quality). We believe that the descriptions of quality from all reporting purchasers, rather than any individual purchaser's characterization, provides the most comprehensive overview of this issue.

¹⁶⁷ *See* staff bid data compilation (revised on July 31, 2000).

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not consistently rated superior to U.S. suppliers.¹⁶⁸ In 1997 and 1998, these nonsubject suppliers consistently submitted bids below Japanese suppliers (7 of 8 instances); in 1999-2000, however, these suppliers were only lower than Japanese suppliers in only 3 of 6 instances, while they were within the range of Japanese bids in 2 instances and higher in 1 instance.¹⁶⁹

In light of the Court's instruction on the issue of nonsubject import pricing, we have broadened our analysis to encompass all nonsubject imports on a combined basis. Tables TCCSS-4, TCCSS-5, and TCCSS-6, compiled for this remand, are attached to this opinion. First, we re-evaluated our comparison of final bids submitted by Japanese suppliers, on the one hand, and nonsubject import suppliers, on the other hand. In 1997-98, final bids submitted by Japanese suppliers were higher than final bids from nonsubject import suppliers in 8 of 12 possible instances, consistent with the perceived high quality of TCCSS from Japan.¹⁷⁰ However, in 1999-2000 final bids submitted by Japanese suppliers were higher than final bids from nonsubject import suppliers in only 4 of 9 observations, a marked reversal in terms of pricing in the marketplace.¹⁷¹ The following tabulation presents these bid comparisons in aggregated form.

¹⁶⁸ CR and PR Table II-6 (3/5, 4/4, 2/2, 1/1, 1/1, and 3/3 purchasers consider *** quality, respectively, to be comparable or inferior to U.S. quality). Many of these suppliers are relatively new. See PR at II-10n.19

¹⁶⁹ See staff bid data compilation (revised on July 31, 2000).

¹⁷⁰ Reporting purchasers were unanimous in describing the quality of TCCSS from Japan as superior to that of TCCSS from ***, and were evenly divided as to whether the quality of TCCSS from Japan was superior or comparable to TCCSS from **. CR and PR Table II-7.

¹⁷¹ See staff bid data compilation (revised on July 31, 2000).

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Bid Comparisons: Number of Bids by Nonsubject Imports, 1997-2000			
Year	Below all Japanese bids	Within the range of all Japanese bids	Above all Japanese bids
Nonsubject Imports			
1997	***	***	***
1998	***	***	***
1999	***	***	***
2000	***	***	***
Total	***	***	***
Source: Compiled from staff bid data compilation (revised July 31, 2000).			

Second, we compared actual weighted average prices and discount rates for TCCSS from Japan and TCCSS from nonsubject countries, rather than unweighted individual bids or bid ranges. The results were similar to those described above. In 1997-98, the weighted average prices for TCCSS from Japan were higher and the discount rates were lower than the weighted average prices and discount rates for TCCSS from nonsubject countries in 5 of 8 comparisons, with margins ranging from 2.4 to 10.7 percent. In 1999, however, the weighted average prices for TCCSS from Japan were higher and the discount rates were lower than the weighted average prices and discount rates for TCCSS from nonsubject countries in only 2 of 4 comparisons, with margins of 2.2 percent or less.¹⁷² In 2000, the discount rates for TCCSS from Japan and from a nonsubject country were identical in the one available comparison.¹⁷³ Again, this represents a marked reversal in terms of pricing in the marketplace.

In summary, our data on non-subject prices show the following: (1) based on the number of bids, or based on weighted average pricing, non-subject imports as a whole were most often priced lower than

¹⁷² These data appear in Tables TCCSS-5 and TCCSS-6, attached as appendices to our views. These data differ slightly from the bid comparisons tabulated earlier due to the consolidation and weighting of all final bids from nonsubject sources into a single annual comparison for each purchaser.

¹⁷³ CR and PR at Table V-3. These data, however, do not reflect final volumes, and so are not included in the appendices.⁴⁵

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imports from Japan in 1997-98; by 1999-2000, however, non-subject imports only undersold Japanese product about half the time; (2) the same pattern holds even when comparing Japanese product with non-subject imports from relatively lower-quality source countries (as defined above); and (3) non-subject imports from source countries that purchasers rated higher in quality than domestic product generally oversold Japanese product throughout the period examined, even though Japanese product was also rated as higher in quality than domestic product. Thus, as Japanese volumes rose more quickly than non-subject volumes over the period examined, there was a shift in the price relationship between non-subject and Japanese TCCSS, as Japanese prices fell relative to prices of non-subject imports.

We described above the impact that low-priced non-subject imports had on the domestic TCCSS market, especially with respect to particular purchasers that significantly increased their purchases of non-subject product. The nonsubject pricing data described above support a conclusion that, whatever effect non-subject imports had, subject imports from Japan made a material contribution to the injury experienced by the domestic industry. In summary, we do not find that the role of nonsubject imports in the U.S. market precludes a finding that the subject imports made a material contribution to the injury experienced by the domestic industry nor that nonsubject imports constitute a predominant source of injury.¹⁷⁴

CONCLUSION

For the reasons stated above, we determine that an industry in the United States is materially injured by reason of imports of tin- and chromium-coated steel sheet from Japan that are sold in the United States at less than fair value.

¹⁷⁴ We note that even were we to find that nonsubject imports were a predominant source of injury, this would not necessarily preclude a finding that subject imports made a material contribution to the injury in the statutory sense of "harm which is not inconsequential, immaterial or unimportant." *Gerald Metals v. United States*, 132 F.3d.716, 722 (Fed. Cir. 1997); *United States Steel Group v. United States*, 873 F. Supp. 673, 695 (Ct. Int'l Trade 1994).

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Table TCCSS-1

Firm-specific U.S. and Japanese final bid and volume data for Inv. No. 731-TA-860 (Final), Tin- and Chromium-coated Steel Sheet from Japan, 1997-2000

Business Proprietary Information Deleted

Table TCCSS-2
Weighted average U.S. and Japanese prices and margins of underselling, 1997-2000

Business Proprietary Information Deleted

**Table TCCSS-3
Weighted average U.S. and Japanese discount rates and margins of underselling, 1997-2000**

**Table TCCSS-4
Firm-specific non-subject and Japanese final bid and volume data for Inv. No. 731-TA-860 (Final), Tin- and Chromium-coated Steel Sheet from Japan, 1997-2000**

Business Proprietary Information Deleted

Table TCCSS-5
Weighted average Non-subject and Japanese prices and margins of underselling, 1997-2000

Table TCCSS-6
Weighted average Non-subject and Japanese discount rates and margins of underselling, 1997-2000