

UNITED STATES INTERNATIONAL TRADE COMMISSION
**CERTAIN CUT-TO-LENGTH STEEL PLATE FROM THE CZECH REPUBLIC,
FRANCE, INDIA, INDONESIA, ITALY, JAPAN, KOREA, AND MACEDONIA**

Invs. Nos. 701-TA-387-392 (Preliminary) & 731-TA-815-822 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3181, April 1999)

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France, India, Indonesia, Italy, and Korea of certain cut-to-length steel plate, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of the respective countries. The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports from France, India, Indonesia, Italy, Japan, and Korea that are alleged to be sold in the United States at less than fair value (LTFV). Finally, pursuant to 19 U.S.C. § 1677(24)(A), the Commission determines that the subject imports from the Czech Republic that are alleged to be sold at LTFV and the subject imports from Macedonia that are alleged to be subsidized and sold at LTFV are negligible.² The Commission's investigation with respect to the Czech Republic is thereby terminated pursuant to 19 U.S.C. § 1673b(a)(1) and its investigations with respect to Macedonia are thereby terminated pursuant to 19 U.S.C. § 1671b(a)(1) and 19 U.S.C. § 1673b(a)(1).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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

² Chairman Lynn M. Bragg finds that there is a potential that such imports from the Czech Republic will imminently account for more than three percent of the total import volume of all such merchandise, and determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from the Czech Republic that are alleged to be sold at LTFV.

BACKGROUND

On February 16, 1999, petitions were filed with the Commission and the Department of Commerce by Bethlehem Steel Corp. (Bethlehem, PA); U.S. Steel Group, a unit of USX Corp. (Pittsburgh, PA); Gulf States Steel, Inc. (Gadsden, AL); IPSCO Steel Inc. (Muscatine, IA); Tuscaloosa Steel Co.³ (Tuscaloosa, AL); and the United Steelworkers of America (Pittsburgh, PA), alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from France, India, Indonesia, Italy, Korea, and Macedonia of certain cut-to-length steel plate that are subsidized by the Governments of the respective countries, and imports from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia of certain cut-to-length steel plate that are sold in the United States at LTFV. Accordingly, effective February 16, 1999, the Commission instituted countervailing duty investigations Nos. 701-TA-387-392 (Preliminary) and antidumping investigations Nos. 731-TA-815-822 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 24, 1999 (64 F.R. 9174). The conference was held in Washington, DC, on March 9, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

³ Gulf States Steel, Inc., is not a petitioner with respect to the investigations on France. Tuscaloosa Steel Co. is not a petitioner with respect to the investigations on the Czech Republic, France, and Italy.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain cut-to-length steel plate from France, India, Indonesia, Italy, and Korea that are allegedly subsidized and by reason of imports of certain cut-to-length steel plate from France, India, Indonesia, Italy, Japan, and Korea that are allegedly sold in the United States at less than fair value (“LTFV”).¹

We also find that imports of certain cut-to-length steel plate from Macedonia that are allegedly subsidized² and that imports of certain cut-to-length steel plate from the Czech Republic and Macedonia that are allegedly sold in the United States at LTFV are negligible.³

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly unfairly traded imports.⁴ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁵

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.”⁶ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product,

¹ Chairman Bragg determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain cut-to-length steel plate from the Czech Republic that are allegedly sold in the United States at less than fair value (“LTFV”). See Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from the Czech Republic.

² The Department of Commerce (“Commerce”) stated in its notice of initiation of the countervailing duty investigation of Macedonia that Macedonia is not a “Subsidies Agreement country” within the meaning of section 701(b) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1671(b). 64 Fed. Reg. 12993, 12995 (March 16, 1999). The Commission received notice from the Office of the United States Trade Representative (“USTR”) on April 1, 1999, confirming that, based on an unconditional most-favored-nation agreement between the United States and Macedonia that was in force on the date of the enactment of the Uruguay Round Agreements Act, Macedonia is a “Subsidies Agreement country” within the meaning of section 701(b)(3) of the Tariff Act of 1930.

³ Chairman Bragg finds that subject imports from the Czech Republic were below 3 percent, and together with imports from Macedonia, below 7 percent for purposes of present material injury analysis, but that there is a potential that imports from the Czech Republic will imminently exceed the 3 percent negligibility threshold. See Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from the Czech Republic.

⁴ 19 U.S.C. §§ 1671b(a) and 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 381 (Ct. Int’l Trade 1992).

⁵ American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁶ 19 U.S.C. § 1677(4)(A).

or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁷ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁸

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁹ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁰ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹¹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹²

B. Product Description

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

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). . . .¹³

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10).

⁹ See, e.g., NEC Corp., et al. v. Dep’t of Commerce and U.S. Int’l Trade Comm’n, Slip Op. 98-164 (Ct. Int’l Trade Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁰ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹¹ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

¹² Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹³ Commerce’s notice specifies the weight limits for certain elements as follows:

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.¹⁴

C. Domestic Like Product Issues

The scope of these investigations is similar to the scope of recent investigations of cut-to-length (“CTL”) carbon steel plate¹⁵ and of hot-rolled steel products¹⁶ in that microalloy steel plate¹⁷ and plate cut from coils are included, but coiled plate is not included. Grade X-70 plate, while included within the scope of these investigations, was specifically excluded from the scope of previous plate investigations.

Petitioners argue that the like product in these investigations should include non-alloy and microalloy CTL plate, and should not include coiled plate.¹⁸ The Japanese and French respondents argue that grade X-70 CTL plate should be treated as a separate like product,¹⁹ while petitioners argue that grade X-70 plate is not a different like product.²⁰ None of the other respondents takes a position on the definition of the domestic like product.²¹

We have considered (1) whether grade X-70 CTL steel plate is a separate like product, and (2) whether non-alloy and microalloy CTL steel plate, excluding other alloy steel plate, comprise one domestic like product.

1. Whether Grade X-70 CTL Steel Plate Is a Separate Like Product

64 Fed. Reg. 12959, 12960 (Mar. 16, 1999).

¹⁴ 64 Fed. Reg. at 12960.

¹⁵ Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine (“Carbon Steel Plate”), Invs. Nos. 731-TA-753-756 (Final), USITC Pub. 3076 (Dec. 1997).

¹⁶ Certain Hot-Rolled Steel Products From Brazil, Japan, and Russia (“Hot-Rolled Steel”), Invs. Nos. 701-TA-384 and 731-TA-806-808 (Preliminary), USITC Pub. 3142 (Nov. 1998).

¹⁷ The weight specifications for the element contents of the microalloy steels included in the domestic like product in Hot-Rolled Steel were the same as those for the microalloy steels included in the scope of this investigation, with the exception that in Hot-Rolled Steel a weight limit of 0.012 percent for boron was specified. Hot-Rolled Steel, USITC Pub. 3142 at 4-5.

¹⁸ Petitioners’ Postconference Brief at 4-7.

¹⁹ French Respondents’ Postconference Brief at 5; Japanese Respondents Postconference Brief at 2.

²⁰ Petitioners’ Postconference Brief at 8-12.

²¹ We are not aware of any information that would warrant reexamining, and no party has urged us to reexamine, our prior decision in Carbon Steel Plate that the domestic like product includes plate cut from coils but does not include coiled plate. Carbon Steel Plate, USITC Pub. 3076 at 5-9.

On balance, the record supports the inclusion of X-70 plate with other CTL plate products in the domestic like product. X-70 plate is part of a continuum of CTL plate products included within the scope of these investigations and is not clearly distinct from all other types of CTL plate. It is produced in the same manufacturing facilities and by the same employees as other types of plate.²² Although it undergoes certain special processes in its manufacture, so do other grades of plate.²³ X-70 plate is more expensive than some other types of ordinary commercial plate but is not the most expensive grade of specialty plate.²⁴ While it is sold only to end users for a specified use (the production of large-diameter pipe, especially for oil and gas transmission projects located in demanding environments), a large share of other CTL plate is also sold to end users, frequently for specific uses.²⁵ Other grades of CTL plate cannot be substituted for X-70, but it is possible for X-70 to be downgraded for other applications, such as piling.²⁶ Although the major importer of X-70 plate from the subject countries views X-70 as a different product than commercial grade plate,²⁷ U.S. producers, and, according to one producer, other plate customers, view X-70 as part of the continuum of plate grades used to manufacture pipe.²⁸

2. Whether Non-Alloy and Microalloy CTL Steel Plate, Excluding Other Alloy Steel Plate, Comprise One Domestic Like Product

The HTSUS separates non-alloy steel plate from stainless steel and other alloy steel plate. Microalloy steel (“high strength low alloy” (“HSLA”)) is more similar in physical characteristics and uses to non-alloy steels than to the alloy steels.²⁹ Carbon and microalloy steel plate are relatively malleable, while alloy steel is valued principally because of its hardenability.³⁰ Non-alloy and microalloy steel plate are used in similar applications, including automotive parts, appliances, shipbuilding, barges and tank construction, and in bridges and other construction, while alloy steel is typically used to produce items for severe wear applications, such as automotive gears, hand tools, antifriction bearings, aircraft parts, and applications requiring environmental resistance in chemical handling equipment.³¹

Carbon and HSLA steel plate can generally be used interchangeably, but they compete only to a limited degree with alloy steel flat-rolled products.³² The addition of alloying elements to the steel above certain thresholds may raise the cost of the steel and may also impart different mechanical and physical properties, depending on the amount added and how other elements are varied.³³

²² Confidential Report (“CR”) at I-11; Public Report (“PR”) at I-8.

²³ CR at I-11, PR at I-8; Petitioners’ Postconference Brief at 10; see also the discussion of secondary steelmaking (CR at I-5, PR at I-4-5) and controlled rolling (CR at I-6, n.13, PR at I-5, n.13).

²⁴ Petitioners’ Postconference Brief at 11, Exhibit 1, ¶ 8; compare the average unit values of X-70 plate from France and Japan with those of the overall import product mix from those countries (CR at I-12, PR at I-9) and with certain normalized CTL plate (selling prices presented in Table V-8, Table V-9, CR at V-20-21, PR at V-15-16).

²⁵ CR at I-10-12, PR at I-8-9. These uses include the production of large-diameter pipe for the transmission of oil, gas, and water. CR at I-12 and n.27, PR at I-9 and n.27.

²⁶ CR at I-10, n.21 and I-12, n.26, PR at I-8, n.21 and I-9, n.26.

²⁷ CR at I-11, PR at I-8.

²⁸ CR at I-11, PR at I-8.

²⁹ Petition, Volume I, Exhibit 1 at 3.

³⁰ Petition, Volume I, Exhibit 1 at 3-4.

³¹ Petition, Volume I, Exhibit 1 at 3, 4.

³² Petition, Volume I, Exhibit 1 at 18; see CR at II-2-3, PR at II-2.

³³ Petition, Volume I, Exhibit 1 at 18.

With respect to price, HSLA steels are generally priced from the base price for carbon steel, not from the base price for alloy steels.³⁴ Alloy steel plate, depending on the particular type of product, can be priced up to \$120 higher than non-alloy and HSLA steel plate.³⁵

Steel makers commonly consider HSLA steels to be carbon steels: “These steels are not considered alloy steel, even though their desired properties are achieved by the use of small alloy additions.”³⁶

We find, consistent with our reasoning in Hot-Rolled Steel,³⁷ that the differences between microalloy steels and non-alloy cut-to-length steel plate are not so pronounced as to constitute clear dividing lines, but that other alloy steel plate exhibits marked differences from both non-alloy and microalloy CTL plate.

For the same reasons set forth in the Hot-Rolled Steel investigations, we find that non-alloy steel plate and microalloy CTL plate constitute a single domestic like product.

3. Conclusion

We therefore conclude that, for purposes of these preliminary investigations, there is one domestic like product consisting of all domestically produced CTL steel plate that corresponds to the scope description, including grade X-70 plate, microalloy steel plate, and plate cut from coils.

D. Domestic Industry and Related Parties

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”³⁸ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.³⁹ Because we have found that the domestic like product consists of all CTL steel plate included within the scope of these investigations, for purposes of these preliminary investigations, we also find that the domestic industry consists of all domestic producers of these products.

We consider two issues with respect to the domestic industry: (1) whether the production of CTL plate includes the operation of processors such as steel service centers,⁴⁰ and (2) whether any producers should be excluded as related parties.

1. The Inclusion of Processors in the Domestic Industry

We note at the outset that the processing performed by steel service centers -- *i.e.*, using coiled plate as an input, uncoiling it, and cutting it to length to form CTL plate -- changes the product from one which we

³⁴ Petition, Volume I, Exhibit 1 at 5.

³⁵ Transcript of Conference (March 11, 1999) (“Tr.”) at 72.

³⁶ Petition, Volume I, Exhibit 1 at 5 (quoting ASM, Specialty Handbook Carbon and Alloy Steels, 29 (J.R. Davis et al., eds., 1996).

³⁷ Hot-Rolled Steel, USITC Pub. 3142 at 6.

³⁸ 19 U.S.C. § 1677(4)(A).

³⁹ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁴⁰ No party has argued against the inclusion of processors of CTL plate from coil in the domestic industry. The petitioners included U.S. processors of plate cut from coil in their description of the domestic industry, noting the Commission’s decision in Carbon Steel Plate. Petition, Vol. II, “Injury Information,” at 3-4. The respondents argue that the domestic industry includes processors that cut CTL plate from coil and, moreover, that in analyzing the impact of imports on the domestic industry, the Commission should not focus on the integrated producers, but should look at the industry as a whole. Indonesian, Japanese, and Korean Respondents’ Joint Postconference Brief at 2-6.

have found is not part of the domestic like product into a product that corresponds to the domestic like product.⁴¹

In deciding whether a firm qualifies as a domestic producer, the Commission often has analyzed the overall nature of a firm's production-related activities in the United States,⁴² although production-related activity at minimum levels could be insufficient to constitute domestic production.⁴³ The Commission generally considers six factors:

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.⁴⁴

With respect to the third factor, Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer.⁴⁵ No single factor is

⁴¹ Commissioner Crawford finds that the analysis to determine whether processors are producers of the domestic like product follows from the like product finding. The production related activity required to convert the plate in coil form into CTL plate is by definition sufficient to convert one like product into a different like product. Therefore, it follows that converting plate in coil form into CTL plate constitutes "production" of CTL plate. She therefore finds that the six-factor test to analyze production-related activities does not apply and thus she does not join the discussion of this test. See Carbon Steel Plate, USITC Pub. 3076 at 10, n.30 and 30-31 (Views of Commissioner Carol T. Crawford).

⁴² See, e.g., Sulfur Dyes from China and the United Kingdom, Invs. Nos. 731-TA-548 and 551 (Final), USITC Pub. 2602 (Feb. 1993); Dry Film Photoresist from Japan, Inv. No. 731-TA-622 (Preliminary), USITC Pub. 2555 at 14 (Aug. 1992); Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea, Inv. No. 731-TA-556 (Preliminary), USITC Pub. 2519 at 11-12 (June 1992).

⁴³ Ferrovandium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 at I-8 (June 1995).

⁴⁴ See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Invs. Nos. 731-TA-736 and 737 (Final), USITC Pub. 2988 at 7-8 (Aug. 1996); Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Invs. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 at I-11 n.37 (Aug. 1995).

⁴⁵ See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-8-9 & n.34 (June 1994) ("no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account"); Low Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded that twenty percent value added by flux coaters was sufficient); see also Low Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-246 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

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

determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation.⁴⁶

We find, consistent with our reasoning in the 1997 Carbon Steel Plate investigations,⁴⁷ that the record here supports the inclusion of toll and non-toll processors of imported and domestic coil in the domestic industry. Processors invest a significant amount of capital in relatively sophisticated processing operations, and account for a significant percentage of overall employment of the U.S. industry. Although the value added is small, this factor is not determinative of the outcome. Rather, we place considerable importance on the fact that the processing performed by the service centers involves changing a product that was affirmatively decided not to be in the domestic like product -- coiled plate -- into the domestic like product.⁴⁸

Based on the foregoing, we include all producers of CTL plate in the domestic industry, whether toll producers, integrated producers, or processors.⁴⁹

⁴⁶ See Silicon Carbide from The People's Republic of China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 at I-11 n.49 (June 1994).

⁴⁷ Carbon Steel Plate, USITC Pub. 3076, at 9-12.

⁴⁸ Carbon Steel Plate, USITC Pub. 3076 at 12.

⁴⁹ For the reasons given above, Chairman Bragg, Vice Chairman Miller, and Commissioner Hillman believe that the processors should be included in the domestic industry. However, they believe that it is appropriate to take into account the greater vulnerability of the domestic mills to the effects of dumped imports in determining whether the domestic industry as a whole is experiencing material injury by reason of subject imports. Thus, while they have looked at the data for the entire domestic industry, they have placed particular emphasis on the condition of the domestic mills in reaching their finding that there is a reasonable indication that subject imports are causing material injury to the domestic industry. They note, however, that this emphasis did not alter the outcome of their decision with respect to the CTL plate industry. Finally, their decision to include processors in the domestic industry producing CTL plate should not be construed as an indication that in any future investigations they will necessarily determine that processors will be included in the industry. An analysis of the facts specific to each investigation will govern their treatment of the issue.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.⁵⁰ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁵¹

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

CSI and National are mill producers that are partially owned by foreign producers of the subject merchandise. Kawasaki Steel Corp. of Japan has a 50 percent ownership interest in CSI, and NKK Corp. of Japan has a 67.6 percent ownership interest in National. North Star is a mill producer and Cargill Steel & Wire is a processor of the domestic like product, and both are wholly owned by Cargill, Inc., which also owns Cargill Ferrous, an importer of subject merchandise. Feralloy Corp. is a processor that is related through common ownership (Preussag North America) to importer Preussag. FPC, a processor, is also related to Preussag because Feralloy Corp. owns a 51 percent interest in the company. U.S. Denro, a mill producer, is partially owned by SAW Pipes, an importer of subject merchandise. JIT is partially owned by importer Mitsui.⁵² All of these companies appear to be related parties under (ii)(II) or (III) of the related parties provision.⁵³

We consequently consider whether "appropriate circumstances" exist to exclude any of these companies from the domestic industry. Each of these companies individually accounts for a very small share of domestic production.⁵⁴ Thus, inclusion of their data would not skew the industry data.⁵⁵ We recognize that

⁵⁰ 19 U.S.C. § 1677(4)(B).

⁵¹ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

⁵² Table III-1, CR at III-2-4, PR at III-2-4.

⁵³ 19 U.S.C. § 1677(4)(B)(ii)(II), (III).

⁵⁴ CSI and National each account for *** of mill production; North Star accounts for *** percent of mill production; U.S. Denro accounts for *** percent of mill production; Cargill Steel and Wire accounts for *** percent of non-toll processor production, which corresponds to *** of total domestic production; Feralloy accounts for *** percent of non-toll and *** percent of toll processor production, which corresponds to *** of total domestic production; FPC accounts for *** percent of toll processor production, which corresponds to *** of total domestic production; and JIT accounts for *** percent of non-toll and *** percent of toll processor production, which corresponds to *** percent of domestic production. Calculations including toll production reflect double counting. Table III-1, CR at III-2-4, PR at III-2-4.

⁵⁵ Commissioner Crawford does not make her decision to exclude or not to exclude a related party based on whether inclusion or exclusion would skew the data. None of these firms imported the subject merchandise, and thus their primary interest lies in production, not importation. Therefore, Commissioner Crawford finds that, for purposes of these preliminary determinations, appropriate circumstances do not exist to warrant excluding any of these firms.

there may be some argument to be made for the exclusion of *** based on the fact that their operating income margins were, at times, higher than those of other domestic producers.⁵⁶ However, there is no evidence that they derive any concrete benefits, or operate in a manner that is different from other domestic producers as a result of their relationship with their foreign producer or importer parents. Similarly, while individual financial data for the processors was not presented, the processors as a group did not have operating income margins outside the range of the mill producers as a group.⁵⁷ *** support the petition, while *** take no position. Based on the available facts on the record at this time, we do not find that appropriate circumstances exist to exclude any of these producers under the related parties provision of the statute.

b. Oregon Steel and Ryerson

Oregon Steel and Ryerson are related parties because they imported subject merchandise. Oregon Steel, which accounted for *** percent of domestic mill production, imported *** of CTL plate from ***. The mill produced ***. Therefore, its imports were equivalent to *** percent of its domestic production.

Ryerson, which accounted for *** percent of processor production, or *** percent of total production, imported ***. The processor converted *** tons of coiled plate into CTL plate in the same year.⁵⁸ Therefore, its imports were equivalent to *** percent of its production.

Based on the available information, Oregon Steel's imports appear to be a result of ***. Its primary interests appear to be in production, and not importation. Although it ***,⁵⁹ Thus, it does not appear to have benefitted financially from its importation activities.

Although Ryerson's imports are equivalent to *** percent of its production, and it ***, its operations are a small share of the overall CTL plate industry. However, because Ryerson ***. The fact that *** makes the question of whether its data should be excluded moot in the preliminary phase of these investigations.⁶⁰

c. ***

***, both processors of CTL plate, reported purchases of subject imports during 1998. The Commission has construed the related party provision to cover producers who purchase large volumes of imports.⁶¹ The threshold question is whether these purchases establish whether either of these processors is "related" under the statute by directly or indirectly controlling an exporter or importer. The Commission generally has found direct or indirect control to exist where a domestic producer was responsible for a predominant share of an importer's purchases, and the importer's purchases were substantial.⁶² It does not appear that either of the purchasing producers purchased a "predominant share" of imports that accounted for a substantial amount of subject imports. *** purchased *** of subject Indonesian product in 1998, which accounted for only *** percent of Indonesian imports, and *** purchased *** of subject Korean product in

⁵⁶ ***, and that operating income was within the range of those of other domestic producers. Table VI-3, CR at VI-10-11, PR at VI-3.

⁵⁷ Table VI-3, CR at VI-10-11, PR at VI-3.

⁵⁸ CR IV-1, n. 2, PR at IV-1, n.2.

⁵⁹ Table VI-3, CR at VI-10-11, PR at VI-3.

⁶⁰ Commissioner Crawford concurs that neither of these firms should be excluded. She does not make her decision to exclude or not to exclude a related party based on whether inclusion or exclusion would skew the data. However, Commissioner Crawford concurs that Oregon Steel's primary interest lies in production, not importation. Although it is a close call, for purposes of these preliminary determinations, she also finds that Ryerson's primary interest lies in production.

⁶¹ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2528 at 12 (June 1992).

⁶² See, e.g., Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10, n.50 (April 1997).

1998, which accounted for only *** percent of Korean imports.⁶³ Given these levels of purchases, and absent other evidence of control, we do not find that these producers are “related parties.”

Accordingly, we do not exclude any domestic producers as related parties for purposes of these preliminary determinations.

III. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.⁶⁴ The statute further provides that imports from a single country which comprise less than 3 percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than 7 percent of the volume of all such merchandise imported into the United States.⁶⁵

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than 3 percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed 7 percent of all such merchandise imported into the United States.⁶⁶ By operation of law, a finding of negligibility terminates the Commission’s investigations with respect to such imports.⁶⁷

The Commission is authorized to make “reasonable estimates on the basis of available statistics” of pertinent import levels for purposes of deciding negligibility.⁶⁸

Negligibility is an issue in these investigations with respect to imports from the Czech Republic and Macedonia.⁶⁹ To evaluate negligibility, we have used official U.S. import statistics for imports for consumption of non-alloy CTL plate, adjusted to include imports of microalloys and offset apparent reporting misclassifications, and to account for temporary importation under bond (“TIB”) and foreign trade zone (“FTZ”) entries, for calendar year 1998, the most recent 12-month period preceding the filing of the petition for which microalloy, TIB, and FTZ data are available.⁷⁰

We further considered two methods for accounting for the TIB and FTZ entries. Under one method, import volumes include microalloy CTL plate and only those FTZ entries that subsequently enter U.S.

⁶³ CR at IV-1, n.3, PR at IV-1, n.3; Table IV-2, CR at IV-7, PR at IV-5.

⁶⁴ 19 U.S.C. § 1677(24)(A)(i)(I).

⁶⁵ 19 U.S.C. § 1677(24)(A)(ii).

⁶⁶ 19 U.S.C. § 1677(24)(A)(iv).

⁶⁷ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

⁶⁸ 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) (“SAA”).

⁶⁹ The French respondents argued that, were the Commission to find X-70 and non-X-70 CTL plate to be separate domestic like products, then French imports of non-X-70 plate would be negligible. French Respondents’ Postconference Brief at 16. Based on our finding that X-70 CTL plate is not a separate domestic like product, negligibility is not an issue with respect to France.

⁷⁰ These are Methods 3 and 4 in the staff report. CR at IV-5-6, PR at IV-7-8. Neither Methods 1 nor 2 in the staff report adjusts for microalloy, FTZ, or TIB entries, and these methods therefore were not appropriate bases for our analysis. We note that in Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373 and 731-TA-769-775 (Final), USITC Pub. 3126 at 9 (Sept. 1998), we based our negligibility determination on official U.S. import statistics for imports for consumption, adjusted to include FTZ entries that entered U.S. customs territory.

customs territory, and exclude TIB entries.⁷¹ Under the other method, official import statistics for non-alloy CTL plate are adjusted to include microalloy CTL plate, TIB entries, and FTZ entries that either reenter U.S. customs territory or are re-exported to Canada.^{72 73 74} Under either method, the subject imports from the

⁷¹ CR at IV-6 (Method 3), PR at IV-8. TIB imports from the subject countries are transformed into a downstream product while temporarily in U.S. customs territory and then re-exported to Canada. CR at IV-5, PR at IV-7. FTZ imports from the subject countries are likewise transformed in the FTZ and then shipped into U.S. customs territory, exported to Canada, or exported to other countries. Id. See also questionnaire responses of ***.

Under the TIB procedure, merchandise is temporarily entered into U.S. customs territory free of duty, and then is re-exported to another country within a specified time, either in its original state or as a downstream product. 19 C.F.R. § 10.39(d)(1). TIB entries are normally not subject to the assessment of antidumping or countervailing duties. See, e.g., Titanium Sponge From Ukraine: Final Results of Antidumping Duty Administrative Review, 61 Fed. Reg. 6350 (Feb. 20, 1996) (entries under TIB not subject to antidumping duties); Titanium Metals Corp. v. United States, 901 F. Supp. 362 (Ct. Int'l Trade 1995); Coumarin From the People's Republic of China ("Coumarin"), Inv. No. 731-TA-677 (Final), USITC Pub. 2852 at I-10, n.56 (Feb. 1995). Likewise, only FTZ entries that are subsequently imported into the customs territory of the United States (either in their original form or incorporated into a downstream product) are subject to the eventual assessment of antidumping or countervailing duties. Coumarin, USITC Pub. 2852 at I-10. The Commission in prior cases has not treated TIB entries as subject imports and has treated FTZ entries as subject imports unless the merchandise is re-exported from the FTZ without entering U.S. customs territory. Coumarin, USITC Pub. 2852 at I-10. The SAA explains that the Commission is to determine whether "the volume of dumped or subsidized imports is negligible," thereby suggesting that only imports that are subject to the assessment of possible antidumping or countervailing duties should be considered. SAA at 185. Only entries for consumption are subject to the assessment of antidumping or countervailing duties. In prior cases, because TIB and FTZ entries that were re-exported without entering U.S. customs territory were not considered entries for consumption, and were not subject to antidumping or countervailing duties, the Commission did not treat them as subject imports. Coumarin, USITC Pub. 2852 at I-10.

⁷² CR at IV-6 (Method 4), PR at IV-8. The difference between the two methods is that Method 3 does not include TIB and FTZ merchandise that is transformed in the United States and re-exported to Canada, whereas Method 4 does include such merchandise, based on NAFTA's duty deferral provisions, as incorporated into U.S. law. Unlike TIB and FTZ merchandise re-exported to non-NAFTA countries, TIB and FTZ entries that are re-exported to Canada after transformation are subject to normal customs duties, to the extent that the duties payable to the United States exceed the duties paid to the other NAFTA country, 19 U.S.C. § 81c(a), 19 U.S.C. § 3333, 19 C.F.R. § 181.53(b)(4)(i), 19 C.F.R. § 181.53(b)(5), 19 C.F.R. § 181.44(a), (b), and to any antidumping and countervailing duties imposed. 19 C.F.R. § 181.42(a). Because the TIB and FTZ entries that are transformed and re-exported to Canada are considered entries for consumption, 19 C.F.R. § 181.53(a)(2), 19 C.F.R. § 10.31(h), this method includes them in the total volume of subject imports.

⁷³ The negligibility analysis of Chairman Bragg, Commissioner Crawford, and Commissioner Koplan is based on Method 4 -- i.e., official import statistics for imports for consumption, adjusted to include imports of microalloys, TIB entries that are re-exported to Canada after transformation and FTZ entries that are either re-exported to Canada after transformation or shipped into U.S. customs territory. They view Method 4 as consistent with past Commission practice of treating only entries for consumption as subject imports given that, under NAFTA, re-exports to a NAFTA country of transformed TIB and FTZ merchandise are treated as entries for consumption and subject to any antidumping and countervailing duties imposed. See 19 U.S.C. § 81c(a), 19 U.S.C. § 3333, 19 C.F.R. § 181.42(a), 19 C.F.R. § 181.53(a)(2), 19 C.F.R. § 10.31(h).

⁷⁴ Vice Chairman Miller and Commissioners Hillman and Askey based their analysis of negligibility and import volumes on Method 3, i.e., official import statistics for imports for consumption, adjusted to include imports of microalloys and FTZ entries that enter for consumption into the U.S. customs territory, and adjusted to exclude merchandise entered under TIB procedures, all of which was further processed and exported to Canada, and to exclude any FTZ entries not entered for consumption into the U.S. customs territory. In general, we agree that entries for consumption should be considered subject imports and, therefore, included in our analysis. In this case, however, Customs' treatment as "entries for consumption" of merchandise that is entered under TIB procedures or in FTZs and transformed and exported to Canada is required to implement the duty drawback provisions of the North American Free Trade Agreement. For purposes of evaluating material injury or threat to a U.S. industry by reason of subject imports,

Czech Republic and Macedonia are each below 3 percent of all CTL plate imports, and together below 7 percent of all such imports, for calendar year 1998.⁷⁵

We also do not find, pursuant to 19 U.S.C. § 1677(24)(A)(iv), that subject imports from either the Czech Republic or Macedonia will imminently account for more than 3 percent individually, nor more than 7 percent in the aggregate, of the total volume of CTL plate imports.⁷⁶

Although the Czech Republic's share of total imports for consumption rose from 1996 to 1997, its share fell to below 3 percent in 1998.⁷⁷ Imports of the subject merchandise from the Czech Republic declined *** percent from 1997 to 1998, and, according to official import statistics, declined from 10,530 short tons in November 1998 to 7,680 short tons in December 1998 to 5,977 short tons in January 1999.⁷⁸

Macedonia's share of total imports for consumption was less than 1 percent in 1996, barely exceeded 3 percent in 1997, and declined to well below 3 percent in 1998.⁷⁹ Imports of the subject merchandise from Macedonia were 9,969 short tons in 1996, 43,361 short tons in 1997, and 50,047 short tons in 1998.⁸⁰ According to official import statistics, there were no imports from Macedonia in October 1998, 14,260 short tons in November 1998, 624 short tons in December 1998, and no imports in January 1999.⁸¹

Excess capacity in both countries is limited, and neither foreign industry appears likely to increase shipments to the United States. The Czech Republic's capacity utilization rates for CTL plate facilities were *** percent in 1996, *** percent in 1997, *** percent in 1998, and are projected to be *** percent in 1999 and *** percent in 2000.⁸² *** reports that it produces a wide variety of steel products other than plate, and has no plans to shift production from these products to plate.⁸³ ***.⁸⁴

Macedonia's capacity utilization rates are as follows: *** percent in 1996, *** percent in 1997, *** percent in 1998, and are projected to be *** percent in 1999 and *** percent in 2000.⁸⁵ Makstil, ***, reports that its production capacity ***.⁸⁶

however, the impact of such merchandise is no different than if the merchandise had been transformed and exported to a non-NAFTA country. Thus, we think it would be anomalous to treat Canada (and Mexico) differently from non-NAFTA countries. Accordingly, we have decided not to be guided by Customs' treatment of the TIB and FTZ entries and we have excluded them from our analysis.

⁷⁵ Under Method 3 in the staff report, imports from the Czech Republic account for *** percent of total imports, and imports from Macedonia account for 2.334 percent of total imports; imports from these two countries together account for less than 7 percent of total imports. Under Method 4 in the staff report, imports from the Czech Republic account for *** percent of total imports, and imports from Macedonia account for 2.234 percent of total imports; imports from these two countries together account for less than 7 percent of total imports. CR at IV-6, PR at IV-8.

⁷⁶ Chairman Bragg does not join in the remainder of Section III of the opinion with respect to the Czech Republic. Chairman Bragg finds there is a potential that subject imports from the Czech Republic will imminently account for more than 3 percent of the total volume of imports of CTL plate. See Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from the Czech Republic.

⁷⁷ Table IV-2, CR at IV-7-8 and Memorandum INV-W-057, PR at IV-5-6 and C-5.

⁷⁸ Table IV-2, CR at IV-7 and Memorandum INV-W-057, PR at IV-5 and C-5; official statistics of Commerce.

⁷⁹ Table IV-2, CR at IV-7 and Memorandum INV-W-057, PR at IV-5 and C-5.

⁸⁰ Table IV-2, CR at IV-7 and Memorandum INV-W-057, PR at IV-5 and C-5.

⁸¹ Official statistics of Commerce.

⁸² Table VII-1, CR at VII-4, PR at VII-3. We note that ***. Table VII-1, CR at VII-4, PR at VII-3.

⁸³ Czech Respondents' Postconference Brief at 10.

⁸⁴ Czech Respondents' Postconference Brief at 10-11. We also note that Czech producer *** does not export CTL plate to the United States. CR at VII-3, n.4, PR at VII-2, n.4.

⁸⁵ Table VII-8, CR at VII-18, PR at VII-7.

⁸⁶ Macedonian Respondents' Postconference Brief at 5-6.

Producers in both Macedonia and the Czech Republic report that ***.⁸⁷ They also argue that their expected focus for shipments of CTL plate will be on the European, rather than the U.S., market because of physical proximity and more favorable trading terms.⁸⁸

The European Union eliminated tariffs on all Czech CTL plate as of December 31, 1995, and an antidumping order imposed on Czech plate by Canada has been terminated.⁸⁹ We also note that import volumes from Macedonia have been sporadic over the period for which data were collected, that both countries' shares of the total volume of CTL plate imports declined from 1997 to 1998, and that both countries' capacity utilization rates are relatively high. Finally, the volumes of reported orders of subject merchandise from both countries for the first half of 1999 are relatively small.⁹⁰ Accordingly, we find no record evidence demonstrating a potential that subject imports from Macedonia and the Czech Republic will imminently exceed the 3- and 7-percent negligibility thresholds, and the investigations with respect to these countries are therefore terminated.

⁸⁷ Czech Respondents' Postconference Brief at 6; Macedonian Respondents' Postconference Brief at 5. However, this contention seems inconsistent with reported data, particularly with respect to the industry in Macedonia. Table VII-8, CR at VII-18, PR at VII-7.

⁸⁸ Czech Respondents' Postconference Brief at 11; Macedonian Respondents' Postconference Brief at 7.

⁸⁹ CR at VII-3, PR at VII-3 (citing the Czech Respondents' Postconference Brief).

⁹⁰ Reported orders of subject merchandise from the Czech Republic for the first half of 1999 are only *** short tons, and for Macedonia, *** short tons. Table VII-10, CR at VII-21, PR at VII-9.

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.⁹¹ In assessing whether subject imports compete with each other and with the domestic like product,⁹² the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;⁹³
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁹⁴

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁹⁵ Only a “reasonable overlap” of competition is required.⁹⁶

Three of the four statutory exceptions to the general cumulation rule do not apply to these investigations.⁹⁷ Because our investigations on the Czech Republic and Macedonia are terminated on the basis of negligibility, the exception based on terminated investigations does apply, and we do not cumulate

⁹¹ 19 U.S.C. § 1677(7)(G)(i).

⁹² The SAA (at 848) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd 859 F.2d 915 (Fed. Cir. 1988).

⁹³ Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that the subject imports should be cumulatively assessed. However, in any final phase investigations she intends to examine further the substitutability between French, Italian, and Japanese subject imports and other subject imports. See Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

⁹⁴ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁹⁵ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

⁹⁶ See Goss Graphic System, Inc. v. United States, ___ CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁹⁷ These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

imports from the Czech Republic and Macedonia with other subject imports for our present material injury analysis.⁹⁸

B. Analysis

For purposes of these preliminary determinations, with respect to all subject countries except the Czech Republic and Macedonia, we find that there is a reasonable overlap of competition among the subject imports, and between the subject imports and the domestic like product.⁹⁹

1. Fungibility

The record shows that U.S. mills' CTL plate often competes for sales of the standard products with similar subject imports from all subject countries and that the domestic like product and subject imports are generally considered broadly interchangeable in use by producers and a majority of importers.¹⁰⁰

In addition to broad interchangeability among CTL plate from different sources, CTL plate produced in each of the subject countries is considered by a majority of importers and virtually all producers to be "frequently," if not "always," interchangeable in use with the domestic product.¹⁰¹ Importers provided comments with respect to specific sources, such as the high quality of CTL plate from France, Italy, Japan, and Korea.¹⁰² Indian and Indonesian imports were cited as presenting quality concerns for some applications,¹⁰³ but the majority of producers and importers also stated that CTL plate from the various subject sources was always or frequently used interchangeably.¹⁰⁴

Most U.S. producers reported that non-price factors are never important in CTL plate sales, while importers considered non-price factors to be more significant.¹⁰⁵ More than half of the responding importers indicated that non-price differences were always or frequently a significant factor for the following country comparisons: France versus both India and Indonesia; India versus Italy and Korea; and Italy versus Korea.¹⁰⁶

We note that imports from Italy are generally of greater thickness than imports from other sources, and the majority of French imports and some Italian and Japanese imports are concentrated in grade X-70 plate.¹⁰⁷ Imports of X-70 plate represent the majority (***)¹⁰⁸ percent in 1998) of the French imports of the subject merchandise. The amount of X-70 plate imported, purchased, or consumed internally in 1998 was

⁹⁸ Chairman Bragg does not join in this paragraph in that she finds a potential that imports from the Czech Republic will imminently exceed the negligibility threshold and determines that there is a reasonable indication of threat of material injury to the U.S. industry by reason of subject imports from the Czech Republic. See Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from the Czech Republic.

⁹⁹ Chairman Bragg also finds a reasonable overlap of competition with regard to imports from the Czech Republic. See Dissenting Views of Chairman Lynn M. Bragg Regarding Imports from the Czech Republic.

¹⁰⁰ CR at II-4, PR at II-3.

¹⁰¹ CR at II-6, PR at II-5.

¹⁰² CR at II-8-10, PR at II-6-7.

¹⁰³ CR at II-8, PR at II-6.

¹⁰⁴ CR at II-11, PR at II-8.

¹⁰⁵ CR at II-7, PR at II-5.

¹⁰⁶ CR at II-11, n.20, PR at II-8, n.20.

¹⁰⁷ CR at II-4-5 and II-10-11, PR at II-3 and II-6-7.

¹⁰⁸ Under Method 3, imports of X-70 plate in 1998 were *** short tons, or *** percent of French imports; under Method 4, imports of X-70 plate in 1998 were *** short tons, or *** percent of French imports. Official statistics of Commerce and questionnaire response of ***.

*** short tons, of which U.S. mills provided ***.¹⁰⁹ The amount of X-70 plate purchased on the open market in 1998 was *** short tons, of which U.S. mills provided *** percent.¹¹⁰ Therefore, a small portion of domestic X-70 plate competes on the open market with French X-70 plate. The remaining ***¹¹¹ percent of French imports in 1998, including ASTM A-36 and ASTM A-516 grade products, did compete with U.S. producers' sales and with subject imports of the same grade products during the period for which data were collected.¹¹² We therefore find that the overall amount of competition among imports and the domestic industry for X-70 plate and the competition with respect to the remaining French imports constitute a reasonable overlap of competition for purposes of these preliminary determinations.

The Italian respondents, who argued that a large proportion of their U.S. sales were of niche products that U.S. producers did not or could not make,¹¹³ represent approximately *** percent of all Italian CTL plate production and, consequently, most exports of subject merchandise to the United States.¹¹⁴ Imports from *** for the *** accounted for well under one half of all Italian imports.¹¹⁵ The record reflects the fact, however, that sales from subject countries were reported for pricing product 3, a "thick" CTL plate product.¹¹⁶ Moreover, the record shows that imports from Italy of ASTM A-36 grade products, which represent approximately ***¹¹⁷ percent of Italian imports in 1998, competed with U.S. producers' sales and with subject imports of the same grade products during the period for which data were collected.¹¹⁸ Thus, there appears to be some overlap of competition for the thick CTL plate that the Italian respondents claim does not compete with other subject imports or the domestic like product,¹¹⁹ but we will seek in any final phase of these investigations more product-specific data in order to evaluate the extent of the competition.

Based on the record in these investigations, we therefore find a reasonable overlap of competition. Nevertheless, we invite further comment on the degree of fungibility among specific grades of CTL plate, such as X-70 and/or other grades used in the production of large diameter pipe, as well as other niche products, such as floor plate or thick plate, and will examine closely the cumulation issue in any final phase of these investigations.

¹⁰⁹ CR at II-11, PR at II-7.

¹¹⁰ CR at II-11, PR at II-7.

¹¹¹ The *** short tons of non-X-70 French imports in 1998 are *** percent of French imports under Method 3 and *** percent under Method 4. Official statistics of Commerce and questionnaire response of ***.

¹¹² Tables V-5, V-8, and V-9, CR at V-16-17 and V-20-21, PR at V-13 and V-15-16.

¹¹³ Italian Respondents' Postconference Brief at 2-4.

¹¹⁴ CR at VII-11, PR at VII-5.

¹¹⁵ *** imports *** were *** and thus are only included in Method 4; they would not be a consideration for the Commissioners whose injury analysis is based on Method 3. See Italian Respondents' Postconference Brief at 2-3.

¹¹⁶ Tables V-5 and V-6, CR at V-16-19, PR at V-15-16. We note that there are some differing perceptions as to what constitutes thick CTL plate. See, e.g., CR at II-9, n.12, PR at II-6, n.12.

¹¹⁷ Compare Tables V-5 and V-6 with Tables C-1 and Table C-1A, CR at V-16-19, and C-3, and Memorandum INV-W-057, PR at V-15-16, C-3, and C-5.

¹¹⁸ Tables V-5 and V-6, CR at V-16-18, PR at V-13-14.

¹¹⁹ Italian Respondents' Postconference Brief at 2-4.

2. Geographic Overlap

CTL plate produced in the United States is shipped nationwide.¹²⁰ Imported CTL plate from the subject countries is marketed in most areas of the United States.¹²¹ The record shows that during the 1996-98 period imports from each of the subject countries were present in all four regions of the United States (East, Gulf, Great Lakes, and West).¹²²

3. Channels of Distribution

Both the domestic producers and importers sell CTL plate to end users as well as distributors, but in different proportions. Importers' trade sales are primarily to distributors, while domestic product sales are more evenly divided between end users and distributors.¹²³ Approximately 57 percent of the CTL plate shipments of U.S. mills, which represent the majority of U.S. production, was to distributors, processors, and service centers in 1998, and about 43 percent to end users.¹²⁴ About 22 percent of U.S. processors' shipments was to distributors, processors, and service centers, and about 78 percent to end users.¹²⁵ For most of the subject countries, more than two-thirds of their imports were to distributors, processors, and service centers.¹²⁶ While large volumes of the French, Italian, and Japanese imports, consisting of pipe grade or special quality CTL plate, were to end users, more than 30 percent each of the French, Italian, and Japanese imports were to distributors, processors, and service centers.¹²⁷ With respect to X-70 plate, three end users, ***, accounted for virtually all of the purchases (including direct imports) of X-70 plate in 1998.¹²⁸

4. Simultaneous Presence

Domestically produced CTL plate was present throughout the United States during the period reviewed. Based on official import statistics, imports of non-alloy CTL steel plate from France, Italy, Japan, and Korea entered the United States in nearly every month between January 1996 and December 1998.¹²⁹ Imports from India and Indonesia entered the United States in fewer months over the three-year period, but entered in 11 and 12 months, respectively, during calendar year 1998.¹³⁰

¹²⁰ CR at II-5 and n.6, and IV-10, PR at II-3 and n.6, and IV-9.

¹²¹ CR at II-5, PR at II-3.

¹²² We note that imports from India and Italy into the West were minimal, as were imports from Indonesia and Japan into the Great Lakes region. Table IV-3, CR at IV-10, PR at IV-9.

¹²³ CR at II-5, PR at II-3.

¹²⁴ Table I-1, CR at I-10, PR at I-7.

¹²⁵ Table I-1, CR at I-10, PR at I-7.

¹²⁶ Table I-1, CR at I-10, PR at I-7.

¹²⁷ Table I-1, CR at I-10, PR at I-7.

¹²⁸ CR at II-10, PR at II-7.

¹²⁹ Table IV-4, CR at IV-11, PR at IV-10.

¹³⁰ Table IV-4, CR at IV-11, PR at IV-10.

5. Conclusion

Based on the record in these investigations, we find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. With respect to fungibility, there are some quality differences between the subject merchandise from France, Italy, and Japan, the domestic like product, and other subject imports, as well as some degree of differentiation in the product mix. Nonetheless, we find that the current record reveals that, during the period for which data were collected, all the subject countries exported to the United States subject merchandise that was broadly interchangeable with each other and with the domestic like product, generally manufactured to industry standards, and suitable for a wide range of applications.¹³¹ We will examine the issue of specialty products and quality and price differences in any final phase of these investigations.

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

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.^{132 133} In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on

¹³¹ Commissioner Crawford concurs that, overall, subject imports are substitutable for each other and for the domestic product. However, the fact that a majority of French imports and some Italian and Japanese imports are grade X-70 plate reduces somewhat the substitutability of these subject imports with the domestic product. Similarly, the nonprice differences discussed above also reduce somewhat the substitutability among the subject imports, particularly the subject imports from India, Indonesia, and Korea, and with the domestic product. Based on these different product mixes and the nonprice differences, Commissioner Crawford finds that the subject imports and the domestic like product are likely moderately substitutable for each other.

¹³² 19 U.S.C. § 1671b(a) and 1673b(a).

¹³³ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997)(rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745(Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), aff’g, 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

domestic producers of the domestic like product, but only in the context of U.S. production operations.¹³⁴ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹³⁵ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports we consider all relevant economic factors that bear on the state of the industry in the United States.¹³⁶ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹³⁷

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing CTL steel plate is materially injured by reason of subject imports from France, India, Indonesia, Italy, and Korea that are allegedly subsidized and by reason of subject imports from France, India, Indonesia, Italy, Japan, and Korea that are allegedly sold at LTFV.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations.¹³⁸ The industry has undergone considerable consolidation over the period for which data were collected, while at the same time adding significant production and capability. Bethlehem and Lukens completed a merger of their plate operations in 1998 and then closed the Sparrows Point plate mill.¹³⁹ Both IPSCO and U.S. Denro began production in late 1997, while Oregon Steel replaced its reversing mill with a Steckel mill during 1997-98.¹⁴⁰ Nucor began construction of a new plate mill and IPSCO, Inc. of Canada announced plans to build a new plate mill in the United States.¹⁴¹ Geneva Steel’s bankruptcy filing, which occurred in early 1999, was described by petitioners as relating to efforts the company undertook to improve its cost structure and efficiency while improving product quality.¹⁴²

The domestic industry’s capacity to produce CTL plate increased 28.7 percent during the period for which data were collected, while production increased by 21.9 percent.¹⁴³ Apparent consumption of CTL

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

¹³⁵ 19 U.S.C. § 1677(7)(A).

¹³⁶ 19 U.S.C. § 1677(7)(C)(iii).

¹³⁷ 19 U.S.C. § 1677(7)(C)(iii).

¹³⁸ The record in the preliminary phase of these investigations indicates that captive production is not significant. Only 3 of the 14 mills providing data to the Commission reported any appreciable intracompany transfers, which accounted for between 4.5 and 6.7 percent of total mill shipments during the period for which data were collected. The processors reported no intracompany transfers. CR at III-7, PR at III-6. We therefore find that, as a threshold matter, the statutory captive production provision does not apply and captive production is not a significant condition of competition.

¹³⁹ CR at III-4, PR at III-1, 4. The Bethlehem-Lukens merger, according to petitioners, reduced capacity (at Sparrows Point), but increased efficiency and reduced costs by utilizing more fully the remaining combined facilities. Petitioners’ Postconference Brief at 43.

¹⁴⁰ CR at III-4, PR at III-1, 4. Petitioners contend that Oregon Steel’s investment in a new Steckel combination rolling mill at Portland and the closure of its Fontana plate mill were directed at lowering costs and expanding product range. Petitioners’ Postconference Brief at 43.

¹⁴¹ CR at III-4, PR at III-1, 4. According to the petitioners, the announced new investments by IPSCO and Nucor were in response to perceived opportunities to participate in supplying strong U.S. demand. Petitioners’ Postconference Brief at 43.

¹⁴² Petitioners’ Postconference Brief at 43.

¹⁴³ Table III-2, CR at III-5, PR at III-5.

plate, which depends on the demand for a variety of end-use applications, also increased markedly from 1996 to 1998.¹⁴⁴

Despite increased production, capacity utilization fell from 80.8 percent in 1996 to 76.5 percent in 1998 as a result of increased capacity.¹⁴⁵ The ratio of U.S. producers' exports to total shipments increased from 1.2 percent in 1996 to 3.0 percent in 1998. Such small volumes relative to total shipments indicates that U.S. producers did not divert production to or from the export market.¹⁴⁶

Finally, much of the CTL plate marketed in the United States has no competition from close substitute materials, and changes in price for those materials are not likely to have a significant effect on CTL plate prices or consumption.¹⁴⁷

B. Volume

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."¹⁴⁸

The methods used for analyzing the volume of imports, Methods 3 and 4, both showed a significant increase in volume and market share of the subject imports during the period for which data were collected.¹⁴⁹ Using Method 4, the volume of cumulated imports from the subject countries rose from *** short tons in 1996 to *** short tons in 1997 and to *** million short tons in 1998, an overall increase of *** percent.¹⁵⁰

¹⁴⁴ Including TIB and product processed through an FTZ and exported to Canada, apparent consumption rose by 17.5 percent; excluding such merchandise, the increase was 16.3 percent. Table IV-5, CR at IV-12 and Memorandum INV-W-057, PR at IV-11 and C-5.

¹⁴⁵ Table III-2, CR at III-5, PR at III-5.

¹⁴⁶ CR at II-2, PR at II-1.

¹⁴⁷ CR at II-2, PR at II-1. We intend to explore the degree of substitutability across the various products in any final investigations.

¹⁴⁸ 19 U.S.C. § 1677(7)(C)(i).

¹⁴⁹ We employed either of the same two methods for analyzing the volume of imports as for analyzing negligibility, both of which are based on official imports for consumption, but are adjusted to include microalloys and to take into account TIB and FTZ entries. These are Methods 3 and 4 in the staff report. CR at IV-5-6, PR at IV-7-8. The difference between them is that Method 3 excludes all TIB and FTZ entries which are reexported to another country, even a NAFTA country, while Method 4 includes TIB and FTZ entries that are shipped into the United States after transformation or reexported to Canada because NAFTA subjects such imports to antidumping and countervailing duties and treats them as entries for consumption. The total volume of 1998 imports included in Method 4 that is not included in Method 3 is *** short tons, from the following subject countries: France, *** short tons; Italy, *** short tons; Japan, *** short tons; the remaining *** short tons were from nonsubject countries. Compare Table C-1 with Table C-1A, CR at C-3 and Memorandum INV-W-057, PR at C-3 and C-5. See also questionnaire responses of ***. The trends exhibited under either method are the same.

The injury analysis of Chairman Bragg and Commissioners Crawford and Koplan is based on Method 4, while the injury analysis of Vice Chairman Miller and Commissioners Askey and Hillman is based on Method 3.

We invite briefing on which method should be the basis of our material injury analysis in any final phase investigations, given prior Commission practice with respect to TIB and FTZ entries, see, e.g., Titanium Sponge From Ukraine: Final Results of Antidumping Duty Administrative Review, 61 Fed. Reg. 6350 (Feb. 20, 1996) (entries under TIB not subject to antidumping duties); Titanium Metals Corp. v. United States, 901 F. Supp. 362 (Ct. Int'l Trade 1995); Coumarin From the People's Republic of China, Inv. No. 731-TA-677 (Final), USITC Pub. 2852 at I-10, n.56 (Feb. 1995), and given that reexports of TIB and FTZ entries to a NAFTA country were not at issue in prior cases.

¹⁵⁰ Table IV-2, CR at IV-7, PR at IV-5.

The subject imports gained market share at the expense of the domestic producers, particularly toward the end of the period for which data were collected.¹⁵¹ The cumulated market share of the subject imports by quantity rose from *** percent in 1996 to *** percent in 1997 and to *** percent in 1998.¹⁵² The domestic producers' share of consumption increased from 75.7 percent in 1996 to 81.2 percent in 1997, and then declined to 76.2 percent in 1998. There was a significant decline in domestic producers' share of the U.S. market during 1998, with market share declining to 69.8 percent late in 1998.¹⁵³

Using Method 3, the volume of cumulated imports from the subject countries rose from *** short tons in 1996 to *** short tons in 1997 and to *** million short tons in 1998, an overall increase of *** percent.¹⁵⁴

The cumulated market share of the subject imports by quantity rose from *** percent in 1996 to *** percent in 1997 and to *** percent in 1998. At the same time, domestic producers' share of consumption increased from 75.7 percent in 1996 to 81.2 percent in 1997, and then declined to 77.0 percent in 1998. The domestic producers' share of the U.S. market declined significantly during 1998 to 70.7 percent late in 1998.¹⁵⁵

We find for purposes of these preliminary investigations that the volume of cumulated subject imports, both absolutely and in terms of percentage of domestic consumption, is significant, regardless of the methodology employed. The increase in subject import volume was dramatic during the period of investigation. The subject imports in 1997 initially gained market share created after the filing of petitions against China, Russia, South Africa, and Ukraine in the last CTL plate case and the suspension agreements that ensued.¹⁵⁶ However, the subject imports continued to gain market share, at the expense of the domestic industry, particularly toward the end of the investigative period.¹⁵⁷ In the face of rising U.S. consumption of CTL plate over the period for which data were collected, U.S. producers' market share declined in 1998 to close to 1996 levels, while subject imports as a share of consumption more than tripled during the period for which data were collected.¹⁵⁸

¹⁵¹ Commissioner Askey notes that subject imports gained market share at the expense of nonsubject imports. Domestic producers' market share was still higher in 1998 than it had been in 1996. Nonsubject imports held *** percent of the market in 1996 but only *** percent in 1998, a decline of *** percentage points. Subject imports increased their market share from *** percent in 1996 to *** percent in 1998, an increase of only *** percentage points. Table C-1A, Memorandum INV-W-057, PR at C-5.

¹⁵² Table IV-6, CR at IV-14, PR at IV-13.

¹⁵³ Table C-1, CR at C-3, PR at C-3.

¹⁵⁴ Table C-1A, Memorandum INV-W-057, PR at C-5.

¹⁵⁵ Table C-1A, Memorandum INV-W-057, PR at C-5.

¹⁵⁶ Carbon Steel Plate, USITC Pub. 3076.

¹⁵⁷ Commissioner Askey refers to the data contained in n.151, *supra*.

¹⁵⁸ Commissioner Crawford joins only in the factual, numerical discussion of the volume of imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of subject imports is significant in light of its price effects and impact.

C. Price Effects of the Cumulated Subject Imports

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

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁵⁹

The record evidence in these investigations shows that, despite some perceived differences in quality, most producers and importers consider the subject imports to be generally substitutable with the domestic like product in the commodity-grade plate.¹⁶⁰ ¹⁶¹ We note, however, that substitutability may be limited with respect to plate used in specific applications, or with greater thickness. We intend to examine this issue closely in any final investigations.

The pricing data gathered in these investigations showed mixed results. During 1998, domestic prices declined noticeably and volumes fell from initial highs in the face of decreasing prices and increasing volumes of product from the six non-negligible countries.¹⁶² ¹⁶³ These declines correspond to the overall

¹⁵⁹ 19 U.S.C. § 1677(7)(C)(ii).

¹⁶⁰ CR at II-4, PR at II-3.

¹⁶¹ We note that substandard quality does not appear to be an issue for most of the imports in question. Importers discussed the quality of CTL plate from France, Italy, Japan, and Korea in positive terms. At least one importer did, however, note instances of inferior quality for imports from India and Indonesia. CR at II-8-10, PR at II-6-7.

¹⁶² Tables V-1-V-9, CR at V-10-21, PR at V-9-16.

¹⁶³ Commissioner Crawford finds that the subject imports are not having significant effects on domestic prices. To evaluate the effects of subsidies and dumping on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were allegedly subsidized and dumped with what domestic prices would have been if the imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In these investigations, no subsidy margins have been calculated, and the range of dumping margins varies by country. However, for all countries the upper range of the margins is large, exceeding 40 percent. Thus, prices for all the subject imports likely would have risen significantly if they had been priced fairly, and the subject imports would have become more expensive relative to the domestic product and other alternative sources for the product (e.g., nonsubject imports). In such a case, if the products are substitutable, demand would have shifted away from subject imports and towards the relatively less-expensive products. As noted above, Commissioner Crawford finds that subject imports and the domestic product are all moderate substitutes for each other. Nonsubject imports, including imports from the Czech Republic and Macedonia, are a moderate factor in the domestic market, accounting for only a *** percent market share in 1998. Of the total volume of nonsubject imports, those from China, Russia, South Africa, and Ukraine account for a market share of 4.7 percent. The competition among the domestic product, the subject imports and these nonsubject imports is limited because they are subject to suspension agreements. Therefore, the primary competition from nonsubject imports is fairly small, that is, the *** percent market share held by the other nonsubject imports. Consequently, it is likely that most of any shift in demand away from the subject imports would have shifted to the domestic product. The subject imports held a market share of *** percent in 1998, and thus the shift in demand to the domestic product likely would have been significant. However, the significant shift in demand would not have allowed the domestic industry to raise its prices. The domestic industry has reported a large amount of unused capacity and substantial inventories that would have been available to satisfy the increase in demand. In addition, there is a large and growing number of domestic producers that compete among themselves. Thus, the reported available capacity and inventories and competition within the domestic industry would have enforced price discipline in the market. Consequently, Commissioner Crawford finds that the subject imports are not having significant effects on domestic prices for cut-to-length steel plate.

increasing level of imports discussed above and culminated in several quarterly price and volume lows or near-lows for domestic producers for the entire period for which data were collected. Furthermore, these price movements have taken place against a backdrop of steep increases in importer and purchaser inventories.¹⁶⁴ However, there was mixed underselling and overselling during 1996 to 1998, with the imported product underselling the domestic product in 103 quarterly observations and overselling the domestic product in 96 quarterly comparisons, although underselling was greater in 1998 than in 1996-97.¹⁶⁵

Several producers alleged the loss of sales or revenues to CTL plate imported from the subject countries. While the majority of these allegations were disputed by the companies alleged to have purchased the product in question in 1997 and 1998, beginning with September 1998 allegations, a number of lost sales were confirmed by the purchasers, involving CTL plate from India, Indonesia, Japan, and Korea. In addition, two allegations of revenue lost to imports of Korean CTL plate in late 1998 were confirmed by the prospective customers.¹⁶⁶

The average unit values (AUVs) for the subject imports declined overall during the period for which data were collected.¹⁶⁷ ¹⁶⁸ Using Method 4, the AUVs for imports from the subject countries declined from *** in 1996 to *** in 1997, and then declined to *** in 1998. Using Method 3, AUVs for imports for the subject countries declined from *** in 1996 to *** in 1997, and then declined to *** in 1998.¹⁶⁹ These declines correspond to significantly increasing levels of subject imports, both absolutely and in terms of domestic consumption.¹⁷⁰

¹⁶⁴ Table VII-9, CR at VII-20, PR at VII-8; Fig. VII-1, CR at VII-22, PR at VII-10.

¹⁶⁵ Tables V-1-9, CR at V-10-21, PR at V-9-16; CR at V-9, n.4, PR at V-8, n.4. In 1996, there were 11 instances of underselling out of 35 comparisons; this increased to 37 instances out of 64 comparisons in 1997, then to 55 instances out of 100 comparisons in 1998. Tables V-1-9, CR at V-10-21, PR at V-9-16; CR at V-9, n.4, PR at V-8, n.4.

¹⁶⁶ Tables V-10 and V-11, CR at V-26-28, PR at V-19.

¹⁶⁷ Using Method 4, the AUVs for imports from Indonesia declined from \$362.92 in 1997 to \$343.63 in 1998; for Italy, from \$450.57 in 1996 to \$422.40 in 1998; for Japan, from ***; for Korea, from \$434.87 in 1996 to \$371.86 in 1998. Table IV-2, CR at IV-8, PR at IV-6. Using Method 3, the AUVs for imports from Indonesia declined from \$362.92 in 1997 to \$343.63 in 1998; for Italy, from ***; for Japan, from ***; for Korea, from \$434.87 in 1996 to \$371.86 in 1998. Table C-1A, Memorandum INV-W-057, PR at C-5-6.

¹⁶⁸ See Hot-Rolled Steel, USITC Pub. 3142 at 16 (declines in AUVs considered in analyzing price effects of subject imports).

¹⁶⁹ Table C-1A, Memorandum INV-W-057, PR at C-5-6.

¹⁷⁰ We are unable to ascertain whether the declines in AUVs are a result of the increase in imports or are a result of other factors, such as a shift in product mix or a decline in the cost of raw materials. We intend to investigate further the reason for the decline in prices and AUVs in any final phase investigations.

D. Impact¹⁷¹

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁷² These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.

The data show a CTL plate industry with declines in a number of key economic factors, despite increases in U.S. production, capacity, and overall demand during the period for which data were collected. The domestic industry's capacity to produce CTL plate increased 28.7 percent from 1996 to 1998, production increased by 21.9 percent and apparent consumption increased by 16.3-17.5 percent.¹⁷³ The capacity utilization of the domestic industry, however, declined from 80.8 percent in 1996 to 76.5 percent in 1998.^{174 175} While orders for CTL plate produced by U.S. mills reached their highest level at the end of the

¹⁷¹ 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). In its notice of initiation, Commerce identified the following estimated dumping margins: France 7.99-30.06, 11.37-42.50; India 44.51, 72.49; Indonesia 17.59, 52.42; Italy 39.55-93.30, 30.75-89.72, Japan 3.06-3.44, 56.24-59.12; and Korea 14.57-63.00, 1.26-34.91. 64 Fed. Reg. 12959. Commerce identified more than one estimated dumping margin for most of the subject countries based on different methodologies for calculating the margin. See CR at I-3, PR at I-3 for a description of the methodologies.

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

¹⁷³ Table II-2, CR at III-5, PR at III-5. Employment, wages, and productivity all increased slightly over the period for which data were collected, while unit production costs declined slightly. Table III-5, CR at III-9, PR at III-8.

¹⁷⁴ Table III-2, CR at III-5, PR at III-5.

¹⁷⁵ Commissioner Crawford does not base her determination on an analysis of the trends in the statutory impact factors. However, she concurs in her colleagues' conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of subsidized and dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when the imports were allegedly subsidized and dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of the subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (e.g., employment, wages, etc.) is derived from this impact. As she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had subject imports been priced fairly. Therefore, any impact of the allegedly dumped and subsidized imports on the domestic industry would have been on the domestic industry's output and sales. Competition from nonsubject imports is fairly small, and thus, had the subject imports not been unfairly traded, most of the demand satisfied by the subject imports likely would have shifted to the domestic product. The increase in demand for the domestic product likely would have been significant, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been dumped and subsidized. Therefore, the domestic industry likely would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of imports of cut-to-length steel plate from France, India, Indonesia, Italy, and Korea that are allegedly subsidized and by reason of imports of cut-to-length steel plate from France, India, Indonesia, Italy, Japan, and Korea that are allegedly dumped.

first quarter of 1998, 1,662,131 short tons, orders declined dramatically throughout the year to 544,016 short tons at the end of fourth quarter 1998.¹⁷⁶ Orders in place with U.S. mills at the close of 1998 were at the lowest level reported over the entire period for which data were collected. At the same time, the inventories held by U.S. producers grew both absolutely and relative to production, throughout 1996-98.¹⁷⁷ An increase in the ratio of U.S. inventories of the domestic like product to U.S. shipments, from 5.1 percent in 1996 to 6.1 percent in 1998,¹⁷⁸ is also a sign that U.S. producers' ability to market the domestic like product was curtailed.

The sales volumes of CTL plate sold by domestic producers increased at an average rate of 6.4 percent during the period for which data were collected, most notably between 1997 and 1998.¹⁷⁹ Despite the fact that U.S. production, production capacity and sales volumes all showed increases, operating income fell by one-fifth in absolute terms, and by one-third as a ratio to net sales.¹⁸⁰ The average unit sales price for CTL plate by the domestic industry dropped by 1.7 percent from 1996 to 1997, and dropped again by 0.3 percent in 1998.¹⁸¹ As indicated above, the decline in the domestic industry's average unit sales prices occurred at the same time that subject imports grew¹⁸² and subject import AUVs fell.

We note, moreover, that the industry's capital expenditures decreased from \$201.6 million in 1996 to \$147.1 million in 1997 to \$144.8 million in 1998. Research and development expenses by the U.S. industry also declined from \$4.4 million in 1996 to \$3.8 million in 1998.¹⁸³

The market share of imports from China, Russia, South Africa, and Ukraine, countries which were found in the most recent CTL plate case in 1997 to be unfairly traded and threatening material injury to the U.S. industry,¹⁸⁴ showed a noticeable decrease, as a share of apparent consumption (by quantity), from nearly 16 percent in 1996 to under 5 percent in 1998.¹⁸⁵ The record to date indicates that the steady increase in imports from the subject countries over the period for which data were collected was an important factor in the U.S. industry's failure to recapture and hold market share lost from 1995 to 1997 to China, Russia, South Africa, and Ukraine¹⁸⁶ before the suspension agreements took effect.¹⁸⁷

¹⁷⁶ CR at III-8, PR at III-7.

¹⁷⁷ Table III-4, CR at III-9, PR at III-7.

¹⁷⁸ CR at II-1, PR at II-1.

¹⁷⁹ CR at VI-1, PR at VI-1.

¹⁸⁰ Table VI-1, CR at VI-2, PR at VI-2. The net income of the U.S. industry declined steadily, from 2.8 percent of net sales in 1996 to 0.8 percent of net sales in 1997, to a negative 0.4 percent in 1998. CR at VI-1, PR at VI-1.

¹⁸¹ CR at VI-1, PR at VI-1.

¹⁸² The overall increase in the volume of subject imports from 1996 to 1998 was *** percent using Method 4 and *** percent using Method 3.

¹⁸³ Table VI-5, CR at VI-13, PR at VI-5.

¹⁸⁴ Carbon Steel Plate, USITC Pub. 3076. Commissioner Crawford found present material injury by reason of the subject imports. See *id.* at 29-40, Views of Commissioner Carol T. Crawford.

¹⁸⁵ Table C-1, Table C-1A, CR at C-3 and Memorandum INV-W-057, PR at C-3 and C-5.

¹⁸⁶ In 1996, these four countries accounted for approximately two-thirds of imported CTL plate. Between 1996 and 1997, the volume of imports from the subject countries approached parity with the volume from the countries under the suspension agreements, with each group accounting for approximately one-third of all imports. By 1998, the subject countries accounted for a majority of all imports of CTL plate. Table IV-2, CR at IV-7 and Memorandum INV-W-057, PR at IV-5 and C-5-6.

¹⁸⁷ From 1996 to 1997, the market share of imports from China, Russia, South Africa, and Ukraine decreased from 15.8 percent to 6.8 percent, while the market share held by the subject imports increased from *** percent to *** percent. However, from 1997 to 1998, while the market share of the suspension agreement countries decreased even further, the U.S. industry's market share declined by over 4 percentage points, and the market share held by the subject imports jumped by over *** percentage points. Table C-1, Table C-1A, CR at C-3 and Memorandum INV-W-057, PR at C-3 and C-5.

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

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing certain CTL steel plate is materially injured by reason of imports of certain CTL steel plate from France, India, Indonesia, Italy, and Korea that are allegedly subsidized and by imports of certain CTL steel plate from France, India, Indonesia, Italy, Japan, and Korea that are allegedly sold in the United States at less than fair value.

**DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG
REGARDING IMPORTS FROM THE CZECH REPUBLIC**

Although I concur with my colleagues in finding that there is not a potential that subject imports from the Czech Republic and Macedonia will imminently account for more than 7 percent of all such merchandise imported into the United States, and that there is not a potential that subject imports from Macedonia alone will imminently account for more than 3 percent of all such merchandise imported into the United States, I do find that there is a potential that subject imports from the Czech Republic will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States. Accordingly, I respectfully dissent from the majority's negligibility finding as to the Czech Republic.

I first note that during the period for which data were collected, the volume of subject imports from the Czech Republic accounted for *** percent of all cut-to-length steel plate imported into the United States in 1996; *** percent in 1997; and *** percent in 1998.¹ Thus, Czech imports *** the negligibility threshold in two out of three years during the period for which data were collected, and *** in 1997. Moreover, Czech imports were *** the negligibility threshold in 1998.

I also note that the 1997 increase may have reflected the *** percent capacity utilization rate evidenced that year. Projected capacity utilization for the Czech Republic in 1999 is *** percent—a slight increase over the 1998 capacity utilization rate,² which is indicative of the potential for Czech imports to imminently exceed the negligibility threshold given the *** percent Czech import share in 1998.

Notwithstanding the decline in Czech imports as a percentage of all such imports into the United States between 1997 and 1998, I find that in light of the projected increase in capacity utilization for 1999 and the *** percent share of total imports held by subject imports from the Czech Republic in 1998, coupled with the import share data for 1996 and especially 1997, there exists a potential that subject imports from the Czech Republic will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States.³

I now turn to whether subject imports from the Czech Republic threaten material injury to the domestic industry.

In assessing whether the domestic industry is threatened with material injury by reason of subject imports from the Czech Republic, the statute directs the Commission to consider “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted”⁴ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”⁵ and considers the threat factors⁶ as a whole;

¹ Table IV-2, Confidential Report (“CR”) at IV-8, Public Report (“PR”) at IV-6. Calculations are based upon Method 4, as described in the staff report, CR at IV-6, PR at IV-8.

² Table VII-1, CR at VII-4, PR at VII-3.

³ 19 U.S.C. § 1677(24)(A)(iv). Although reported orders of subject merchandise from the Czech Republic for the first half of 1999 are relatively small, and Czech exports to the United States are projected to decline in 1999, I note that this is likely due to the pendency of these investigations. Tables VII-1 and VII-10, CR at VII-4 and VII-21, PR at VII-3 and VII-9; *see* 19 U.S.C. § 1677(7)(I).

⁴ 19 U.S.C. § 1677(7)(F)(ii).

⁵ *Id.*

⁶ 19 U.S.C. § 1677(7)(F)(i).

indeed, the presence or absence of any such factor is not dispositive of the Commission's determination.⁷ In making my determination, I have considered all statutory factors that are relevant to these investigations.⁸

The statute provides that the Commission may, in determining threat of material injury, cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.⁹ I note that I have joined my colleagues in cumulating subject imports from France, India, Indonesia, Italy, Japan, and Korea. For the reasons discussed below, I further determine that subject imports from these countries should be cumulated with Czech imports for purposes of my threat analysis.¹⁰

First, with regard to fungibility, the vast majority of U.S. producers and importers found Czech imports either "always" or "frequently" interchangeable with the U.S. product and with imports from other countries subject to these investigations.¹¹ Second, with regard to geographic overlap, I note that during the period for which data were collected, Czech imports were present in each of the four domestic regions examined by staff, as were all other subject imports.¹² Third, with regard to channels of distribution, Czech imports mirrored those of most other countries subject to these investigations, in that over two-thirds of Czech imports were to distributors, processors, and service centers.¹³ Finally, with regard to simultaneous presence in the U.S. market, I note that Czech imports entered the United States in 34 of 36 months during the period examined.¹⁴

Accordingly, based on the entirety of the record evidence in these investigations, I determine that there is a reasonable overlap of competition between Czech imports and imports from each of the remaining countries subject to these investigations.

In addition, I find that Czech imports exhibited a volume trend similar to that of other cumulated subject imports.¹⁵ I further note that the average unit value of subject imports from the Czech Republic in 1998 was substantially below that of U.S. producers, as was the average unit value for subject imports from four of the six remaining countries subject to these investigations.¹⁶ Consequently, based upon all of the foregoing, I determine that Czech imports should be cumulated with subject imports from France, India, Indonesia, Italy, Japan, and Korea.

⁷ See 19 U.S.C. § 1677(7)(F)(ii).

⁸ 19 U.S.C. § 1677(7)(F)(i). I note that factor (I) is not relevant, as it addresses the nature of any countervailable subsidies, and Czech imports are subject solely to an antidumping investigation. Factor (VII) is also not relevant, as it concerns raw and processed agricultural products.

⁹ See 19 U.S.C. § 1677(7)(H).

¹⁰ For additional discussion of my approach to cumulation in a similar context, I refer to my dissenting views regarding imports from Germany in Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126 (Sept. 1998).

¹¹ CR at II-6 and II-11, PR at II-4 and II-8. Although a majority of importers found factors other than price to be always or frequently significant in comparing the Czech product with merchandise from India, as did half of responding importers in comparing the Czech product with non-subject merchandise, see CR at II-11 n.20 & II-12 n.21, PR at II-8 nn. 21 & 22, I also note that one importer considered the Czech product to be of excellent quality and size range. CR at II-8 n.9, PR at II-6 n.9.

¹² Table IV-3, CR at IV-10, PR at IV-9.

¹³ Table I-1, CR at I-10, PR at I-7.

¹⁴ Table IV-4, CR at IV-11, PR at IV-10.

¹⁵ In addition to the Czech Republic, subject import volume increased between 1996 and 1998 for five of the six remaining countries subject to these investigations. Table IV-2, CR at IV-7, PR at IV-5.

¹⁶ Compare Table III-3 with Table IV-2, CR at III-7 and IV-8, PR at III-6 and IV-6.

For purposes of assessing the threat of material injury posed by subject imports from the Czech Republic, I am mindful of the fact that I have joined my colleagues in finding a reasonable indication that the domestic industry is materially injured by reason of cumulated imports of certain cut-to-length steel plate from the remaining countries subject to these investigations. When assessed in conjunction with the reasonable indication of present material injury caused by these cumulated subject imports, I determine that there is a reasonable indication that future Czech imports pose an imminent threat of material injury to the domestic industry.

In particular, I note that even the increased Czech capacity utilization rate projected for 1999 falls short of the capacity utilization level evidenced in 1997, indicating an availability of excess capacity among Czech producers. Second, given the significant gap by which the average unit value for domestic shipments exceeded the average unit value for Czech imports during the period for which data were collected, and particularly in 1998, I find that Czech imports are likely to enter the U.S. at prices which will have a likely depressing or suppressing effect on domestic prices.

Third, I note that one Czech mill reported the production of other steel products on the same equipment used to produce the subject merchandise,¹⁷ indicating a potential for product-shifting. Fourth, I find that the impact of Czech imports will exacerbate the negative impact of cumulated subject imports from the remaining countries subject to these investigations, on the ability of domestic producers to make capital expenditures and engage in research and development efforts. Fifth, I find that the threat posed by Czech imports is heightened in light of the existing suspension agreements covering carbon steel cut-to-length plate from China, Russia, South Africa, and the Ukraine.

For the foregoing reasons, and based upon the entirety of the record evidence in these investigations, I determine that there is a reasonable indication that subject imports from the Czech Republic pose an imminent threat of material injury to the domestic industry.

¹⁷ CR at VII-3, PR at VII-2.