

# **CUT-TO-LENGTH CARBON STEEL PLATE FROM THE FEDERAL REPUBLIC OF GERMANY**

**Determination of the Commission in  
Investigation No. 731-TA-147  
(Preliminary-Remand) Under  
the Tariff Act of 1930**

**USITC PUBLICATION 1550**

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**UNITED STATES INTERNATIONAL TRADE COMMISSION**

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## PREFACE

This investigation (No. 731-TA-147 (Preliminary--Remand) was conducted by the Commission in response to a remand order of the Court of International Trade (Gilmore Steel Corp. v. United States, Court No. 84-2-00228, Slip Op. 84-85, Apr. 23, 1984). The Commission's determination is based on the record developed in the original investigation (No. 731-TA-147 (Preliminary)) and citations in the enclosed "Views of the Commission" are to the Commission's report in that case (Certain Flat-Rolled Steel Products from Belgium and the Federal Republic of Germany: Determination of the Commission in Investigations Nos. 731-TA-146 and 147 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations, USITC Publication 1451, November 1983).



UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

Investigation No. 731-TA-147 (Preliminary—Remand)

CUT-TO-LENGTH CARBON STEEL PLATE FROM  
THE FEDERAL REPUBLIC OF GERMANY

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and a remand order of the Court of International Trade (Gilmore Steel Corp. v. United States, Court No. 84-2-00228, Slip Op. 84-85, Apr. 23, 1984), that there is a reasonable indication that a domestic industry is materially injured 2/ by reason of imports from the Federal Republic of Germany of carbon steel plate other than in coils, provided for in item 607.66 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV). We have made our determination on the basis of an analysis of a regional industry consisting of producers of carbon steel plate located in California, Oregon, and Washington.

Background

On September 29, 1983, a petition was filed with the Commission and the Department of Commerce by counsel representing Gilmore Steel Corp. (Gilmore) alleging that imports of certain flat-rolled carbon steel products 3/ from Belgium and the Federal Republic of Germany were being, or were likely to be, sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673). The petition was filed on behalf of a national industry

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

2/ Chairwoman Stern determines that there is a reasonable indication that a domestic industry is materially injured or threatened with material injury.

3/ Both cut-to-length and coiled carbon steel plate were included within the scope of the petition.

with respect to imports from Belgium and on behalf of both a national and a regional industry (including producers located in the States of California, Oregon, and Washington) with respect to imports from the Federal Republic of Germany. Accordingly, effective September 29, 1983, the Commission instituted preliminary antidumping investigations under section 733(a) of the Act. Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on October 14, 1983 (48 F.R. 46865). The conference was held in Washington, D.C., on October 26, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On November 14, 1983, the Commission advised the Secretary of Commerce that it had made affirmative determinations in these investigations on the basis of finding a reasonable indication of material injury to a national industry (see USITC Publication 1451, November 1983). <sup>1/</sup> Subsequently, Commerce rescinded its notice of initiation of these investigations on the grounds that Gilmore had not properly filed on behalf of a national industry (49 F.R. 3503, Jan. 27, 1984). Gilmore contested this action by filing suit in the Court of International Trade. The Court upheld Commerce's rescission insofar as the petition purported to be on behalf of a national industry, but reversed its action insofar as the petition was on behalf of an alleged regional industry and remanded the case to Commerce. Accordingly, Commerce reinitiated an antidumping investigation on carbon steel plate from the Federal Republic of Germany (49 F.R. 21556, May 22, 1984), noting that the

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<sup>1/</sup> Then Chairman Eckes indicated in additional views that he also found a reasonable indication of material injury to a regional industry.

"ITC will determine whether there is a reasonable indication that imports of carbon steel plate from the FRG are materially injuring, or are likely to materially injure, a regional United States industry." 1/

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1/ The reinitiated investigation covers only cut-to-length carbon steel plate. In its role as the administering authority for antidumping investigations, Commerce excluded coiled plate from the scope of the investigation on the basis that Gilmore does not produce that product.



## VIEWS OF THE COMMISSION

On the basis of the record in investigation No. 731-TA-147 (Preliminary), we determine that there is a reasonable indication of material injury to an industry in the United States by reason of imports of carbon steel plate, cut-to-length, from the Federal Republic of Germany which are allegedly sold at less than fair value. We have made our determination on the basis of an analysis of a regional industry consisting of producers of carbon steel plate located in California, Oregon, and Washington. 1/

Our determination follows a remand from the Court of International Trade on April 23, 1984, to the United States Department of Commerce, International Trade Administration ("ITA"). The ITA subsequently reinitiated this antidumping investigation. In our original determination and views, we made an affirmative determination of material injury to a national industry. 2/ For this remand, the Commission must determine whether a reasonable indication of material injury exists with respect to a regional industry. Our determination upon remand is based upon the record in the original investigation, not upon a de novo compilation of facts and statistics. In any final investigation, our staff will collect additional information by questionnaires and field work and we will hold a public hearing at which time

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1/ Commissioner Eckes cites as the rationale for his determination in this remand investigation his additional views in the earlier investigation. See "Additional Views of Chairman Eckes Concerning Reasonable Indication of Material Injury to a Regional Industry," Certain Flat-Rolled Carbon Steel Products from Belgium and the Federal Republic of Germany, inv. No. 731-TA-147 (Preliminary), USITC Pub 1451 (1983) at 17-20.

2/ Certain Flat-Rolled Steel Products from Belgium and the Federal Republic of Germany, inv. nos. 731-TA-146 and 147 (Preliminary), USITC Pub. 1455 (1983).

petitioner, respondents, and any interested parties may present testimony and arguments.

The domestic industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" in an antidumping duty investigation as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 3/ "Like product," in turn, is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to [the] investigation." 4/

In the original preliminary determination we found that there were two like products: (1) hot-rolled carbon steel plate, cut-to-length and (2) hot-rolled carbon steel plate in coils. That finding was consistent with Commission practice up to that time. 5/ We noted that although there was at that time "no reason to deviate from the precedent on this issue," it was our intention to explore the question further in any final investigation, taking into consideration the findings and conclusions made in the final investigation of carbon steel products from Brazil. The final investigation of the Brazil case has since been completed. 6/ In our determination of that case, we resolved the question of like product, reaching the conclusion that cut-to-length plate and plate in coil should be considered one like

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3/ 19 U.S.C. § 1677(4)(A) (1980).

4/ 19 U.S.C. § 1677(10) (1980).

5/ See, e.g., Certain Flat-Rolled Carbon Steel Products from Brazil, inv. No. 731-TA-123 (Preliminary), USITC Pub. 1361 (1983).

6/ Certain Flat-Rolled Carbon Steel Products from Brazil, inv. No. 731-TA-123 (Final), USITC Pub. 1499 (1984).

product--carbon steel plate. We reached this conclusion based upon our finding that both cut-to-length and coil have "virtually identical end uses" and with minor exceptions, once cut and leveled, plate in coils is interchangeable with plate that is cut-to-length. We have followed the one-industry approach in investigations subsequent to the Brazil case. <sup>7/</sup>

We are of the view that to be consistent, we must follow the one-like product approach in this preliminary investigation as well. The notice of investigation issued by the Commerce Department covers cut-to-length plate only, since Gilmore does not produce plate in coils. Nonetheless, though a like product definition is determined by reference to the subject imports, it need not be precisely limited to the subject imports where, by characteristics or uses, another item is also interchangeable with the article subject to investigation. Accordingly, we find the like product to be carbon steel plate.

Our original determination focused on a national industry. For purposes of this remand, however, we must focus on a regional industry. Section 771(4)(A) defines a regional industry as follows:

(C) Regional industries--In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

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<sup>7/</sup> See Certain Carbon Steel Products from Argentina, Australia, Finland, South Africa, and Spain, inv. Nos. 701-TA-212 (Preliminary) and 737-TA-169-182 (Preliminary), USITC Pub. 1510 (1984).

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

19 U.S.C. § 1677(4)(c) (1980).

Two producers of carbon steel plate have facilities in the Western region: (1) Gilmore's Oregon Steel Mills Division, which is located in Portland, Oregon, and (2) Kaiser Steel Corporation ("Kaiser"), which has facilities at Fontana, California. 8/ The staff report indicates that both Kaiser and Gilmore sold all but a small percentage of their production in California, Oregon, and Washington. 9/ Therefore, the first criterion for a regional industry is satisfied.

On the basis of the information in this record, the second criterion--that the market for the like product is not supplied to any substantial degree by producers outside the region--is also satisfied. 10/ The overriding concern of regional industry analysis is to determine whether a market is isolated and insular. We note that major geographical barriers hinder the complete integration of the Western area of the United States into a national market. Transportation costs for shipping plate from other areas

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8/ Kaiser manufactured plate in coils and plate to cut-to-length during the period under investigation. As noted above, Gilmore only manufactured plate cut-to-length.

9/ Report of the Commission (Report) at A-36.

10/ Id.

into the Western region discourage outside supply in ordinary circumstances. In the event of a final investigation, we intend to examine the outside supply question very carefully. However, at this time and given the particular circumstances of this investigation, the outside supply is not significant enough to preclude a regional industry finding. 11/

The statute also requires a concentration of the subject imports within the region. The requisite concentration must be "clearly higher in the regional market than in the rest of the U.S. market." 12/ The ratio of imports of plate from West Germany to apparent Western area consumption 13/ is much greater than the ratio of plate imports from West Germany to apparent U.S. consumption. 14/ In every year the penetration ratio in the Western region is almost 50 percent higher than the ratio for the nation as a whole. Thus, we determine that imports are concentrated in the region. Accordingly, we determine that for purposes of our preliminary determination, it is appropriate to consider the Western area--consisting of the States of California, Washington, and Oregon--as a regional industry. 15/

#### Material injury to a regional industry

To find material injury to a regional industry, the Commission must determine that there is a concentration of the subject imports in the regional

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11/ No precise numerical cutoff exists for outside supply, above which an area is disqualified from regional industry status. We note that the percentage of outside supply were much higher in 1981 than in 1980, 1982 or the portion of 1983 for which data was available.

12/ H.R. Rep. No. 317, 96th Cong., 1st Sess. 73 (1979).

13/ Report at A-40, Table 23.

14/ *Id.* at A-35, Table 19.

15/ This does not preclude a contrary finding based upon new information obtained in a final investigation. Furthermore, we have not answered the question of whether it would be appropriate to consider injury to a regional industry where the industry consists of only one producer with a relatively small share of total U.S. production.

market and that the producers of all, or almost all, of the production within that market are being materially injured or threatened with material injury. 16/ As we noted above for purposes of our regional industry determination, the subject imports are concentrated in the West Coast within the meaning of section 771(4)(C). The legislative history of that provision indicates that a concentration exists where the ratio of the subject imports to consumption of the imports and the domestically-produced like product is clearly higher in the region than in the rest of the U.S. market. 17/ Based on the data collected in this preliminary investigation, we determine that the required concentration of imports in the West Coast region does exist. We now consider material injury to the producers within that region.

To determine whether there is material injury to the producers within that region, we must examine individual company results and determine whether the injured companies collectively represent all, or almost all, of the regional production. 18/ Based on the economic and financial condition of each producer in the regional industry, we determine that there is a reasonable indication of material injury to each of them. For each producer, production, capacity utilization, shipments, and financial performance declined sharply during the period of the investigation. 19/ Since these two producers represented all, or almost all, of the production of cut-to-length carbon steel plate within the region during the period of the investigation,

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16/ 19 U.S.C. § 1677(4)(C) (1980).

17/ S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979).

18/ See *Atlantic Sugar, Ltd. v. United States*, 2 CIT 295, 300 (1981).

19/ Report at A-37, Table 20. We note that the data is confidential. Although Kaiser did not provide complete financial data, whereas Gilmore was able to, the record indicates that Kaiser terminated production of raw steel in October, 1983, and was to phase out the rolling of plate by December, 1983.

there is a reasonable indication of material injury to the regional industry in question. 20/

#### Causation

A reasonable indication exists that LTFV imports of cut-to-length carbon steel plate from West Germany were a cause of material injury to the regional industry. The volume of imports of plate from West Germany into the region increased during 1980-82. 21/ The report contains evidence that West German imports are underselling plate produced in the Western region. 22/ In addition, the unit value per short ton of imports from West Germany declined sharply between 1981 and 1982. Comparing unit values for imported plate in the region for January-August 1982 and January-August 1983 shows an even sharper descent. While the average unit value of imports from West Germany into the Western region was declining, the share of total U.S. imports from West Germany which went to the Western region increased dramatically. 23/

#### Conclusion

For all of the above reasons we find that there is a reasonable indication of material injury to a regional industry of the United States, consisting of producers of hot-rolled carbon steel plate located in the Western region, by reason of alleged LTFV imports of cut-to-length plate from the Federal Republic of Germany.

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20/ Id. at A-36.

21/ Id. at A-39, Table 22.

22/ Id. at A-64-69, Tables 32-33.

23/ Id. at A-41, Table 24. From January-August 1983, the share of total imports from West Germany which went to the Western region was 15.3 percent. For the same period in 1983, the figure was 38.3 percent.

