

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**STAINLESS STEEL BAR FROM FRANCE, GERMANY,  
ITALY, KOREA, TAIWAN, AND THE UNITED KINGDOM**

**Invs. Nos. 701-TA-413 (Preliminary) and 731-TA-913-918 (Preliminary)**

**DETERMINATIONS AND VIEWS OF THE COMMISSION**

**(USITC Publication No. 3395, February 2001)**

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**STAINLESS STEEL BAR FROM FRANCE, GERMANY,  
ITALY, KOREA, TAIWAN, AND THE UNITED KINGDOM**

**DETERMINATIONS**

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 733(a) of the Tariff Act of 1930 (the Act),<sup>3</sup> that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel bar<sup>4</sup> from France, Germany, Italy, Korea, Taiwan, and the United Kingdom that are alleged to be sold in the United States at less than fair value (LTFV).<sup>5</sup>

The Commission also determines,<sup>6</sup> pursuant to section 703(a) of the Act,<sup>7</sup> that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel bar from Italy that are alleged to be subsidized by the Government of Italy.<sup>8</sup>

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

<sup>2</sup> Commissioner Dennis M. Devaney not participating.

<sup>3</sup> 19 U.S.C. § 1673b(a).

<sup>4</sup> For purposes of these investigations, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip, or plate, wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

<sup>5</sup> Commissioner Lynn M. Bragg determines that there is a reasonable indication that an industry in the United States is threatened with material injury.

<sup>6</sup> Commissioner Dennis M. Devaney not participating.

<sup>7</sup> 19 U.S.C. § 1671b(a).

<sup>8</sup> Commissioner Lynn M. Bragg determines that there is a reasonable indication that an industry in the United States is threatened with material injury.

## **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 investigation under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those 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.

## **BACKGROUND**

The Commission instituted these investigations effective December 28, 2000, following receipt of a petition filed with the Commission and the Department of Commerce by Carpenter Technology Corp. (Wyomissing, PA); Crucible Specialty Metals (Syracuse, NY); Electralloy Corp. (Oil City, PA); Empire Specialty Steel, Inc. (Dunkirk, NY); Slater Steels Corp., Specialty Alloys Division (Fort Wayne, IN); and the United Steelworkers of America, AFL-CIO/CLC (Pittsburgh, PA), **alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of stainless steel bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom, that are alleged to be sold in the United States at LTFV, and by reason of imports of stainless steel bar from Italy that are alleged to be subsidized by the Government of Italy.** Accordingly, effective December 28, 2000, the Commission instituted countervailing duty investigation No. 701-TA-413 (Preliminary) and antidumping investigations Nos. 731-TA-913-918 (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 January 4, 2001 (66 FR 807). The conference was held in Washington, DC, on January 18, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## **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 stainless steel bar (“SSB”) from France, Germany, Italy, Korea, Taiwan, and the United Kingdom that are allegedly sold in the United States at less than fair value (“LTFV”) and imports of SSB from Italy that are allegedly subsidized.<sup>1 2</sup>

### **I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS**

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>3</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>4</sup>

### **II. DOMESTIC LIKE PRODUCT AND INDUSTRY**

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

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>5</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>6</sup> 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 . . . .”<sup>7</sup>

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<sup>1</sup> Commissioner Lynn M. Bragg finds that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports. See *Separate Views of Commissioner Lynn M. Bragg Regarding Threat of Material Injury*. She joins sections I to IV.A. of the Commission’s Views.

<sup>2</sup> Commissioner Dennis M. Devaney not participating.

<sup>3</sup> 19 U.S.C. §1671b(a), 19 U.S.C. §1673b(a); see also *American Lamb Co. v. United States*, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); *Ranchers-Cattlemen Action Legal Foundation v. United States*, 74 F. Supp.2d 1353, 1368-69 (CIT 1999).

<sup>4</sup> *American Lamb*, 785 F.2d at 1001 (Fed. Cir. 1986); see also *Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>5</sup> 19 U.S.C. §1677(4)(A).

<sup>6</sup> 19 U.S.C. § 1677(4)(A).

<sup>7</sup> 19 U.S.C. § 1677(10).

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.<sup>8</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>9</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>10</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>11</sup>

## **2. Product Description**

Commerce’s notices of initiation define the imported merchandise within the scope of these investigations as:

*articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.*<sup>12</sup>

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<sup>8</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>9</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>10</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>11</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find 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).

<sup>12</sup> Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Bar From France, Germany, Italy, Korea, Taiwan, and the United Kingdom, 66 Fed. Reg. 7620 (Jan. 24, 2001); Notice of Initiation of Countervailing Duty Investigation: Stainless Steel Bar from Italy, 66 Fed. Reg. 7739 (Jan. 25, 2001). Commerce’s Notices indicated that the scope does not include “stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (i.e., cold-formed

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The subject merchandise consists of straight lengths of stainless steel with a uniform cross section in various shapes.<sup>13</sup> While rod and wire are coiled, bar by definition comes in straight lengths only.

### **C. Domestic Like Product**

#### **1. Arguments of the Parties**

In these investigations,<sup>14</sup> the Petitioners, Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel, Inc., Slater Steels Corp., and the United Steel Workers of America, AFL-CIO/CLC,<sup>15</sup> argue that the Commission should define the domestic like product to be all SSB.<sup>16</sup>

Two groups of respondents argue that the Commission should find separate like products consisting of a specialized SSB product and all other SSB, though each group specifies a different specialty product. Specifically, respondents BGH Edelstahl Freital, BGH Edelstahl Siegen, and BGH Specialty Steel, Inc. (hereinafter, "BGH") argue that the Commission should find that four grades of special quality SSB used in oil and gas drilling equipment constitute a like product separate from all other SSB.<sup>17</sup> Similarly, respondents Stahlwerk Ergste Westig GmbH and Ergste Westig South Carolina, Inc. (hereinafter "SEW") argue that medical bar<sup>18</sup> should also be a like product separate from all other SSB.<sup>19</sup>

#### **2. Whether Oil Field Equipment Bar or Medical Bar Constitutes a Separate Like Product<sup>20</sup>**

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<sup>12</sup> (...continued)

products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections." *Id.* Commerce noted that the stainless steel bar subject to these investigations is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the Harmonized Tariff Schedule of the United States ('HTSUS')." *Id.*

<sup>13</sup> Confidential Report ("CR"), INV-Y-016, Feb. 5. 2001 (as revised by memorandum INV-Y-024, Feb. 9, 2001), at I-9, Public Report ("PR") at I-8.

<sup>14</sup> In the previous investigations involving SSB, the Commission found one like product consisting of all SSB, and did not find cold-finished SSB and hot-formed SSB to be separate like products. Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995) at I-6 to I-9 (using five-factor finished/semifinished analysis).

<sup>15</sup> Petition of December 28, 2000, at 2-3.

<sup>16</sup> Petitioners' Postconference Brief at 3, Exh. 1 at 1.

<sup>17</sup> BGH's Postconference Brief at 5. The four grades are AISI 410 QDT, oil quenched and double tempered; AISI 420 modified, oil quenched and double tempered; Super 13 Chrome Heat Treated, quenched and tempered; and AISI 630 17/4 PH DBH 1150, solution annealed and double precipitation hardened. BGH's Postconference Brief, App. 1, at 1.

<sup>18</sup> Medical Bar is defined by SEW to be primarily ASTM F 138 SSB and AISI Grade 420 SSB. *See* CR at I-15 n.26; PR at I-12 n.26. Medical bar is used for surgical implants, dental instruments, and other medical applications. CR at I-15, PR at I-12.

<sup>19</sup> SEW's Postconference Brief at 2.

<sup>20</sup> We have limited information concerning the domestic counterparts to medical bar and oil field equipment  
(continued...)

There is a continuum of physical characteristics among SSB without clear dividing lines. The record indicates that physical characteristics differ among types of SSB depending on the variety of stainless steel used.<sup>21</sup> Neither medical bar nor oil field equipment bar themselves have completely uniform physical characteristics.<sup>22</sup> There also appears to be overlap in the physical characteristics of medical bar and oil field equipment bar as AISI grade 420 stainless steel is used for both.<sup>23</sup> Consequently, the physical characteristics of medical bar, oil field equipment bar, and other SSB all vary and there is some overlap in physical properties among the types of bar.

End uses also vary among all the different types of bar depending upon specifications. Oil field equipment bar and medical bar have their particular end uses. However, there are many specialty forms of SSB.<sup>24</sup> Each type of SSB has a particular end use, just as medical bar and oil field equipment bar have particular end uses. For example, certain specialty SSB is designed for applications in aerospace, power generation, and valves and fittings in semiconductor manufacturing.<sup>25</sup> Hence, there is a wide array of specialty SSB products, and SSB is generally considered a specialty product.<sup>26</sup>

Medical bar, oil field equipment bar, and other SSB appear to not be interchangeable; their uses are determined by the specifications to which they are made. However, as noted, AISI grade 420 is used for oil field equipment bar, medical bar, and other SSB<sup>27</sup> so there may be some limited interchangeability among these three categories of SSB.

Medical bar may differ in its channels of distribution. While imported medical bar is sold to end users<sup>28</sup> and most other SSB is sold first to distributors, the record is unclear as to how domestically

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<sup>20</sup> (...continued)

bar. The Commission examines the domestically produced merchandise in making its like product determination. See Torrington Co. v. United States, 747 F. Supp. 744, 749 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

<sup>21</sup> Stainless steel varies in its chromium and nickel content and how it is treated. It can be annealed, quenched, tempered, precipitation hardened and is categorized as martensitic or austenitic depending on content and treatment. BGH's Postconference Brief, App. 1 (B.J. Moniz, Metallurgy, 2<sup>nd</sup> ed.) at 253-267. The different types of stainless steel have different properties, including resistance to heat and corrosion. Id.

<sup>22</sup> See BGH's Postconference Brief, App. 1 (B.J. Moniz, Metallurgy, 2<sup>nd</sup> ed.) at 254. AISI 630 used in oil field equipment bar is precipitation hardened, while the other oil field equipment bar grades, AISI 410 QDT, AISI 420 modified, and Super 13 Chrome Heat Treated are quenched and tempered. CR at I-14 n.23, PR at I-11 n.23. One medical bar grade is austenitic and one is martensitic. Medical bar grade ASTM 138 F stainless steel is derived from 316L stainless steel which is austenitic rather than martensitic. See SEW's Postconference Brief at 3, Att. C; BGH's Postconference Brief, App. 1 (B.J. Moniz, Metallurgy, 2<sup>nd</sup> ed.) at 257 (Fig. 17-6), 273. AISI 420, the other grade used for medical bar, is martensitic. Id.

<sup>23</sup> BGH's Postconference Brief, App. 1 at 1; SEW's Postconference Brief at 1.

<sup>24</sup> See Transcript of Staff Conference of January 18, 2001 ("Tr.") at 82, 112-113; Petitioners' Postconference Brief, Exh. 4 (Affidavits).

<sup>25</sup> CR at I-16, PR at I-12.

<sup>26</sup> Petitioners' Postconference Brief at 15; Petitioners' Postconference Brief at Exh. 5 (listing SSB products for military and space applications).

<sup>27</sup> CR at I-14 to I-16, PR at I-11 to I-12.

<sup>28</sup> CR at I-15, PR at I-12.

produced medical bar is distributed.<sup>29</sup> It also is unclear whether oil field equipment bar has distinct channels of distribution.

The same facilities and employees are used for production of oil field equipment bar, medical bar, and other SSB.<sup>30</sup> The manufacturing process for oil field equipment bar does not differ significantly from that of other specialty SSB that requires heat treatment.<sup>31</sup> Medical bar is produced using an additional remelting process, but apparently some other SSB is also produced with an additional melting step.<sup>32</sup>

Medical bar is perceived to be a distinct product but so are other types of SSB.<sup>33</sup> Oil field equipment bar, on the other hand, is not clearly defined as a product distinct from other SSB, but as another specialty bar product.<sup>34</sup>

Medical bar and oil field equipment bar command a higher price than most other SSB; however, it also appears that other types of SSB are as expensive as these two types.<sup>35</sup>

Although there are differences in physical characteristics and production processes within the medical bar and oil field equipment bar categories, medical bar and oil field equipment bar are part of the continuum of specialty bar products; SSB encompasses a variety of specialty products with different physical characteristics, end uses, production processes, and prices. We therefore conclude that there are no clear dividing lines between medical bar and oil field equipment bar and other forms of SSB. Accordingly, we find one like product consisting of all SSB.

#### **D. Domestic Industry and Related Parties**

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.<sup>36</sup> Based on our definition of the domestic like product, we define the domestic industry to include all producers of SSB.<sup>37</sup>

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<sup>29</sup> CR & PR at II-1.

<sup>30</sup> CR at I-14 to I-16, PR at I-11 to I-12.

<sup>31</sup> CR at I-14 to I-16, PR at I-11 to I-12.

<sup>32</sup> CR at I-15 to I-16, PR at I-12.

<sup>33</sup> CR at I-15 to I-16, PR at I-12.

<sup>34</sup> CR at I-14 to I-15, PR at I-11 to I-12.

<sup>35</sup> CR at I-15 to I-16, PR at I-12.

<sup>36</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

<sup>37</sup> We do not include service centers in the definition of the domestic industry. The Commission requires that service centers be engaged in production-related activity before the service centers are considered part of the domestic industry. See Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan and Korea, Inv. Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final), USITC Pub. 3273, (Jan. 2000) at 8-10 (citing 19 U.S.C. § 1677(B)(i)(III) and noting that service centers changed a product that was not included in the domestic like product—coiled plate—into the domestic like product). The record here indicates that the processing at the service centers is minimal. Petitioners' Postconference Brief at 5,7; Petitioners' Postconference Brief, Exh. 4, Affidavit of Andrew McElwee of Carpenter, at 1 ("only minimal processing").



We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. 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.<sup>38</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>39</sup>

\*\*\* imported the subject merchandise during the period of investigation.<sup>40</sup> Therefore, both of these producers are related parties and either may be excluded from the definition of the domestic industry if appropriate circumstances exist.

\*\*\* is the \*\*\* with \*\*\* percent of U.S. production in 1999.<sup>41</sup> \*\*\* imports have been \*\*\* and therefore, these imports would not affect its financial data.<sup>42</sup> As its U.S. production was \*\*\* short tons in 1999, the subject imports were less than one half of one percent of \*\*\* production. Given \*\*\* size and the fact that \*\*\* is predominantly a producer rather than importer, we find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry as a related party.<sup>43</sup>

\*\*\* imported \*\*\* short tons of subject merchandise in 1999.<sup>44</sup> This constituted \*\*\* percent of its U.S. production of \*\*\* short tons in 1999.<sup>45</sup> \*\*\* accounted for \*\*\* percent of U.S. production in 1999.<sup>46</sup> However, there is no indication that its role as direct importer confers any undue benefit or that it is unusually profitable because of its importation of subject merchandise. Its profits are within the \*\*\* of

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<sup>38</sup> 19 U.S.C. § 1677(4)(B).

<sup>39</sup> 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*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

<sup>40</sup> CR at IV-8, PR at IV-7. See also CR & PR at Table IV-5.

<sup>41</sup> CR & PR at Table III-1.

<sup>42</sup> Its direct importation of subject merchandise peaked at \*\*\* of SSB in 1997 and it had \*\*\* imports from subject countries in 1999 and \*\*\* in January through September 2000. CR & PR at Table IV-5.

<sup>43</sup> We note also that \*\*\* purchased subject imports during the period of investigation. The small scale of these purchases, which peaked at about \*\*\* percent of \*\*\* production, also suggests that \*\*\* is not an appropriate candidate for exclusion from the domestic industry. See CR & PR at Table III-7.

<sup>44</sup> CR & PR at Table IV-5.

<sup>45</sup> CR & PR at Table III-1.

<sup>46</sup> CR & PR at Table III-1.

profitability experienced by other U.S. producers.<sup>47</sup> There is no information in the record concerning the reason for its importation of the subject merchandise. Given that \*\*\* is a significant producer whose primary interest is in domestic production and there is no evidence of a clear benefit from its importations, we find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry as a related party.

### **III. CUMULATION<sup>48</sup>**

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

For purposes of evaluating the volume and price effects for a determination of reasonable indication of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise 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 U.S. market.<sup>49</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>50</sup> 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 geographic 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.<sup>51</sup>

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

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<sup>47</sup> See CR & PR at Table VI-4 (it is a \*\*\* than the industry average).

<sup>48</sup> Commissioner Bragg notes that the record indicates that import quantities for each of the subject countries exceeded the 3 percent statutory negligibility threshold during the pertinent period. CR at IV-3, PR at IV-2. Therefore, negligibility is not an issue in these investigations.

<sup>49</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>50</sup> The SAA 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.” SAA at 848, 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).

<sup>51</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. 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).

imports compete with each other and with the domestic like product.<sup>52</sup> Only a “reasonable overlap” of competition is required.<sup>53</sup>

## **B. Analysis**

The conditions for cumulating the subject imports have been satisfied. The petition was filed with respect to all subject imports on the same day, and based on the four factors which the Commission considers in analyzing cumulation, there is a reasonable overlap of competition.

First, notwithstanding respondents’ arguments to the contrary, there is a significant degree of fungibility among the subject imports and the domestic product.<sup>54</sup> Most U.S. producers and importers agree that the subject imports and the domestic like product were always or frequently interchangeable.<sup>55</sup> Several purchasers indicated that price and lead times were the most important factors in purchasing decisions as sales generally involve prequalification, and therefore, quality was not an issue.<sup>56</sup> While subject imports consist of an array of specialty products, domestic producer Carpenter, as well as other domestic producers, make a variety of proprietary grades, including little-used grades.<sup>57</sup>

Second, the record indicates that the subject imports are sold or offered for sale in the same geographic market, the entire United States, as is domestically-produced SSB.<sup>58</sup> Third, the channels of distribution for subject imports and domestically-produced SSB are similar; both generally travel through

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<sup>52</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>53</sup> See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (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, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

<sup>54</sup> The French producers and importers, Ugine-Savoie Imphy, Trafilerie Bedini and Ugine Stainless and Alloys, Inc. (“French Respondents”), argue that French imports are not substitutable with other subject imports. French Respondents’ Postconference Brief at 4-5. They assert that their product is a patented and proprietary product and specially designed for automatic screw machines; they claim it does not compete with other subject imports. Id. at 5-6.

<sup>55</sup> CR at II-13, PR at II-8. In the country-to-country comparisons of the subject imports, importers reported a high degree of interchangeability for imports from France with imports from the other subject countries. See CR & PR at Table II-3. Also, importers did not report a significant degree of differences in product characteristics for imports from France compared to imports from the other countries. See CR & PR at Table II-5. Subject imports from France consisted of a variety of grades of SSB, as did imports from the other subject countries, indicating some overlap in the grades of SSB imported from the subject countries. See CR & PR at Tables VII-2, VII-4, VII-6, VII-8, VII-10, VII-12. Moreover, we note that the grades, and presumably SSB products other than the patented French product, used for screw machines, are imported from the other subject countries. CR & PR at Tables VII-4, VII-6, VII-8, VII-10, VII-12. See French Respondents’ Postconference Brief at Exh. 2 (Affidavit of \*\*\*) (grades 303 and 304L used for screw machines). See also Tr. at 83-84.

<sup>56</sup> CR at II-12, PR at II-8.

<sup>57</sup> CR at II-12, PR at II-8. Representatives of the domestic producers submitted affidavits indicating that they produced the specialty grades produced by subject producers BGH, Ugine, Valbruna, and SEW. See Petitioners’ Postconference Brief, Exh. 4 (Affidavits of Andrew McElwee of Carpenter, Daniel Anderson of Slater Steels, Dan O’Leary of Crucible Materials Corp., and Gary Zaffalon of Empire Specialty Steel, Inc.). Further, purchasers indicated that these grades were not available only from a single source. CR at II-12, PR at II-8.

<sup>58</sup> CR at V-3 to V-4, PR at V-3.

distribution networks to end users.<sup>59</sup> Fourth, imports from each of the subject countries have been present in the U.S. market in significant quantities throughout the period of investigation.<sup>60</sup>

We therefore find that a reasonable overlap of competition exists among the subject imports and between subject imports and the domestic like product. Consequently, we cumulate subject imports from all subject countries for the purpose of analyzing whether there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

#### **IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV AND/OR SUBSIDIZED IMPORTS<sup>61</sup>**

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.<sup>62</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>63</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>64</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>65</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>66</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

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<sup>59</sup> CR & PR at II-1. Domestic producers primarily sell to service centers or distributors. CR & PR at Table III-6. Most subject imports are sold to service centers or distributors and mill depots, but \*\*\*. CR & PR at Table IV-4.

<sup>60</sup> See CR & PR at Table IV-2.

<sup>61</sup> Commissioner Lynn M. Bragg finds that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports.

<sup>62</sup> 19 U.S.C. §§ 1671b(a) and 1673b(a).

<sup>63</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>64</sup> 19 U.S.C. § 1677(7)(A).

<sup>65</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>66</sup> 19 U.S.C. § 1677(7)(C)(iii).

## A. Conditions of Competition

The following conditions of competition are pertinent to our analysis.

While there has apparently been an increase in demand for stainless steel generally,<sup>67</sup> apparent consumption of SSB only shows an increase towards the end of the period of investigation, 1997 through September 2000.<sup>68</sup>

Demand for SSB is derived from demand for end use products. While SSB is sold as hot-finished and cold-finished, the majority of imports by quantity and value are of cold-finished SSB,<sup>69</sup> as is most SSB that is sold on the open market by U.S. producers.<sup>70</sup> Most domestically produced hot-finished SSB is captively consumed in the manufacture of cold-finished SSB.<sup>71</sup> SSB is used in the automotive industry and for chemical processing, dairy and food processing, and pharmaceutical equipment.<sup>72</sup> Purchasers almost always require certification or prequalification of their suppliers, and once a product is qualified, price becomes an important factor in purchasing decisions.<sup>73</sup>

The price of raw materials such as nickel has an impact on the selling price of SSB.<sup>74</sup>

The domestic industry added capacity over the period of investigation, and its capacity utilization generally declined.<sup>75</sup>

Nonsubject imports maintained a steady presence in the U.S. market during the period of investigation, and their market share was higher in interim 2000 as compared to interim 1999.<sup>76</sup>

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<sup>67</sup> CR at II-9, PR at II-6.

<sup>68</sup> See CR & PR at Table IV-6. U.S. apparent consumption fell from 263,165 short tons in 1997 to 256,281 short tons in 1998, to 237,150 short tons in 1999. *Id.* In the first nine months of 2000, apparent consumption increased to 225,480 short tons from 169,336 short tons in the same period in 1999. *Id.* Petitioners argued that the Commission should look at data for several additional years in evaluating the condition of the industry, but we have relied upon data for the standard period of investigation for our analysis.

<sup>69</sup> See CR & PR at Table IV-3.

<sup>70</sup> See CR & PR at Table III-5.

<sup>71</sup> CR at I-10, PR at I-9. See also CR & PR at Table III-4. Hot-finished SSB either still has the scale (an oxide coating on the surface), or is rough turned, pickled or blast cleaned. See CR at I-10, PR at I-8.

<sup>72</sup> CR at I-9, PR at I-8.

<sup>73</sup> CR at II-11 to II-12, PR at II-7 to II-8; CR & PR Table II-1.

<sup>74</sup> CR & PR at V-1.

<sup>75</sup> The industry's capacity was 285,127 short tons in 1997, 285,767 short tons in 1998, and 304,777 short tons in 1999. CR & PR at Table III-2. The increase appears to have continued in 2000, as capacity was 236,471 short tons in the first nine months of 2000 as compared to 229,564 short tons in the first nine months of 1999. CR & PR at Table III-2. Capacity utilization declined from 59.8 percent in 1997, to 58.3 percent in 1998 and 50.8 percent in 1999. *Id.* However, in the first nine months of 2000, capacity utilization was 55.5 percent while it was only 48.7 percent in the same period in 1999. *Id.*

<sup>76</sup> Imports from nonsubject countries were 35,464 short tons in 1997, 33,395 short tons in 1998, and 30,087 short tons in 1999. CR & PR at Table IV-6. In January through September 2000, nonsubject imports were 35,964 short tons, compared with 20,188 short tons in the same period in 1999. *Id.* Their market share displayed similar  
(continued...)

The vast majority of domestic producers' shipments of SSB are through service centers, although a small fraction of shipments are to end users.<sup>77</sup> Subject imports are also sold to service centers, as well as to master distributors (mill depots) and end users.<sup>78</sup> Master distributors may hold significant inventories of imports.<sup>79 80</sup>

## **B. Volume of 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."<sup>81</sup>

Subject imports' U.S. market share fluctuated over the period of investigation, although it increased significantly in the first nine months of 2000 relative to the first nine months of 1999.<sup>82</sup> Subject imports generally increased over the period of investigation, particularly in the most recent period.<sup>83</sup> During the same period, U.S. producers' U.S. market share \*\*\* decreased, from 64.7 percent in 1997 to 55.8 percent in interim 2000.<sup>84</sup> Subject imports thus gained market share at the expense of the U.S. industry.

For purposes of these preliminary determinations, we find the volume and increase in volume of cumulated subject imports, both in absolute terms and relative to apparent consumption in the United States, to be significant.

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

Section 771(7)(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

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<sup>76</sup> (...continued)  
trends. See CR & PR at Table IV-7.

<sup>77</sup> CR & PR at Table III-6.

<sup>78</sup> CR & PR at Table IV-4.

<sup>79</sup> Tr. at 14 (Andrew McElwee).

<sup>80</sup> Commissioner Lynn M. Bragg does not join the remainder of the Commission's Views.

<sup>81</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>82</sup> Subject imports totaled 57,530 short tons in 1997, 62,761 short tons in 1998 and 57,456 short tons in 1999. They also increased from 39,055 short tons in the first nine months of 1999 to 63,678 short tons in the same period of 2000. CR & PR at Table IV-2.

<sup>83</sup> Subject imports' market share was 21.9 percent in 1997, 24.5 percent in 1998, and 24.2 percent in 1999. In the first nine months of 2000, their market share was 28.2 percent, as compared to 23.1 percent in the same period in 1999. CR & PR at Table IV-7.

<sup>84</sup> CR & PR at Table IV-7.

- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>85</sup>

Information from U.S. producers and importers indicates that domestically-produced SSB and subject imports are generally substitutable and price is an important factor in purchasing decisions.<sup>86</sup>

The pricing data available in these investigations indicate that domestic prices for domestically-produced SSB generally declined in 1997, 1998 and the first half of 1999, before recovering a bit in the second half of 1999 through September 2000.<sup>87</sup> Prices for the subject imports did not follow as consistent trends.<sup>88</sup> While we are mindful of possible differences and changes in the product mix, unit values for imports from all subject countries and domestically-produced SSB declined from 1997 to 1999.<sup>89</sup>

The Commission collected pricing data on ten SSB products.<sup>90</sup> Of the 469 quarterly sales comparisons, subject imports undersold domestically-produced SSB in 331 of the comparisons, or 71 percent of all observations.<sup>91</sup>

The general pattern of underselling shown by the pricing data is supported to some degree by the corroborated lost sales allegations made by the domestic producers; staff confirmed \*\*\* of the \*\*\* alleged lost sales.<sup>92</sup> Corroborated allegations show that the domestic industry lost significant sales to lower-priced subject imports, with many of these lost sales occurring in 2000.<sup>93</sup>

We find, for purposes of these preliminary determinations and based on the record in these investigations, that cumulated subject imports have depressed domestic prices to a significant degree or prevented price increases, which otherwise would have occurred, to a significant degree.

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<sup>85</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>86</sup> CR at II-13, PR at II-8 to II-9; CR & PR at Tables II-2 and II-3 (noting interchangeability). Lead time is not as important a factor as price in purchasing decisions. See CR & PR at Table II-1.

<sup>87</sup> CR & PR at V-10.

<sup>88</sup> CR & PR at V-10.

<sup>89</sup> See at CR & PR at Table C-1.

<sup>90</sup> We note that the coverage of the data collected in this preliminary phase was low. Sales of the ten products used in price comparisons accounted for only 2.3 percent of U.S. producers' shipments. CR and PR at V-9. Coverage for subject imports from France, Germany, Italy, Korea, Taiwan, and the United Kingdom was, respectively, 5.4 percent, 2.4 percent, 2.2 percent, 11.2 percent, 3.4 percent, and 0.7 percent. CR & PR at V-9.

We also note that a significant number of reported prices in our pricing comparisons \*\*\*. CR at V-10 n.2, PR at V-9 n.2; CR & PR at VI-2; CR & PR at Table III-1. In the final phase of these investigations, we intend to seek wider pricing data and explore the basis on which \*\*\* prices were calculated.

<sup>91</sup> CR & PR at Table V-6.

<sup>92</sup> CR & PR at Table V-7.

<sup>93</sup> CR & PR at Table V-7. We intend to gather additional data on the inventories of subject imports held by distributors, processors, and service centers in the final phase of these investigations.

#### **D. Impact of the Subject Imports**

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.<sup>94</sup> 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 affected industry.”<sup>95 96</sup>

The domestic industry’s production, shipments and sales all declined during the period of investigation, although the industry saw some improvement in its financial performance in the first nine months of 2000 relative to the same period in 1999.<sup>97</sup> As noted, the domestic industry’s capacity grew over the period of investigation while capacity utilization generally declined.<sup>98</sup> Further, inventories as a ratio to U.S. shipments increased during the period of investigation.<sup>99</sup> The domestic producers lost market share over the period of investigation, and their share of the U.S. market is well below what it was at the

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<sup>94</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 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.).

<sup>95</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

<sup>96</sup> 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 estimated dumping margins of 45.94 to 71.83 percent for imports from France, 62.48 to 228.66 percent for imports from Germany, 17.04 to 132.57 percent for imports from Italy, 25.72 to 122.18 percent for imports from Korea, 18.83 to 68.55 percent for imports from Taiwan, and 21.93 to 125.77 percent for imports from the United Kingdom. 66 Fed. Reg. 7620, 7622-25 (January 24, 2001).

Commerce initiated investigations of 24 subsidy programs in the countervailing duty case with respect to imports from Italy. 66 Fed. Reg. 7739, 7741 (January 25, 2001). See also CR & PR at Table I-2.

<sup>97</sup> The industry’s production was 170,625 short tons in 1997, 166,545 short tons in 1998, and 154,711 short tons in 1999. CR & PR at Table III-2. In the first nine months of 1999 and 2000, production was 111,699 short tons and 131,341 short tons, respectively. *Id.* Similarly, the domestic producers’ U.S. shipments were 170,171 short tons in 1997, 160,125 short tons in 1998, and 149,607 short tons in 1999. CR and PR at Table III-3. In the first nine months of 1999 and 2000, the industry’s U.S. shipments were 110,092 short tons and 125,838 short tons, respectively. *Id.* The domestic industry’s net sales were 177,474 short tons in 1997, 161,793 short tons in 1998, and 161,733 short tons in 1999. CR & PR at Table VI-3. The industry recorded sales of \*\*\* short tons in the first nine months of 1999 and \*\*\* short tons in the first nine months of 2000. *Id.*

<sup>98</sup> The industry’s capacity was 285,127 short tons in 1997, 285,767 short tons in 1998, and 304,777 short tons in 1999. CR & PR at Table III-2. The increase appears to have continued in 2000, as capacity was 236,471 short tons in the first nine months of 2000 as compared to 229,564 short tons in the first nine months of 1999. CR & PR at Table III-2. Capacity utilization declined from 59.8 percent in 1997, to 58.3 percent in 1998 and 50.8 percent in 1999. *Id.* However, in the first nine months of 2000, capacity utilization was 55.5 percent while it was only 48.7 percent in the same period in 1999. *Id.*

<sup>99</sup> CR & PR at Table III-8. The ratio was 14.1 percent in 1997, 15.5 percent in 1998 and 16.3 percent in 1999. *Id.* The ratio declined slightly in the first nine months of 2000 to 13.9 percent as compared to 15.2 percent in the first nine months of 1999. *Id.*



beginning of the period of investigation, despite an increase in their U.S. shipments in the first nine months of 2000.<sup>100</sup>

The financial position of the industry has deteriorated throughout most of the period under investigation.<sup>101</sup> The number of domestic producers reporting operating losses on commercial sales rose from four in 1997 to six in 1999.<sup>102</sup> Moreover, three firms, Republic Technologies, FirstMiss, and AL Tech, exited the industry during the period of investigation,<sup>103</sup> and the industry's average number of production and related workers fell during 1997, 1998, and 1999.<sup>104</sup>

While the domestic industry experienced some improvement in the first nine months of 2000, the domestic industry generally reported declining profitability throughout the period of investigation.<sup>105</sup> Profits fell even as domestic producers made significant productivity gains and unit production costs declined.<sup>106</sup>

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<sup>100</sup> The industry's market share was 64.7 percent in 1997, 62.5 percent in 1998, 63.1 percent in 1999, 65.0 percent in the first nine months of 1999, and 55.8 percent in the first nine months of 2000. CR & PR at Table IV-7.

<sup>101</sup> We base our analysis of the condition of the U.S. industry on financial data for production operations only as the statute directs us to consider the impact of subject imports only in the context of U.S. production operations. 19 U.S.C. § 1677(7)(B)(i). Staff also collected financial data that include both production and distribution operations for the purpose of examining the allocation of profits between the two operations. Compare CR & PR at Tables VI-3 and VI-4 (production only) with CR & PR at Tables VI-1 and VI-2 (production and distribution). We note that revenues from producers' related distribution operations contributed to their overall financial resources. During the final phase of these investigations, we intend to explore further the allocation of profits and the determination of transfer prices by domestic producers that have related service centers. See CR at V-10 n.2, PR at V-9 n.2.

<sup>102</sup> CR & PR at Table VI-3. The Commission had financial data for 12 firms. Id.

<sup>103</sup> CR at III-5 and III-11, PR at III-3 and III-8. Empire Steel was formed in 1999 from the assets of AL Tech which filed for bankruptcy protection in 1997. CR at VI-2, PR at VI-1. Carpenter purchased Talley Metals in 1998. CR at III-4, PR at III-3.

<sup>104</sup> See CR & PR at Table III-9. The industry had a greater average number of production and related workers in the first nine months of 2000 than in the first nine months of 1999, but the number remained well below the 1997 level. See CR & PR at Table III-9.

<sup>105</sup> CR & PR at Table VI-3. The industry's operating income as a percentage of net sales was 3.7 percent in 1997, 3.5 percent in 1998, and 0.7 percent in 1999. In the first nine months of 1999, the ratio was \*\*\* percent, but it improved to \*\*\* percent in the first nine months of 2000. Id. Despite the improvement in 2000, profitability remains lower than it was in 1997.

<sup>106</sup> Productivity was 35.8 short tons per 1,000 hours in 1997, 36.9 short tons per 1,000 hours in 1998, 39.3 short tons per 1,000 hours in 1999, 38.0 short tons per 1,000 hours in the first nine months of 1999, and 40.9 short tons per 1,000 hours in the first nine months of 2000. CR & PR at Table III-9. The cost of goods sold was \$3,282 per short ton in 1997, \$3,139 per short ton in 1998, \$3,015 per short ton in 1999. CR & PR at Table VI-3. On the other hand, in the first nine months of 1999 and 2000 respectively, the cost of goods sold increased from \*\*\* per short ton to \*\*\* per short ton. Id. During 1997-99, the value of the industry's net sales per short ton declined more than its cost of goods sold per short ton. The unit value per short ton was \$3,716 in 1997, \$3,523 in 1998, and \$3,264 in 1999. In the first nine months of 2000, it was \*\*\*, as compared to \*\*\* in the same period in 1999. CR & PR at Table VI-3.

Along with declining profits, the domestic producers' capital expenditures declined between 1997 and 1999, as did their spending for research and development.<sup>107</sup>

Based on the record in the preliminary phase of these investigations, we find that the significant and increasing volume of low priced cumulated subject imports had a significant negative impact on the U.S. industry producing SSB. Accordingly, we determine that there is a reasonable indication of material injury by reason of the subject imports.

### **CONCLUSION**

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of SSB from France, Germany, Italy, Korea, Taiwan, and the United Kingdom that are allegedly sold in the United States at less than fair value and by imports of SSB from Italy that are allegedly subsidized.<sup>108</sup>

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<sup>107</sup> CR & PR at Table VI-5. Spending on research and development declined throughout the period of investigation. See CR & PR at Table VI-5.

<sup>108</sup> Commissioner Lynn M. Bragg finds that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports. See Separate Views of Commissioner Lynn M. Bragg Regarding Threat of Material Injury.



**SEPARATE VIEWS OF COMMISSIONER LYNN M. BRAGG  
REGARDING THREAT OF MATERIAL INJURY**

**Investigations Nos. 701-TA-413 (Preliminary) and 731-TA-913-918 (Preliminary)**

**STAINLESS STEEL BAR FROM FRANCE, GERMANY,  
ITALY, KOREA, TAIWAN, AND THE UNITED KINGDOM**

For the reasons set forth below, I determine that there is a reasonable indication that the domestic stainless steel bar industry is threatened with material injury by reason of subject imports of stainless steel bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom.

I note that I join my colleagues' discussion with respect to the definitions of the domestic like product and domestic industry, cumulation, and the conditions of competition that are distinctive to the domestic industry.

**I. No Reasonable Indication of Material Injury by Reason of Subject Imports**

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from France, Germany, Italy, Korea, Taiwan, and the United Kingdom that are allegedly subsidized and/or sold in the United States at less than fair value.

The record in these preliminary phase investigations indicates that from 1997 to 1999, subject imports increased their share of apparent U.S. consumption while prices for most stainless steel bar products sold in the U.S. market (including both subject imports and the domestic like product) declined steadily.<sup>1</sup> However, the linkage between subject imports' increased market share and any injury to the domestic industry is not sufficiently apparent during the interim 2000 period; despite a surge in the volume of generally undersold subject imports, prices for the domestic like product and the performance of the domestic industry improved,<sup>2</sup> thus evidencing an absence of an indication of present material injury by reason of subject imports in the most recent reporting period.<sup>3</sup>

Nonetheless, I believe the record provides a sufficient basis to conclude that there is a reasonable indication of a threat of material injury to the domestic industry by reason of subject imports. Accordingly, I render affirmative threat determinations in these preliminary investigations.

**II. Reasonable Indication of a Threat of Material Injury**

I find that the same analysis which justifies cumulation of all subject imports for purposes of the Commission's assessment of present material injury applies equally to the assessment of a threat of material injury. In this regard, I place particular importance on the significant degree of fungibility among imports

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<sup>1</sup> CR and PR at Table IV-7; CR and PR at Tables D-1-D-10.

<sup>2</sup> In analyzing the domestic industry's financial performance, I considered related distributor revenues. I note that I will reexamine this issue in any final phase investigations.

<sup>3</sup> I find the most recent interim data in these investigations sufficiently probative given that the period is based upon three quarters of data.

from all subject countries and between subject imports and the domestic like product.<sup>4</sup> In addition, upon review of the entire period of investigation, I found similar volume and pricing trends among all subject countries and that these trends further support cumulation.<sup>5</sup> Accordingly, I exercise my discretion to cumulate all subject imports in analyzing whether there is a reasonable indication of threat of material injury.

In considering the statutory threat factors, I have taken into account the current state of the industry and conditions of competition distinctive to the stainless steel bar industry. Based upon an evaluation of these relevant statutory factors, I find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from France, Germany, Italy, Korea, Taiwan, and the United Kingdom that are allegedly subsidized and/or sold in the United States at less than fair value.

By quantity, the cumulated volume of subject imports decreased from 57,530 short tons in 1997 to 57,456 short tons in 1999.<sup>6</sup> However, between the interim periods, the volume of subject imports surged from 39,055 short tons in interim (January-September) 1999 to 63,678 short tons in interim 2000.<sup>7</sup> In addition, subject imports' share of apparent U.S. consumption on a volume basis increased from 21.9 percent in 1997 to 24.2 percent in 1999.<sup>8</sup> Looking at the interim periods, subject imports' market share increased from 23.1 percent in interim 1999 to 28.2 percent in interim 2000.<sup>9</sup> I find that the rate of increase in subject import volume, both in absolute terms and as a share of apparent U.S. consumption, provides a reasonable indication that subject producers are likely to increase imports significantly in the imminent future.

The record also indicates that although subject producers in \*\*\*, Germany, and Italy are currently operating at high capacity utilization rates, subject producers in each of these countries are export-oriented.<sup>10</sup> In addition, producers in Germany and Italy currently possess large inventories of subject merchandise.<sup>11</sup> With respect to Korea and the United Kingdom, subject producers in these two countries have considerable excess capacity and are also export-oriented.<sup>12</sup> Collectively, subject producers currently possess approximately \*\*\* short tons of excess capacity and approximately \*\*\* short tons of inventory (for a total of approximately \*\*\* short tons of stainless steel bar) which would likely be made available for export to the United States.<sup>13</sup>

With respect to U.S. inventories of the subject merchandise, the record indicates that U.S. distributors currently possess large volumes of subject merchandise which appear to have increased towards

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<sup>4</sup> CR at II-12 to II-13; PR at II-8 to II-9.

<sup>5</sup> CR and PR at Table IV-2; CR and PR at Tables D-1-D-10.

<sup>6</sup> CR and PR at Table IV-2.

<sup>7</sup> CR and PR at Table IV-2.

<sup>8</sup> CR and PR at Table IV-7.

<sup>9</sup> CR and PR at Table IV-7.

<sup>10</sup> CR and PR at Tables \*\*\*, VII-3 and VII-5.

<sup>11</sup> CR and PR at Tables VII-3 and VII-5.

<sup>12</sup> CR and PR at Tables VII-7 and VII-11.

<sup>13</sup> CR and PR at Tables VII-1-VII-11.

the end of the period of investigation.<sup>14</sup> In addition, inventories of subject imports reported by U.S. importers rose throughout the period examined.<sup>15</sup> I find that as these inventories are released into the U.S. market, the domestic industry will be faced with falling prices and resulting operating losses.

The record further indicates an ability of subject producers to shift from the production of non-subject merchandise to the production of subject product.<sup>16</sup> However, the extent of subject producers' ability to product shift is not clear from the record in this preliminary phase of the investigations. I therefore intend to examine this issue further in any final phase investigations.

In addition, although domestic prices increased in interim 2000,<sup>17</sup> these price increases are not likely to be sustainable in the face of continued surging volumes of generally undersold subject imports, particularly given the numerous instances and levels of underselling by subject imports.

Accordingly, and based upon all of the foregoing, I find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports from France, Germany, Italy, Korea, Taiwan, and the United Kingdom.

### **III. Conclusion**

As a result of the uncertainty regarding the domestic industry's improved financial performance in the most recent reporting period in the face of increased volumes of generally undersold subject imports, I find that the record does not reflect a reasonable indication of present material injury by reason of subject imports. However, based primarily upon a significant increase in import volume in the interim period, the apparent increasing build-up of inventories of subject merchandise held by both U.S. distributors and importers, current excess capacity and large inventories of subject merchandise in the subject countries, and the current performance difficulties of the domestic industry, I find that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports from France, Germany, Italy, Korea, Taiwan, and the United Kingdom that are allegedly subsidized and/or sold in the United States at less than fair value.

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<sup>14</sup> Tr. At 14-15 (McElwee); Postconference Brief of German Respondents EWG, KEG, WEG, ASG, and Thyssen, Exh. 2, pp. 2-1 to 2-3. I note that specific figures for U.S. distributors' inventories are unavailable because questionnaires were not sent to most of these entities. In any final phase investigations, I intend to address the apparent build-up and eventual sale of such inventories as a condition of competition, as well as the inventories' impact on the domestic industry's current and future performance.

<sup>15</sup> CR and PR at Table VII-13.

<sup>16</sup> CR at VII-4-VII-28; PR at VII-2 to VII-16.

<sup>17</sup> CR and PR at Tables D-1-D-10.