

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN COLD-ROLLED STEEL PRODUCTS FROM
TURKEY AND VENEZUELA

Investigations Nos. 731-TA-839-840 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3297, May 2000)

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CERTAIN COLD-ROLLED STEEL PRODUCTS FROM TURKEY AND VENEZUELA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of certain cold-rolled steel products from Turkey and Venezuela that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective June 2, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corporation (Bethlehem, PA); U.S. Steel Group (Pittsburgh, PA); Ispat Inland, Inc. (East Chicago, IL); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corporation (Mishawaka, IN); Gulf States Steel, Inc. (Gadsden, AL); Steel Dynamics, Inc. (Butler, IN); Weirton Steel Corporation (Weirton, WV); and the United States Steelworkers of America, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of cold-rolled steel from Turkey and Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 1, 1999 (64 FR 67307). The hearing was held in Washington, DC, on January 20, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 dissenting.

IEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel products from Turkey and Venezuela that Commerce found to be sold in the United States at less than fair value (“LTFV”).¹

I. THE COMMISSION ADOPTS THE VIEWS STATED IN CERTAIN COLD-ROLLED STEEL FROM ARGENTINA, BRAZIL, JAPAN, RUSSIA, SOUTH AFRICA, AND THAILAND

On June 2, 1999, the domestic industry filed petitions seeking the imposition of antidumping and countervailing duties on imports of certain cold-rolled steel products from 12 countries: Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela. On March 20, 2000, the Commission published its determinations with respect to six of those countries: Argentina, Brazil, Japan, Russia, South Africa, and Thailand.² We were required to issue our determinations with respect to those countries in March 2000 because Commerce issued its final determinations with respect to those countries earlier than its determinations with respect to Turkey and Venezuela.

The record in these investigations is nearly identical to the record on which the determinations regarding imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand were based.³ Therefore, for purposes of these determinations, we adopt the findings and analysis in the Commission’s views regarding imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand for like product, domestic industry, negligibility, and conditions of competition, including captive consumption.⁴

II. CUMULATION

A. In General

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,

¹ Chairman Bragg dissenting. See Dissenting Views of Chairman Lynn M. Bragg.

² 65 Fed. Reg. 15008 (Mar. 20, 2000). See Certain Cold-Rolled Steel from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (Mar. 2000) (hereinafter “Cold-Rolled I”).

³ Under section 771(7)(G)(iii) of the Tariff Act of 1930, as amended (“the Act”), we are required to make our determinations in the instant investigations on the same record as that of the determinations regarding imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, except that the record in these investigations also includes Commerce’s final determinations in these investigations and the parties’ final comments concerning the significance of those determinations.

⁴ We note that the negative determination and subsequent termination of the investigations regarding Argentina, Brazil, Japan, Russia, South Africa, and Thailand render moot the consideration of some domestic producers as related parties. See Cold-Rolled I at 7-9. In light of our decision in those investigations and in these determinations not to exclude any domestic producers as related parties, we find no need to revisit the issue of related parties in these determinations. Similarly, our observations regarding the likely effects of a trade agreement with Russia are not relevant to these determinations but do not affect our overall analysis.

if such imports compete with each other and with the domestic like product in the United States market.⁵ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁶

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.⁷ Only a “reasonable overlap” of competition is required.⁸

Because the petitions in these investigations were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, three of the four statutory exceptions to the general cumulation rule do not apply in the final phase of these investigations.⁹ One of the four statutory exceptions to cumulation, 19 U.S.C. § 1677(7)(G)(ii)(II), provides that the Commission “shall not cumulatively assess the volume and effect of imports...from any country with respect to which the investigation has been terminated.” The Act further provides that, if either Commerce or the Commission reaches a final negative determination in an antidumping or countervailing duty investigation, “the investigation shall be terminated upon publication of notice of that negative determination...”¹⁰ The Commission’s notice of its final negative determinations in the countervailing and antidumping duty investigations of imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand were published in the *Federal Register* on March 20, 2000.¹¹ Accordingly, we find that those investigations have been terminated and that section 1677(7)(G)(ii)(II) precludes cumulation of imports from those countries in these instant investigations.¹²

⁵ 19 U.S.C. § 1677(7)(G)(i).

⁶ 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).

⁷ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁸ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁹ These exceptions concern imports from Israel, 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).

¹⁰ 19 U.S.C. §§ 1671d(c)(2) and 1673d(c)(2).

¹¹ 65 Fed. Reg. 15008 (Mar. 20, 2000).

¹² We have considered the record closing provision applicable to staggered investigations and find that it does not alter the operation of the statutory bar to cumulation for terminated investigations for two reasons. First, Congress’s express purpose in adopting the record closing provision was to avoid the kind of analysis the Commission previously performed under the “recent order rule,” which was a test for determining whether imports as to which the Commission had reached an affirmative determination in the earlier of staggered votes were having

Therefore, with the exception of imports from the countries whose investigations have been terminated, we are required to determine whether there is a reasonable overlap of competition both between the domestic like product and subject imports from each of the subject countries, as well as among the subject imports from all six of the subject countries.

B. Analysis

In the preliminary phase of these investigations, the Commission cumulated subject imports from all countries, finding a sufficient degree of fungibility of the subject imports with each other and the domestic merchandise, overlap of geographic markets, common or similar channels of distribution, and simultaneous presence in the U.S. market.¹³ In the final phase of these investigations, we again find that each of the criteria for cumulation is met with respect to all six subject countries.¹⁴

1. Fungibility

According to domestic producers, domestically produced cold-rolled steel and imported cold-rolled steel are broadly interchangeable.¹⁵ Importers also reported that domestically produced and imported cold-rolled steel products are broadly interchangeable, with certain limitations.¹⁶ *** noted limited interchangeability between the superior products imported from Thailand and lower-quality imports from other sources, while another noted a lack of interchangeability between the domestic product and subject imports from Indonesia and Venezuela because of the superior quality of the domestic product.¹⁷ Arguments were also presented by respondents that subject imports did not compete with each other, particularly with respect to Slovakia and Venezuela, and particularly with respect to quality differences.¹⁸

continuing adverse effects as of vote day in the later investigation, despite the imposition of an order between the votes. The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) (“SAA”) at 848-849. The “recent order” situation does not arise when the first of the staggered votes is negative rather than affirmative. Second, the statutory exception to cumulation for terminated investigations necessarily contemplates that the Commission will take into account determinations it makes after the date specified for closing the record to new factual information since the determinations that result in the termination of an investigation (whether based on negligibility or a negative final determination) ordinarily are made after that closing date. Indeed, the Commission’s rules define the entire record in an investigation to include the determination. 19 CFR § 207.2(f)(2). This approach is consistent with Commission practice. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3106 (Feb. 1997) at 20-21. In any event, as shown by our earlier decision, we would have made the same determinations had we cumulated subject imports from all 12 countries initially named in the petitions.

¹³ Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Inv. Nos. 701-TA-393-396 and 731-TA-829-840 (Preliminary), USITC Pub. 3214 (July 1999) (hereinafter “Preliminary Determination”) at 19.

¹⁴ Respondents from Indonesia, Slovakia, and Venezuela argued that the Commission is barred from cumulating the subject imports of countries whose imports are deemed to be individually negligible. See, e.g., Venezuelan Prehearing Brief at 12. We addressed those arguments in our views in Cold-Rolled I and incorporate those views by reference herein. See Cold-Rolled I at 11 n.65.

¹⁵ CR of February 18, 2000 (hereinafter “CR”) at II-8, PR of February 18, 2000 (hereinafter “PR”) at II-5.

¹⁶ CR at II-9, PR at II-5.

¹⁷ CR at II-10, PR at II-6.

¹⁸ Indonesian Prehearing Brief at 11-12, Slovakian Prehearing Brief at 12, Venezuelan Prehearing Brief at 30.

Purchasers of cold-rolled steel products were asked whether they had actually substituted product from one country for those from another country for the same end use. Seventeen of 40 had substituted product from two or more different countries. The results show a mix of substituted product and a mix of applications, including automotive.¹⁹

Although the scope of these investigations (and the corresponding domestic like product) covers a wide variety of cold-rolled products, imports from all subject countries are concentrated in a few sizes and commercial grades of cold-rolled steel.²⁰ Both domestically-produced cold-rolled steel bound for the open market and subject imports are concentrated in thicknesses greater than 0.020 inches and less than or equal to 0.060 inches.²¹

2. Geographic Overlap

Domestically-produced cold-rolled steel is shipped nationwide.²² Subject imports from five of the six subject countries entered every region between January 1996 and September 1999.²³ Subject imports from Venezuela were the most geographically concentrated of all subject imports, with over 90 percent of subject imports from Venezuela entering the Gulf region.²⁴ Relatively small shares of subject imports from Slovakia and Turkey entered the West region; relatively small shares of subject imports from China entered the Great Lakes region.²⁵

3. Channels of Distribution

The domestic industry internally consumes a large volume of its production of certain cold-rolled steel in the process of producing downstream products such as tin mill black plate and coated products.²⁶ Of the domestic product sold in the merchant market in 1998, a significant portion was sold to distributors, processors, and service centers.²⁷ Of the sales to end users, customers in the automotive and appliance sectors were leading purchasers.²⁸

U.S. importers sell the subject merchandise on the open market, primarily to distributors, processors, and service centers. In 1998, the share of subject imports shipped to that segment ranged from a low of *** percent of subject imports from Venezuela to a high of *** percent of subject imports from Slovakia.²⁹ While the automotive sector is an important market for domestically-produced cold-rolled steel products, only subject imports from *** were sold to the automotive sector, and even for subject imports from *** the automotive sector accounted for *** percent of all subject imports.³⁰

4. Simultaneous Presence

¹⁹ CR at II-18-II-19, PR at II-12.

²⁰ CR at IV-9, PR at IV-8.

²¹ CR at Table IV-4, PR at Table IV-4.

²² CR at IV-9, PR at IV-8.

²³ CR at Table IV-5, PR at Table IV-5.

²⁴ CR at Table IV-5, PR at Table IV-5.

²⁵ CR at Table IV-5, PR at Table IV-5.

²⁶ CR at Table I-2, PR at Table I-2.

²⁷ CR at Table I-2, PR at Table I-2.

²⁸ CR at Table I-2, PR at Table I-2.

²⁹ CR at Table I-2, PR at Table I-2.

³⁰ CR at Table I-2, PR at Table I-2.

Cold-rolled steel products produced in the United States were present in the market throughout the period under investigation.³¹ Subject imports from four of the six subject countries were present for a large majority of the period, with subject imports from China, Slovakia, Taiwan, and Turkey present in at least three-quarters of the 45 months.³² Subject imports from Venezuela were present for 23 of the 45 months, including eight of nine months in the interim period of January through September, 1999.³³ Subject imports from Indonesia were present in each year, including eight months of 1998 and four of the first nine months in 1999.³⁴

5. Conclusion

Based on the evidence in the record of the general fungibility among the subject imports and the domestic like product, broad geographic distribution, similar channels of distribution, and the simultaneous presence of subject imports in the U.S. market, we find a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. There are some quality differences perceived by both purchasers and importers between certain subject imports and the domestic product, as well as some degree of differentiation in the product mix from each country and the domestic like product. Nonetheless, we find that the record reveals that the merchandise imported from all the subject countries to the United States was generally fungible with each other and with the domestic like product. We note that additional differences do exist when the factors of geographic overlap and simultaneous presence are considered, most notably the limited geographic concentration of subject imports from Venezuela. However, cumulation is appropriate when there is a reasonable overlap of competition and cumulation is not dependent on a perfect match on all factors. Therefore, we find a reasonable overlap of competition among subject imports and with the domestic like product in the U.S. market. Consequently, we cumulate subject imports from all six of the subject countries for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.³⁵ In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.³⁶ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³⁷ In assessing whether 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.³⁸ No single factor is dispositive, and all relevant factors are

³¹ CR at IV-10, PR at IV-8.

³² CR at Table IV-6, PR at Table IV-6.

³³ CR at Table IV-6, PR at Table IV-6.

³⁴ CR at Table IV-6, PR at Table IV-6.

³⁵ 19 U.S.C. §§ 1671d(b) and 1673d(b).

³⁶ 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).

³⁷ 19 U.S.C. § 1677(7)(A).

³⁸ 19 U.S.C. § 1677(7)(C)(iii).

considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³⁹

For the reasons discussed below, we determine that the domestic industry producing certain cold-rolled steel is not materially injured by reason of LTFV imports from Turkey and Venezuela.

A. Volume of Cumulated Subject Imports

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.”⁴⁰

We found the volume of subject imports not to be significant in our earlier determination, when the cumulated volume of subject imports from 12 countries was substantially larger than the cumulated volume of subject imports from the six remaining subject countries in the instant cases.⁴¹ Here we find that the lesser volume of subject imports is too small to be considered significant when viewed in light of the conditions of competition in this industry, especially in light of the attenuated competition between subject imports and the domestic like product, and in light of our discussion of price effects below.

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.⁴²

³⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁰ 19 U.S.C. § 1677(7)(C)(i).

⁴¹ Cold-Rolled I at 20-21. In the instant cases, the volume of subject imports increased between 1996 and 1998, rising from 182,020 short tons in 1996 to 554,867 short tons in 1998. CR at Table IV-2, PR at Table IV-2. Most of the increase occurred between 1996 and 1997, when subject imports rose by over 300,000 short tons, an increase of 173.8 percent. CR at Table IV-2, PR at Table IV-2. Subject imports declined 22.7 percent in interim 1999 compared to interim 1998. CR at Table C-1, PR at Table C-1. As a share of total domestic consumption, including internal transfers, subject imports rose from 0.5 percent in 1996 to 1.5 percent in 1998. CR at Table C-1, PR at Table C-1. The share of total domestic consumption held by subject imports in interim 1999 was 1.0 percent, compared to 1.4 percent for interim 1998. CR at Table C-1, PR at Table C-1. The share of open market consumption accounted for by subject imports rose from 1.1 percent in 1996 to 3.2 percent in 1998. CR at Table C-2, PR at Table C-2. Their share of open market consumption slipped from 3.0 percent in interim 1998 to 2.3 percent in interim 1999. CR at Table C-2, PR at Table C-2. The actual increase in subject import volume between 1997 and 1998, approximately 56,561 short tons, was less than 0.5 percent of total open market apparent domestic consumption.

⁴² 19 U.S.C. § 1677(7)(C)(ii).

We discussed the reasons why prices were unlikely to be suppressed or depressed to any significant degree by subject imports in our views in our earlier cold-rolled determinations.⁴³ We find that the same conditions described in that opinion apply here and therefore adopt by reference our reasoning as expressed in those views.⁴⁴

In sum, while the small volume of subject imports may have contributed to some extent to the price declines in the market, we conclude that the contribution of subject imports to those price declines was not significant.

D. Impact of Cumulated Subject Imports on the Domestic Industry⁴⁵

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”⁴⁶ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”⁴⁷

We have already concluded that the volume and price effects of the subject imports are not significant. We discussed the reasons why the volume effects and price effects of the subject imports were not having a significant impact on the domestic industry in our views in our earlier cold-rolled determinations.⁴⁸ We find that the same conditions described in that opinion apply here and therefore adopt our reasoning as expressed in those views herein by reference.⁴⁹

In light of our conclusion that the volume and price effects of subject imports are not material, we do not find material injury to the domestic industry by reason of the subject imports.

IV NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Cumulation for Purposes of Threat Analysis

⁴³ See Cold-Rolled I at 21-24.

⁴⁴ See Cold-Rolled I at 21-24. We note that there are some differences in the degree of underselling from that described in Cold-Rolled I. Subject imports undersold domestic product in 85.7 percent of all price/product comparisons in 1996, in 94.9 percent in 1998, in 97.4 percent in 1998, and 93.3 percent in interim 1999. CR at Tables F-1-F-6, PR at Tables F-1-F-6.

⁴⁵ 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 subject imports. 19 U.S.C. § 1677(7)(C)(iii)(V). The final margins as calculated by Commerce were as follows: Turkey, from 8.67 percent to 32.91 percent; and Venezuela, 42.93 percent to 56.37 percent. CR of April 12, 2000 at I-4, PR of April 12, 2000 at I-4. Preliminary dumping margins for other countries subject to these investigations are as follows: China, 8.84 to 23.72 percent; Indonesia, 49.28 percent; Slovakia, 32.83 percent; and Taiwan, 4.72 to 14.80 percent. CR at I-5, PR at I-5.

⁴⁶ 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).

⁴⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁸ See Cold-Rolled I at 24-25.

⁴⁹ See Cold-Rolled I at 24-25.

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has the discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.⁵⁰ In deciding whether to cumulate, we also consider whether the subject imports are increasing at similar rates and have similar pricing patterns.⁵¹

Petitioners have argued that all subject imports should be cumulated for purposes of a threat determination. Various respondents have argued against cumulation.

In these investigations, we note that the volume of subject imports from all six countries were higher in 1998 than in 1996.⁵² The volume of subject imports declined overall in interim 1999 compared to interim 1998, but trends in the interim period were mixed, with subject imports from four of the six countries declining while subject imports from the remaining two countries were increasing.⁵³ Prices, as shown by average unit values, declined for subject imports from every country between 1996 and 1998 except for Slovakia and Turkey, and the increase in average unit values of subject imports from Turkey was small.⁵⁴ Declines occurred in AUVs for subject imports from all six countries in interim 1999 compared to interim 1998 and the declines were fairly uniform.⁵⁵ Similar pricing patterns were shown for most countries and products, with price declines throughout the period under investigation.⁵⁶ Subject imports from most countries showed similar average margins of underselling.⁵⁷

We recognize that, at least for some of the countries, there are factors that argue against cumulation for purposes of our threat analysis. However, on balance, we find enough overlap of conditions of competition and similarities in price and volume trends to warrant exercising our discretion to cumulate all subject imports. We therefore cumulate the dumped and subsidized imports from all countries subject to these investigations in assessing the threat of material injury to the industry by subject imports.

B. Statutory Factors

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”⁵⁸ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.⁵⁹ In making our

⁵⁰ 19 U.S.C. § 1677(7)(H).

⁵¹ See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

⁵² CR at Table IV-2, PR at Table IV-2.

⁵³ CR at Table IV-2, PR at Table IV-2.

⁵⁴ CR at Table IV-2, PR at Table IV-2.

⁵⁵ CR at Table IV-2, PR at Table IV-2.

⁵⁶ CR at Tables F-1 to F-6, PR at Tables F-1 to F-6.

⁵⁷ CR at Tables V-5 and V-6, PR at Tables V-5 and V-6.

⁵⁸ 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

⁵⁹ 19 U.S.C. § 1677(7)(F)(ii).

determination, we have considered all statutory factors that are relevant to these investigations.⁶⁰ We have also taken into account the current condition of the domestic industry.⁶¹

We found that the cumulated subject imports of all 12 countries, which included subject imports from the six countries currently at issue, did not threaten the domestic industry with material injury in our determinations regarding subject imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand.⁶² Our consideration of all statutory factors relevant to these investigations reveals that the same factual underpinning for our finding of no threat of material injury in our earlier determinations is present, or is even more compelling, in these investigations.⁶³ Therefore, for the reasons expressed in our earlier determinations, we do not find that the domestic industry is threatened with material injury by reason of the subject imports.⁶⁴

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing certain cold-rolled steel is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel from Turkey and Venezuela that Commerce found to be sold in the United States at less than fair value.

⁶⁰ 19 U.S.C. § 1677(7)(F)(I). Factor I, concerning countervailable subsidies, and Factor VII, regarding raw and processed agriculture products, are inapplicable to the investigations at issue.

⁶¹ Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994). The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(i) requires the Commission to consider “all relevant factors” that might tend to make the existence of a threat of material injury more probable or less probable, including domestic industry support for the petition and the views of other interested parties such as consumers. 44 F.3d at 984. The court stated that the Commission “may use its sound discretion in determining the weight to afford these and all other factors, but . . . cannot ignore them.” Id. at 984. The Commission cannot limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Id.

⁶² Cold-Rolled I at 26-27.

⁶³ As in our earlier determinations, the countries subject to investigation have shown generally declines in subject import volumes in the interim 1999 period, *** rates of capacity utilization, *** levels of domestic consumption of domestically-produced certain cold-rolled steel products, *** inventory levels, a lack of significant outstanding orders and *** planned capacity increases. CR at Tables VII-2, VII-3, VII-7, VII-9, VII-11, and VII-12, PR at Tables VII-2, VII-3, VII-7, VII-9, VII-11, and VII-12.

⁶⁴ See Cold-Rolled I at 26-27.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

Certain Cold-Rolled Steel Products from Turkey and Venezuela Inv. Nos. 731-TA-839-840 (Final)

For the reasons set forth below, I determine that the domestic cold-rolled steel industry is materially injured by reason of subject imports from Turkey and Venezuela. Accordingly, I dissent from the negative determination rendered by the majority in these investigations.

I. Material Injury:

The instant investigations arise out of a group of simultaneously filed petitions that also included the Commission's recently completed investigations of certain cold-rolled steel products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand.¹ Under section 771(7)(G)(iii) of the Tariff Act of 1930, as amended, the Commission is required to render determinations in the instant investigations based upon the same record as that of the Commission's determinations regarding subject imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, except that the record in these investigations also includes Commerce's final determinations with regard to Turkey and Venezuela as well as the parties' final comments concerning the significance of such determinations.² The record in the instant investigations is otherwise identical to that examined by the Commission in determinations regarding imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand; consequently, I adopt the findings and analysis contained in my determination regarding imports from the foregoing six countries³ for purposes of defining the domestic like product and domestic industry, negligibility, cumulation,⁴ captive production and

¹ Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000).

² 19 U.S.C. § 1677(7)(G)(iii); see Certain Hot-Rolled Steel Products from Brazil and Russia, Inv. Nos. 701-TA-384 (Final) and 731-TA-806 and 808 (Final), USITC Pub. 3223 at 3 (August 1999).

³ Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, *Dissenting Views of Chairman Lynn M. Bragg*, Inv. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 at 29-40 (March 2000).

⁴ I again determine to cumulate subject imports from all twelve countries for which petitions were filed on the same day, notwithstanding the fact that a Commission majority previously rendered a negative determination with regard to Argentina, Brazil, Japan, Russia, South Africa, and Thailand. In my view, the record closing provision of 19 U.S.C. § 1677(7)(G)(iii) precludes the Commission from considering any information that postdates the closing of the record in these investigations on February 25, 2000, except as expressly provided by statute (*i.e.* Commerce's final antidumping determinations and party final comments thereon). I have previously articulated this approach in similar circumstances. See Certain Steel Wire Rod From Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087, at 8 n.31 (March 1998) (cross-cumulation of imports subject to countervailing duty investigations warranted in staggered determinations notwithstanding the fact that the CVD investigations previously had been terminated). Once the prerequisites for cumulation are satisfied (*i.e.* filing of petitions on the same day coupled with a reasonable overlap of competition), I do not believe that the statute dictates disparate analyses simply because certain of the investigations are concluded before others; indeed, to conclude otherwise carries implications for the analysis beyond the question of cumulation. For example, if imports subject to previously terminated investigations are no longer deemed amenable to cumulation in staggered investigations (assuming the prerequisites for cumulation are otherwise satisfied), the Commission

other conditions of competition, and material injury, in the instant investigations of subject imports from Turkey and Venezuela.

Based upon my cumulative analysis of subject imports from the twelve countries for which petitions were filed on the same day, I find that the domestic industry is materially injured by reason of subject imports from Turkey and Venezuela.

II. Critical Circumstances:

In the investigation of subject imports from Venezuela, Commerce has made an affirmative finding of critical circumstances with respect to product produced and/or exported by Sidor. As a result of Commerce's finding and my affirmative determination of present material injury in the instant investigations, I am also required to render a critical circumstances determination for Venezuela. Thus, I must determine whether the imports at issue are likely to undermine seriously the remedial effect of an antidumping duty order.

I note that Sidor did not provide company-specific data export data to the Commission, although it is reported to be the sole exporter of subject merchandise in Venezuela. Census data on the record indicate that subject imports from Venezuela were 65,201 short tons from December 1998 through May 1999, and 20,224 short tons from June through November 1999. Thus, a comparison of the six month periods preceding and following the filing of the petition demonstrates roughly a 69 percent decline in the volume of subject imports from Venezuela. Accordingly, I find that there has not been a massive surge in imports, such that the remedial effect of an order on Venezuela will be undermined seriously absent an affirmative critical circumstances determination. I therefore reach a negative determination on critical circumstances.

III. Conclusion:

Based upon the foregoing, I determine that the domestic industry producing certain cold-rolled steel is materially injured by reason of subject imports from Turkey and Venezuela. In addition, I render a negative critical circumstances determination with regard to Venezuela in these investigations.

may be required in certain circumstances to revisit its findings concerning negligibility. These circumstances were not, however, present in the instant investigations.