# Hot-Rolled Steel Products from India

Investigation No. 701-TA-405 (Section 129 Consistency Determination)


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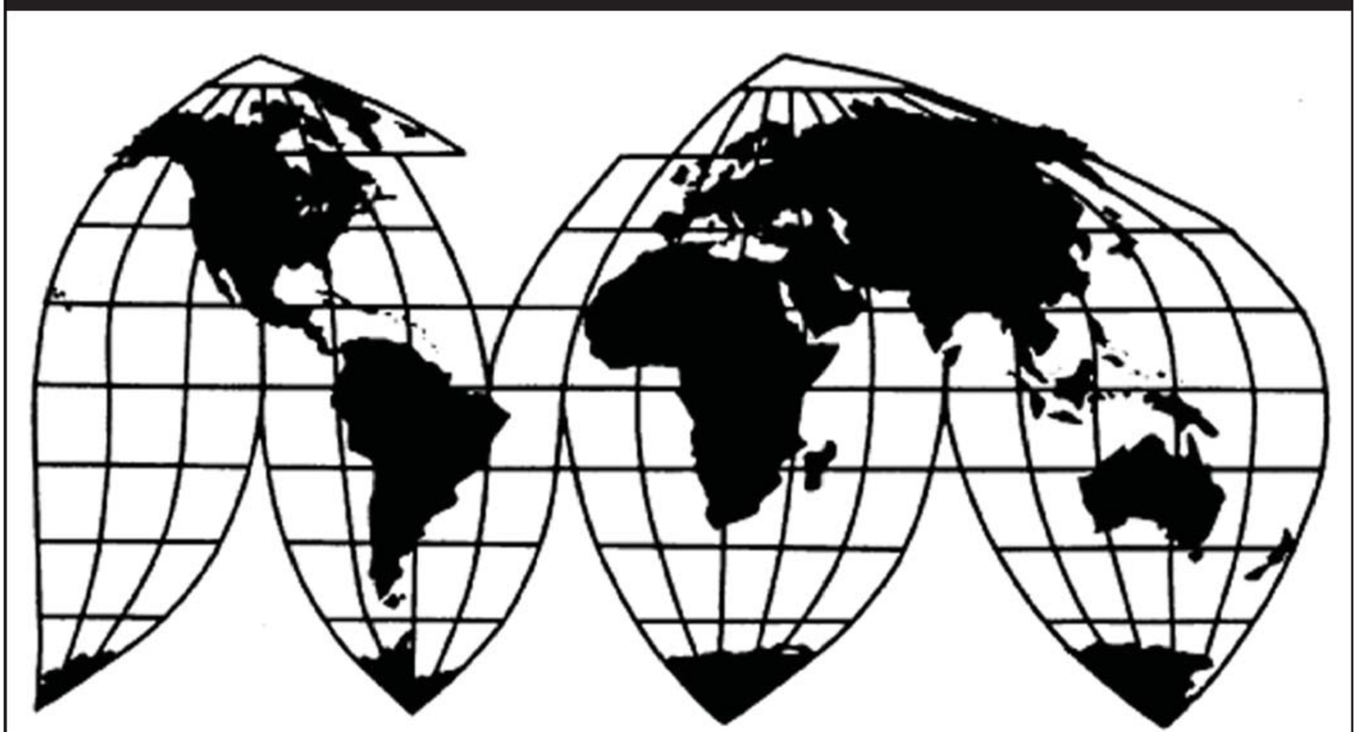
**U.S. International Trade Commission**




**Washington, DC 20436**

# U.S. International Trade Commission

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**Address all communications to**
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**Washington, DC 20436**

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been redacted.

## Views of the Commission

On November 6, 2015, the U.S. International Trade Commission (Commission) received a written request from the United States Trade Representative (USTR) to issue a determination, under 19 U.S.C. § 3538(a)(4),[1] that would render the Commission's countervailing duty (CVD) determination regarding imports of certain hot-rolled steel flat products (hot-rolled steel) from India in Inv. No. 701-TA-405[2] not inconsistent with the World Trade Organization (WTO) Dispute Settlement Body (DSB) recommendations and rulings in *United States -- Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*.[3] In response to USTR's request, we hereby issue our views regarding subsidized imports of hot-rolled steel from India. These findings supplement the Commission's original determinations contained in Final Determinations USITC Pub. 3446 and Final Determinations II USITC Pub. 3468.

On the basis of the record in the Commission's original CVD investigations regarding hot-rolled steel, the recommendations and rulings of the WTO DSB in DS436, and comments

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[1] This provision is commonly referred to as "Section 129" of the Uruguay Round Agreements Act (URAA).

[2] Specifically, this proceeding involves the Commission's affirmative countervailing duty determination regarding hot-rolled steel imports from India, Inv. No. 701-TA-405 in *Hot-Rolled Steel Products from Argentina and South Africa*, Inv. Nos. 701-TA-404 and 731-TA-898 and 905 (Final), USITC Pub. 3446 at 9-26 (August 2001) (USITC Final Determinations or USITC Pub. 3446); *Hot-Rolled Steel Products from China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, Inv. Nos. 701-TA-405-408 and 731-TA-899-904 and 906-908 (Final), USITC Pub. 3468 at I-1 (November 2001) (USITC Final Determinations II). No other aspect of these original determinations was subject to the WTO proceedings. India only challenged whether the Commission's CVD determination with respect to subsidized hot-rolled steel imports from India was consistent with U.S. obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). India's challenge did not, nor did the WTO DS 436 Report, include the concurrent Commission antidumping duty (AD) determination regarding hot-rolled steel imports from India or any of the other AD or CVD determinations regarding hot-rolled steel imports.

[3] WT/DS436/AB/R (DS 436 Report). The injury-related portions of the DS 436 Report are on pages 247-261 and 264.

received in response to the Commission's notice published in the *Federal Register* on December 1, 2015,[4] we find that an industry in the United States is materially injured by reason of imports of hot-rolled steel found by the U.S. Department of Commerce (Commerce) to be subsidized,[5] and make an affirmative determination regarding subsidized hot-rolled steel imports from India.[6]

# I. Background

## A. The Commission's Original Determination

In November 2000, nine U.S. hot-rolled steel producers and a labor union filed petitions alleging that the domestic industry had been materially injured by reason of allegedly subsidized imports of hot-rolled steel from Argentina, India, Indonesia, South Africa, and Thailand and allegedly dumped imports of hot-rolled steel from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine.[7] The Commission found that it was appropriate to cumulate the subsidized and/or dumped imports of hot-rolled steel from all eleven countries, including India, in its injury analysis.[8] Based on the record, the Commission found that there had been significant increases in the volume and market share of subject imports and that the subject imports had undersold the domestic like product and had a significant suppressing and depressing effect on domestic

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[4] 80 Fed. Reg. 75132 (December 1, 2015).

[5] Final Affirmative Countervailing Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand. 66 Fed. Reg. 37007 (July 16, 2001); 66 Fed. Reg. 49635 and 49637 (September 28, 2001); 66 Fed. Reg. 50410 and 50412 (October 3, 2001).

[6] Commissioner Schmidtlein joins these views with respect to cumulated subsidized imports of hot-rolled steel from India insofar as they are considered an alternative analysis that does not disturb the original determinations.

[7] 65 Fed. Reg. 70364 (November 22, 2000).

[8] USITC Final Determinations at 9-14.

prices, resulting in a decline in the overall condition of the industry. The Commission found that the subject imports were having a significant adverse impact on the domestic industry.[9] Accordingly, in its final determinations, the Commission unanimously concluded that an industry in the United States was materially injured by reason of subject imports from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine.[10]

### B. Request for WTO Proceedings

On April 24, 2012, India invoked the WTO Dispute Settlement Understanding (DSU) proceedings by requesting consultations with the United States concerning various Commerce and Commission measures, including the Commission's determination in Inv. No. 701-TA-405 that led to the imposition of a CVD order on hot-rolled steel from India. A WTO dispute settlement panel was thereafter established by the DSB. The WTO dispute settlement panel issued its public Final Report on July 14, 2014, and found that action by the Commission in connection with its CVD determination regarding imports of hot-rolled steel from India was inconsistent with Article 15 of the WTO SCM Agreement.[11]

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[9] USITC Final Determinations at 9-26; USITC Final Determinations II at I-1. The Commission issued its final determinations regarding dumped and subsidized imports from Argentina and dumped imports from South Africa at an earlier date than its other determinations because Commerce issued its final determinations regarding these countries several months before its other determinations in the investigations. Because the Commission cumulated all the subject countries in both determinations, the Commission adopted the findings regarding the subsidized imports from Argentina and the dumped imports from Argentina and South Africa in its analysis in the subsequent determinations for the subject imports from the other countries, including India.

[10] USITC Final Determinations at 26; USITC Final Determinations II at 4.

[11] *United States – Countervailing – Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/R at 124 (July 14, 2014).

On August 8, 2014, India filed a notice of appeal challenging a number of the findings regarding the Commerce subsidy determinations in the Panel Report; the United States filed a notice of other appeal on August 13, 2014, which included challenging the findings in the Panel Report related to Commission injury matters.[12] On December 8, 2014, the WTO Appellate Body issued its report in *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*.[13] The DSB adopted the Appellate Body Report on December 19, 2014. In that Report, the Appellate Body found, *inter alia*, that the United States in the CVD investigation regarding imports of hot-rolled steel from India had acted inconsistently with Article 15 of the WTO SCM Agreement insofar as the Commission cumulatively assessed the effects of imports that were not subject to simultaneous CVD investigations with the effects of hot-rolled steel imports from India that were subject to a CVD investigation.[14]

**C. Section 129 Request and Proceedings**

Section 129 deals with WTO panel or Appellate Body reports that find a Commission or certain Commerce determinations not to be in conformity with obligations of the United States under the WTO Agreements.[15] The statute provides that, "if a majority of the Commissioners issues an affirmative report under paragraph (1) {an advisory report on whether the statute permits the Commission to take steps under existing law that would render its action not

[12] Written submissions were filed by both the United States and India, and oral argument was held on September 24-26, 2014.

[13] WT/DS436/AB/R.

[14] On January 16, 2015, the United States informed the DSB that it intended to bring its measures into conformity with the Appellate Body Report. *See* DSU Article 21.3. Thereafter, the United States and India agreed that the reasonable period of time (RPT) for implementation would be 15 months from the December 19 date of adoption of the Appellate Body Report in DS 436 by the DSB. Thus, the RPT ends on March 19, 2016.

[15] Statement of Administrative Action (SAA) to the URAA, H.R. Rep. No. 103-316, Vol. I at 1022 (1994).

inconsistent with the DSB recommendations and rulings}, the Commission upon written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission's action described in paragraph (1) not inconsistent with the findings of the panel or Appellate Body."[16] On November 6, 2015, USTR transmitted its request for this determination under section 129(a)(4) of the URAA.[17] The Commission must issue its Section 129 consistency determination not later than 120 days after the request from USTR, in this case by March 7, 2016.[18]

The Commission is tasked under Section 129 with making a determination that would render its original action not inconsistent with the findings of the WTO DS 436 Report. A Section 129 consistency proceeding is limited to issuing a determination in connection with the particular matter at issue.[19] Thus, the Commission must focus its consistency determination on the issues related to the DSB recommendations and rulings in the DS 436 Report as set forth by

[16] 19 U.S.C. § 3538 (a)(4). The SAA recognizes that "{m}any of the ITC's proceedings are time-limited by statute, and the ITC cannot revisit its actions in those proceedings in the absence of the authority provided by subsection (a)(4) or a remand. A written request by the Trade Representative under subsection (a)(4) will provide authority for the ITC to take action with respect to such matters." SAA at 1024.

[17] On October 23, 2015, the Commission issued an advisory report, under section 129(a)(1) of the URAA, stating that Title VII of the Tariff Act of 1930 (Tariff Act) permitted the Commission to take steps in connection with its countervailing duty investigation regarding imports of hot-rolled steel products from India in Investigation No. 701-TA-405 that would render its action in that proceeding not inconsistent with the DSB recommendations and rulings in DS 436. The USTR request to the Commission for a Section 129 consistency determination focuses solely on implementation of the WTO's findings concerning the CVD order on *Hot-Rolled Steel from India*.

[18] 19 U.S.C. § 3538(a)(4).

[19] *See* 19 U.S.C. § 3538(a)(1) and SAA at 1023. *See also Corus Staal BV v. United States Dep't of Commerce*, 259 F. Supp. 2d 1253, 1264 (Ct. Int'l Trade 2003), *aff'd upon remand*, 395 F.3d 1343 (Fed. Cir. 2005) ("WTO decisions appear to have very limited precedential value and are binding only upon the particular countries involved. They are not binding upon other signatory countries or future WTO panels.")

USTR's request – the original CVD determination regarding imports from India.[20] The DS 436 Report found the original CVD determination regarding India to be inconsistent with U.S. obligations under the WTO SCM Agreement.[21] To bring the measure into conformity, the Commission action must specifically address the original CVD determination regarding subsidized imports from India. This determination does not address issues that were not in dispute in the WTO proceeding or as to which the WTO Appellate Body found the United States in conformity with its obligations under the WTO.

After receiving the Section 129(a)(4) request from USTR, the Commission issued a notice of scheduling in the *Federal Register* on December 1, 2015.[22] In the notice, the Commission invited persons who were interested parties participating in the original CVD investigation (or successor firms) regarding hot-rolled steel imports from India and the Government of India to participate and submit written comments. In the scheduling notice, the Commission set forth the limitations on the scope of the proceeding as defined in USTR's request letter; [23]

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[20] Letter from Ambassador Michael B.G. Froman to the Honorable Meredith M. Broadbent, dated November 6, 2015 ("The Appellate Body's findings in this regard are set out in paragraphs 4.587 to 4.600 of the Appellate Body report (WT/DS436/AB/R). Its conclusion based on these findings is set out in paragraph 5.1(h)(i) of the report.").

[21] *See* DSB 436 Report at 4.570, 4.600, and 5.1(h)(i); *see also* DS 436 Report at 4.628 and 5.1(h)(ii) ("reverses the Panel's findings . . . that Section 1677(7)(G) of the US Statute is inconsistent 'as such' with Article 15.3 and Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement") (emphasis in original).

[22] 80 Fed. Reg. 75132 (December 1, 2015).

[23] The scheduling notice stated:

> This proceeding is being conducted in order for the Commission to make a determination that would render its countervailing duty investigation regarding imports of hot-rolled steel products from India, in Inv. No. 701-TA-405, not inconsistent with the DSB recommendations and rulings in DS 436. Thus, this proceeding only involves issues related to the DSB recommendations and rulings and does not involve issues that were not in dispute in DS436 or on which the United States was found in conformity with its obligations under the

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accordingly, the parties' comments focused on the limited scope set forth in the scheduling notice.

The Commission received comments from the following parties to the Section 129 proceeding: ArcelorMittal USA LLC (ArcelorMittal); Nucor Corporation (Nucor); United States Steel Corporation (US Steel); Essar Steel India Limited (Essar); and the Government of India (GOI).

### D. Issues Not Affected by the DS 436 Report

None of the parties has argued that the Commission should revisit the collateral issues that were not subject to the WTO dispute.[24] We have considered the record in undertaking our analysis and making a consistency determination regarding subsidized imports of hot-rolled steel from India. We adopt and incorporate by reference the Commission's findings in the original CVD determination regarding subject imports from India, as set forth in the USITC Final Determinations, with respect to issues that were not in dispute or were found in conformity in the WTO proceeding. Thus, we incorporate by reference the definition of the domestic like product as consisting of all hot-rolled steel corresponding to the scope of investigation;[25] the

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(…Continued)

> WTO Agreement on Subsidies and Countervailing Measures. The DSB recommendations and rulings in this regard are set out in paragraphs 4.587 to 4.600 of the Appellate Body report (WT/DS436/AB/R); its conclusion based on these findings is set out in paragraph 5.1(h)(i) of the report. Any material in the interested parties' written comments that address any issue beyond those set forth in these paragraphs will be disregarded.

80 Fed. Reg. 75132, 75133 (December 1, 2015).

[24] ArcelorMittal Comments at 13-15; Nucor Comments at 14-18; US Steel Comments at 2-5. Both the GOI Comments and Essar Comments seem to assume that the Commission will not revisit findings that were not in dispute in the WTO proceeding.

[25] USITC Final Determinations at 3-6.

definition of the domestic industry that includes all domestic producers of hot-rolled steel;[26] the finding that subject imports from none of the subject countries were negligible for purposes of the CVD investigations;[27] the finding that the captive production provision applied and thus the focus of the analysis should be primarily on the merchant market for hot-rolled steel in considering market share and financial performance of the domestic industry;[28] and the findings regarding the conditions of competition.[29]

## II. Cumulation

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

(1) the degree of fungibility between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

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[26] USITC Final Determinations at 6-8.

[27] USITC Final Determinations at 9-10.

[28] USITC Final Determinations at 15-16. We note that the statute at the time of the original determination governs the determination in this proceeding. Thus, recent changes to the statute regarding the captive production provision and the factors considered in the impact analysis have not been considered in this determination.

[29] USITC Final Determinations at 16-19. While we have incorporated by reference the relevant conditions of competition findings from the original CVD determinations, we have also highlighted conditions of competition below that inform our analysis here.

(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.[30]

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.[31] Only a "reasonable overlap" of competition is required.[32]

The threshold requirement for cumulation is satisfied because petitioners filed the countervailing duty petitions with respect to Argentina, India, Indonesia, South Africa, and Thailand (the CVD countries) on the same day, November 13, 2000.[33] As discussed below, we find a reasonable overlap of competition among subject CVD imports from all five countries and between subject imports from each source and the domestic like product.[34]

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[30] *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).

[31] *See*, *e.g.*, *Wieland Werke, AG v. United State*s, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[32] 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." H.R. Rep. No. 103-316, Vol. I at 848 (1994) (*citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. at 902); *see Goss Graphic Sys., 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"); *Wieland Werke,* 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[33] None of the statutory exceptions to cumulation applies.

[34] All of the parties based their comments in this proceeding on the assumption that the Commission would cumulate all imports subject to affirmative subsidy determinations and do not seek reconsideration of the analysis underlying the Commission's decision to cumulate subject imports on the basis of a finding of a reasonable overlap of competition. *See, e.g.*, ArcelorMittal Comments at 13-15; Nucor Comments at 17-18; US Steel Comments at 3-5.

*Fungibility*. The record in these investigations indicates that there is at least a moderate level of substitutability between domestic and imported hot-rolled steel products and among subject imports.[35] Domestic producers and importers report a substantial degree of interchangeability between the domestic like product and subject imports. Purchasers generally agree that imported and domestically produced hot-rolled steel are used in the same applications, specifically identifying product from Argentina, India, and Thailand as being used in the same applications as the domestic like product.[36] Most purchasers do not believe that differences in quality between domestically produced and imported steel are so significant that the market should be considered segmented.[37] While hot-rolled steel from all sources must meet minimum standards, product from India and South Africa was specifically identified as being considered of lower quality.[38] Despite acknowledged quality differences, most responding purchasers agreed that steel from all sources was interchangeable.[39]

*Channels of Distribution*. Approximately two-thirds of U.S. producers' total shipments of hot-rolled steel in 2000 were consumed internally or transferred to related affiliates for further processing.[40] Slightly more than half of all commercial shipments of the domestic like product were sold to distributors, processors, or service centers in 2000.[41] Manufacturers of tubular products accounted for 21.4 percent of commercial shipments of the domestic like product in 2000, cold-rolled sheet converters accounted for 2.9 percent of shipments, and other end users

[35] INV-Y-141 at II-13; USITC Pub. 3446 at II-8.
[36] INV-Y-141 at II-17; USITC Pub. 3446 at II-11.
[37] INV-Y-141 at II-16; USITC Pub. 3446 at II-11.
[38] INV-Y-141 at II-17; USITC Pub. 3446 at II-11.
[39] INV-Y-141 at II-17; USITC Pub. 3446 at II-11.
[40] INV-Y-141 at I-12; USITC Pub. 3446 at I-11.
[41] INV-Y-141 at Table I-1; USITC Pub. 3446 at Table I-1.

accounted for the remaining 22.0 percent of shipments.[42] The majority of the commercial shipments of subject imports from all five CVD countries went to distributors, processors, or service centers.[43]

*Geographic Overlap*. The domestic like product is marketed and sold throughout the U.S. market.[44] Subject imports from all five CVD countries entered through the East, Gulf, and West regions during the period of investigation; imports from India also entered through the Great Lakes region.[45] At least one-quarter of all subject imports from all five CVD countries entered the U.S. market through the Gulf region.

*Simultaneous Presence in Market*. The domestic like product was available throughout the period of investigation. With the exception of subject imports from Argentina in 1998, subject imports from each of the five CVD countries entered the U.S. market in every year of the period of investigation.[46]

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[42] INV-Y-141 at Table I-1; USITC Pub. 3446 at Table I-1.

[43] INV-Y-141 at Table I-1; USITC Pub. 3446 at Table I-1. For commercial shipments of subject imports from Argentina, 99.8 percent were to distributors, processors, or service centers, and 0.2 percent to manufacturers of tubular products; for commercial shipments of subject imports from India, 54.2 percent were to distributors, processors, or service centers, 36.4 percent to manufacturers of tubular products, and 9.4 percent to other end users; for commercial shipments of subject imports from Indonesia, 91.5 percent were to distributors, processors, or service centers, 4.4 percent to manufacturers of tubular products, and 4.1 percent to other end users; for commercial shipments of subject imports from South Africa, 60.2 percent were to distributors, processors, or service centers, 10.5 percent to manufacturers of tubular products, 21.4 percent to cold-rolled sheet converters, and 6.7 percent to other end users; and for commercial shipments of subject imports from Thailand, [ ] percent were to distributors, processors, or service centers, and [ ] percent to manufacturers of tubular products. *Id*.

[44] USITC Pub. 3446 at IV-6.

[45] USITC Pub. 3446 at Table IV-3.

[46] USITC Pub. 3446 at Table IV-4. No subject imports from Argentina entered the U.S. market in 1998, but they did enter the U.S. market in 12 months of 1999, 11 months of 2000, and two of three months in interim 2001. *Id.*

*Conclusion*. For the foregoing reasons, we find there is a reasonable overlap of competition among subject imports from all five CVD countries and between subject imports and the domestic product. Accordingly, we cumulate subject imports from all five CVD countries for the purpose of analyzing whether the domestic industry is materially injured by reason of subject imports from Argentina, India, Indonesia, South Africa, and Thailand.

## III. Material Injury by Reason of Subject Imports

Based on the record, we find that an industry in the United States is materially injured by reason of cumulated imports of hot-rolled steel products that Commerce has found to be subsidized and make an affirmative determination regarding subsidized hot-rolled steel imports from India.

### A. Legal Standards

The Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[47] 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.[48] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[49] 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

[47] 19 U.S.C. § 1671d(b).

[48] 19 U.S.C. § 1677(7)(B). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each {such} factor ... and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[49] 19 U.S.C. § 1677(7)(A).

States.[50] 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."[51]

Although the statute requires the Commission to determine whether the domestic industry is "materially injured or threatened with material injury by reason of" unfairly traded imports,[52] it does not define the phrase "by reason of," indicating that this aspect of the injury analysis is left to the Commission's reasonable exercise of its discretion.[53] In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.[54]

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition

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[50] 19 U.S.C. § 1677(7)(C)(iii).

[51] 19 U.S.C. § 1677(7)(C)(iii).

[52] 19 U.S.C. § 1671d(a).

[53] *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("{T}he statute does not 'compel the commissioners' to employ {a particular methodology}."), *aff'g,* 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

[54] The Federal Circuit, in addressing the causation standard of the statute, indicated that there must be evidence in the record "to show that the harm occurred 'by reason of' the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods." *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997); s*ee also Taiwan Semiconductor Industry Ass'n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.[55] In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.[56] Nor does the "by reason of" standard require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.[57] It is clear that the existence of injury caused by other factors does not compel a negative determination.

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[55] SAA at 851-52 ("{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors include "the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry").

[56] SAA at 851-52 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); *Taiwan Semiconductor Industry Ass'n,* 266 F.3d at 1345 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); *Gerald Metals,* 132 F.3d at 722 (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

[57] S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

Assessment of whether material injury to the domestic industry is "by reason of" subject imports does not require the Commission to address the causation issue in any particular way as long as the injury to the domestic industry can reasonably be attributed to the subject imports and the Commission ensures that it is not attributing injury from other sources to the subject imports.[58] The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard.[59] Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.[60]

**B. Conditions of Competition and the Business Cycle**

The following conditions of competition inform our analysis of whether there is material injury by reason of subject imports. While we have incorporated by reference the relevant Conditions of Competition findings in the Commission's original final determination,[61] we have highlighted those conditions of particular importance to our analysis below. We also note, as mentioned above, that we have reviewed the evidence in the record and adopted the Commission's analysis and finding in the original final determination that the captive production criteria are met.[62] Thus, we focus our analysis primarily on the merchant market for hot-rolled steel in considering market share and financial performance of the domestic industry.

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[58] *See United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

[59] We provide below a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

[60] *See U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

[61] *See* USITC Pub. 3446 at 16-19.

[62] *See* USITC Pub. 3446 at 15-16.

### 1. Demand Considerations

U.S. demand for hot-rolled steel is a function of the demand for the downstream products that incorporate hot-rolled steel. These include a vast array of applications in the pipe and tube, automotive, automobile parts, appliance, and construction industries.[63] Hot-rolled steel is typically used in applications where its strength serves a structural function and surface finish and light weight are not crucial qualities.[64] In most applications, there is no effective substitute for hot-rolled steel.[65]

The majority of U.S. hot-rolled steel production is internally consumed, with the remaining shipments being sold in the merchant market. In 2000, approximately 67 percent of total domestic shipments of certain hot-rolled steel were either consumed internally within domestic mills or transferred to affiliated companies for further processing.[66] The primary use for internally consumed hot-rolled steel is cold-rolled sheet and/or coated steel products.[67] Thus, demand for hot-rolled steel also is driven by the demand in the market sectors for these finished downstream products.

Service centers, processors, and distributors are important purchasers of hot-rolled steel. In 2000, a majority of sales in the merchant market of domestically produced and subject CVD imports were to service centers, processors, or distributors.[68]

Demand for hot-rolled steel in the United States tends to follow broad demand trends in the U.S. economy, such as GDP or the index of industrial production, which drives specific

[63] USITC Pub. 3446 at II-7.
[64] USITC Pub. 3446 at I-9. Light weighting steel, however, is becoming more important. *Id*.
[65] USITC Pub. 3446 at II-7.
[66] USITC Pub. 3446 at I-10.
[67] USITC Pub. 3446 at III-8 and Table III-6.
[68] USITC Pub. 3446 at Table I-1.

trends in the automotive, construction, and energy sectors.[69] As a result, steel demand expands and contracts when the economy does.

Over the period of investigation, apparent U.S. consumption in the merchant market fluctuated between years, but declined overall by 10.0 percent from 31.8 million short tons in 1998 to 28.6 million short tons in 2000.[70] Apparent U.S. consumption in the merchant market was 22.9 percent lower in interim 2001 at 6.2 million short tons than in interim 2000 at 8.0 million short tons.[71] Apparent U.S. consumption in the total U.S. market followed similar trends.[72]

**2. Supply Considerations**

The domestic industry consists of both integrated producers and nonintegrated or scrap-based producers.[73] Minimills are the most prominent examples of nonintegrated producers and typically are more heavily focused on spot merchant market sales than are

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[69] USITC Pub. 3446 at II-7. During the period of investigation, the industrial production index increased from 1998 until late 2000, when it began to decline. *Id*.

[70] USITC Pub. 3446 at Table C-2. Apparent U.S. consumption in the merchant market declined by 12.6 percent from 31.8 million short tons in 1998 to 27.8 million short tons in 1999, then rose by 3.0 percent to 28.6 million short tons in 2000. *Id*.

[71] USITC Pub. 3446 at Table C-2.

[72] USITC Pub. 3446 at Table C-1. Apparent U.S. consumption in the total U.S. market declined by 3.5 percent from 74.0 million short tons in 1998 to 71.4 million short tons in 1999, then rose by 1.6 percent to 72.5 million short tons in 2000. *Id*. Apparent U.S. consumption in the total U.S. market was 20.6 percent lower in interim 2001 at 15.9 million short tons than in interim 2000 at 20.0 million short tons. *Id*. Because internal consumption accounts for more than 90 percent of non-commercial sales (internal consumption and transfers to related parties), we refer to all non-commercial sales as internal consumption. Internal consumption increased in both 1999 and in 2000, rising by 4.3 percent between 1998 and 2000. *Id*. at Table VI-5A.

[73] The integrated producers generally use a basic oxygen furnace to produce molten steel primarily from raw materials iron ore and coke and a limited amount of scrap. Nonintegrated or scrap-based producers (minimills) use electric arc furnaces to produce molten steel by melting scrap metal supplemented with primary iron products, or purchase rather than produce their slab needs. USITC Pub. 3446 at I-6-I-7.

integrated producers.[74] In 2000, 21 domestic firms accounted for over 90 percent of the U.S. production of hot-rolled steel.[75]

Domestic producers increased capacity steadily, or by 4.0 percent overall, from 1998 to 2000.[76] This increase in overall production capacity occurred despite the fact that bankruptcy affected at least five firms, removing an estimated [ ] percent of capacity from the domestic industry in 2000.[77] While hot-rolled steel production is capital intensive, domestic producers were able to increase their productivity from 1998 to 2000, but productivity was substantially lower in interim 2001 than in interim 2000.[78]

Domestic producers supply over 80 percent of the total U.S. hot-rolled steel market and over 60 percent of the merchant market, with the remainder supplied by subject CVD imports and nonsubject imports.[79] The market share of various import suppliers shifted significantly during the period of investigation. In 1998, nonsubject imports, including imports from Brazil, Japan, and Russia, were 11.5 million short tons, or 36.2 percent of apparent U.S. consumption in the merchant market.[80] In response to a petition filed on September 30, 1998, the

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[74] USITC Pub. 3446 at 18 n.116.

[75] USITC Pub. 3446 at III-1.

[76] USITC Pub. 3446 at Tables III-3 and C-1. Total domestic capacity in interim 2001 was slightly lower at 19.1 million short tons than in interim 2000 at 19.2 million short tons. *Id*.

[77] INV-Y-141 at III-1 n.1; USITC Pub. 3446 at III-1 n.1. The five firms that filed for Chapter 11 bankruptcy are Acme, CSC, Gulf States, Trico, and Worldclass. Acme, CSC, and Worldclass continue to operate under bankruptcy, but Gulf States and Trico have ceased operations. USITC Pub. 3446 at III-1 n.1.

[78] Productivity increased by 9.4 percent from 1998 to 2000, but was 6.2 percent lower in interim 2001 than in interim 2000. USITC Pub. 3446 at Tables C-1 and C-2.

[79] During the period of investigation, domestic producers' share of apparent U.S. consumption fluctuated within a range between 84.1 percent and 94.7 percent of the total market and between 63.0 percent and 86.4 percent of the merchant market. USITC Pub. 3446 at Tables C-1 and C-2; INV-NN-093 at Table HRS-1.

[80] INV-NN-093 at Table HRS-1.

Commission determined in mid-1999 that the domestic industry was materially injured by reason of hot-rolled steel imports from Brazil, Japan, and Russia, and remedies in the form of antidumping duties or suspension agreements were imposed.[81] Nonsubject imports, including those from Brazil, Japan, and Russia, declined to 5.2 million short tons in 1999, accounting for 18.8 percent of apparent U.S. consumption in the merchant market, and were 19.7 percent in 2000, 20.3 percent in interim 2000 and 11.9 percent in interim 2001.[82] While the presence of nonsubject imports declined overall, cumulated subject CVD imports increased substantially from 0.8 percent of apparent U.S. consumption in the merchant market in 1998 to 4.0 percent in 1999 and 5.8 percent in 2000.[83] Although the sources of imports changed during the period of investigation, imports remain an important segment of the U.S. merchant market.

**3. Substitutability and Other Conditions**

As discussed above, there is a fair degree of substitutability among hot-rolled steel products from the various subject CVD countries and between subject imports and the domestic like product.[84] While there are some quality differences and differences in product mix, domestically produced and imported hot-rolled steel generally are interchangeable, share the same essential chemical and physical properties, and are used in the same applications.[85]

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[81] *See Certain Hot-Rolled Steel Products from Japan*, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 1 and 3 (June 1999); *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).

[82] INV-NN-093 at Table HRS-1. Nonsubject imports accounted for 15.6 percent of apparent U.S. consumption in the total market in 1998, 7.4 percent in 1999, and 7.9 percent in 2000, 8.2 percent in interim 2000 and 4.7 percent in interim 2001. *Id*.

[83] INV-NN-093 at Table HRS-1.

[84] USITC Pub. 3446 at II-7-II-12.

[85] USITC Pub. 3446 at II-9-II-12.

Moreover, in light of the interchangeability and comparable quality of hot-rolled steel from different sources, price is a principal factor influencing purchasing decisions. Price was reported as one of the top three most important factors in purchasing decisions by the largest number of purchasers, followed by quality.[86]

Domestic producers make 71.4 percent of their sales on a spot basis.[87] When domestic producers sell by contract, a substantial share of those contracts (approximately 62 percent) are on a short-term (six months or less) basis.[88] Many producers reported that spot market prices affected the contract price.[89] Slightly more than half of importers' sales were on a spot basis, with the majority of sales by contract on a very short-term (three months or less) basis.[90]

### C. Volume of Subject Imports

Section 771(7)(C)(i) of the Tariff 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."[91]

Despite declines over the period of investigation in apparent U.S. consumption in both the merchant and total U.S. markets, cumulated subject imports rose significantly, with cumulated CVD volumes increasing by 571.5 percent between 1998 and 2000.[92] The volume of

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[86] USITC Pub. 3446 at Table II-2. When asked to rank the top three factors influencing their purchasing decisions, the largest number of purchasers (24 firms) cited price, and the second largest number (22 firms) cited quality. *Id*.

[87] USITC Pub. 3446 at V-12.

[88] USITC Pub. 3446 at V-12. Most contracts tended to fix both price and quantity, but arrangements varied. *Id*.

[89] USITC Pub. 3446 at V-12.

[90] USITC Pub. 3446 at V-12.

[91] 19 U.S.C. § 1677(7)(C)(i).

[92] INV-NN-093 at Table HRS-1. Apparent U.S. consumption declined by 10.0 percent in the merchant market and by 1.9 percent in the total U.S. market from 1998 to 2000. *Id*. We note that (Continued...)

cumulated CVD imports rose from 246,688 short tons in 1998 to 1.1 million short tons in 1999 and 1.7 million short tons in 2000.[93] Consequently, subject CVD imports' share of the merchant market increased steadily from 0.8 percent of apparent U.S. consumption in 1998 to 5.8 percent of apparent U.S. consumption in 2000.[94]

Domestic shipments either did not keep pace with increases in subject CVD imports or declined as subject CVD imports increased, particularly from 1999 to 2000. For example, as apparent U.S. consumption in the merchant market increased by 3.0 percent and subject CVD imports increased by 46.0 percent from 1999 to 2000, U.S. commercial shipments declined by 0.5 percent.[95] Quarterly data further show the differing trends between subject CVD imports and domestic shipments. U.S. producers' order books peaked in the fourth quarter of 1999 and declined thereafter; similarly, their commercial shipments to the merchant market declined between the first and second quarters of 2000.[96] Conversely, subject CVD import volume reached its peak quarterly level (623,212 short tons) in the second quarter of 2000.[97]

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(…Continued)
subject imports from India rose by 697.0 percent, from 109,941 short tons in 1998 to 876,264 short tons in 2000. *Id*.

[93] INV-NN-093 at Table HRS-1. Subject CVD imports totaled 363,765 short tons in January-March 2000 and 100,839 short tons in January-March 2001. *Id*.

[94] INV-NN-093 at Table HRS-1. Subject CVD imports' share of the merchant market was 4.6 percent in interim 2000 and 1.6 percent in interim 2001. *Id*. Subject CVD imports' share of the total U.S. market increased steadily from 0.3 percent of apparent U.S. consumption in 1998 to 2.3 percent of apparent U.S. consumption in 2000, and was 1.8 percent in interim 2000 and 0.6 percent in interim 2001. *Id*. Subject CVD imports as a ratio of U.S. production increased steadily from 0.4 percent in 1998 to 2.5 percent in 2000, and was 2.0 percent in interim 2000 and 0.7 percent in interim 2001. INV-NN-093 at Table HRS-2.

[95] INV-NN-093 at Table HRS-1. For the total U.S. market, as apparent U.S. consumption increased by 1.6 percent and subject CVD imports increased by 46.0 percent from 1999 to 2000, total U.S. shipments only increased by 0.3 percent. *Id*.

[96] USITC Pub. 3446 at III-10 and Table III-5. Reported hot-rolled steel products on U.S. producers' order books were 5.0 million short tons as of December 31, 1999; 4.9 million short tons as of (Continued...)

We recognize that the volume and market share of subject CVD imports were lower in interim 2001 than in interim 2000. However, U.S. importers' inventories of subject CVD imports increased significantly from 1999 to 2000, remained at high levels through the first quarter of 2001, and continued to exert downward pressure on orders for the domestic like product.[98] Furthermore, we find that the filing of the petitions contributed to the lower subject CVD import volumes in interim 2001 than in interim 2000, and therefore give the interim 2001 volume data less weight in our analysis.[99] Accordingly, we find that subject CVD import volume, both in absolute terms and relative to consumption and production in the United States, was significant.

### D. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Tariff Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether

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(…Continued)
March 31, 2000; 4.1 million short tons as of June 30, 2000; 3.5 million short tons as of September 30, 2000; and 3.4 million short tons as of December 31, 2000. *Id*. at III-10. U.S. producers' commercial shipments were 6.0 million short tons for January-March 2000; 5.6 million short tons for April-June 2000; 4.9 million short tons for July-September 2000; and 4.7 million short tons for October-December 2000. *Id*. at Table III-5.

We note that minimill orders followed a pattern similar to that of the integrated producers. In fact, the minimills, which rely on sales to the merchant market more heavily than do integrated mills, felt the effects of the increased volume of subject imports sooner than the integrated mills. INV-Y-156.

[97] Calculated from USITC Pub. 3446 at V-10-V-11.

[98] U.S. importers' end of period inventories of subject CVD imports increased from 15,090 short tons in 1998 to 24,755 short tons in 1999 and 44,598 short tons in 2000, and were 26,662 short tons in interim 2000 and 22,727 short tons in interim 2001. Calculated from INV-Y-141 at Table VII-12.

[99] Subject CVD imports peaked in the second quarter of 2000 (623,212 short tons), but the volume of these imports in the third quarter of 2000 (360,830 short tons) remained significantly higher than in the first six quarters of the period of investigation. These petitions were filed on November 13, 2000, and, subsequently, subject CVD import volume declined in the fourth quarter of 2000 and the first quarter of 2001. Calculated from USITC Pub. 3446 at V-10-V-11.

> (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.[100]

As discussed above, the record indicates that subject CVD imports and domestically produced hot-rolled steel are at least moderately substitutable and that price is an important factor in purchasing decisions.[101] Subject imports and the domestic like product share the same essential chemical and physical properties. In light of the interchangeability and comparable quality of hot-rolled steel from different sources, price is a principal factor influencing purchasing decisions, and sustained underselling by even a relatively moderate amount of subject CVD imports can have price-suppressing or price-depressing effects.

Throughout most of the period of investigation, subject CVD imports undersold the domestic like product.[102] Specifically, subject CVD imports undersold the domestic like product in 74 of 124 quarterly comparisons, or in 59.7 percent of the comparisons.[103] This price underselling is particularly probative, given the importance of price in purchasers' decisions to

[100] 19 U.S.C. § 1677(7)(C)(ii).

[101] USITC Pub. 3446 at II-9-II-11 and Tables II-2 and II-3.

[102] The Commission collected quarterly pricing data on four hot-rolled steel products. Nineteen U.S. producers and 20 importers provided usable pricing data for sales of the requested products although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for 24.2 percent of U.S. producers' commercial shipments of hot-rolled steel and 26.7 percent of U.S. shipments of imports from Argentina, 20.9 percent of U.S. shipments of imports from India, 26.3 percent of U.S. shipments of imports from Indonesia, 10.9 percent of U.S. shipments of imports from South Africa, and 12.1 percent of U.S. shipments of imports from Thailand during the period of investigation. USITC Pub. 3446 at Table V-2.

[103] INV-NN-093 at Table HRS-4. Limited price comparison data were reported for subject CVD imports for Product 4. We note that subject CVD imports from India undersold the domestic like product in 28 of 37 quarterly comparisons, or in 75.7 percent of the comparisons. *Id*.

increase inventories.[104] We find that low subject CVD import prices,[105] at a time when prices for the domestic like product were rising and apparent U.S. consumption in the merchant and total U.S markets was increasing, provided the impetus for the significant growth in subject CVD import volume that occurred in late 1999 and the first half of 2000.

Prices were at their highest levels for the period of investigation in the first or second quarter of 1998, then declined sharply in the second half of 1998, as the volume of unfairly traded imports from Brazil, Japan, and Russia entered the market; after relief was granted against those unfairly traded imports in mid-1999, prices began to rise in the latter part of 1999 and continued to rise through the first or second quarter of 2000.[106] Prices generally did not recover to the levels seen in early 1998, despite increases in apparent U.S. consumption in the merchant and total U.S. markets in late 1999 and early 2000. The restrained price recovery occurred during the same quarters that subject CVD import volume increased sharply and subject CVD imports undersold the domestic like product. This coincided with peak levels in purchasers' inventories for the period of investigation, particularly in the second and third quarters of 2000;[107] these inventory overhangs, to which subject CVD imports contributed,[108]

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[104] USITC Pub. 3446 at V-9. Purchasers indicated that anticipated future demand was the most important factor in deciding to hold inventories, although low purchase prices, whether domestic or import, also were a factor. *Id*.

[105] *See also* USITC Pub. 3446 at Table II-1. Reported average unit values (AUV) for purchases from each of the five subject CVD countries were lower than for purchases from domestic producers in each year of the period of investigation. For example, responding purchasers reported AUVs for purchases of hot-rolled steel from India of $300 in 1998, $227 in 1999, and $330 in 2000 compared to AUVs for purchases of domestic hot-rolled steel of $348 in 1998, $319 in 1999, and $332 in 2000. *Id*.

[106] INV-NN-093 at Tables HRS-5 – HRS-14; USITC Pub. 3446 at Figures V-13 – V-16.

[107] USITC Pub. 3446 at V-10 – V-11. We recognize that only about half of the responding purchasers were able to classify inventories by country of origin. *Id*. at V-11.

[108] *See also* subject CVD importers' inventories discussed above. Calculated from INV-Y-141 at Table VII-12.

continued to exert a negative influence on domestic prices. Consequently, prices then fell sharply during the latter half of 2000 and early 2001, generally to their lowest levels.[109]

Accordingly, we find that the significant price underselling by subject CVD imports has had significant adverse effects on domestic prices during the period of investigation.

**E. Impact of the Subject Imports**

Section 771(7)(C)(iii) of the Tariff Act provides that in examining the impact of subject imports, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[110] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, gross profits, net profits, operating profits, cash flow, return on investment, return on capital, ability to raise capital, ability to service debts, research and development, and factors affecting domestic prices. 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."[111]

While most domestic industry trade indicators increased from 1998 to 2000, the industry's financial performance displayed substantial fluctuations during the period of investigation; financial performance indicators improved in tandem with increases in prices in late 1999 and the first half of 2000, but declined in the second half of 2000 in tandem with declines in prices and the increased volume of subject CVD imports, even as apparent U.S.

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[109] In addition, there was [ ] confirmed lost sale involving subject CVD imports during the final investigations. INV-Y-141 at Table V-14.

[110] 19 U.S.C. § 1677(7)(C)(iii)(2001); *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.").

[111] 19 U.S.C. § 1677(7)(C)(iii) (2001).

consumption in the merchant and total U.S. markets increased. The domestic industry's production and commercial shipments[112] were higher in 2000 than in 1998. Capacity, production, and capacity utilization rates all rose from 1998 to 2000, with most of the increase occurring from 1998 to 1999. The domestic industry's capacity increased each year and increased overall by 4.0 percent from 1998 to 2000.[113] While production followed a similar trend and was 5.5 percent higher in 2000 than in 1998, most of the increase (4.5 percent) occurred from 1998 to 1999. This trend reversed in the interim period, and production was substantially lower in interim 2001 than in interim 2000.[114] Capacity utilization fluctuated within a narrow range from year to year and was substantially lower in interim 2001 than in interim 2000.[115]

While the domestic industry's U.S. shipments were higher in 2000 than in 1998 on both a total basis and a commercial basis, commercial shipments declined from 1999 to 2000 despite increases in apparent U.S. consumption for the merchant market for the same period. Commercial shipments increased by 6.9 percent from 1998 to 1999 but declined by 0.5 percent

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[112] The majority of U.S. hot-rolled steel production is internally consumed to produce downstream products. USITC Pub. 3446 at Table III-4. As noted above, we find the captive production provision applies and focus our analysis primarily on the merchant market in considering the market share and financial performance of the domestic industry (although we also consider overall domestic industry data).

[113] USITC Pub. 3446 at Tables III-3 and C-1. The domestic industry's production capacity was 73.5 million short tons in 1998, 75.5 million short tons in 1999, 76.4 million short tons in 2000, 19.2 million short tons in interim 2000, and 19.1 million short tons in interim 2001. *Id*.

[114] USITC Pub. 3446 at Tables III-3 and C-1. The domestic industry's production was 62.5 million short tons in 1998, 65.3 million short tons in 1999, 65.9 million short tons in 2000, 18.1 million short tons in interim 2000, and 15.3 million short tons in interim 2001. *Id*.

[115] USITC Pub. 3446 at Tables III-3 and C-1. The domestic industry's capacity utilization was 85.0 percent in 1998, 86.5 percent in 1999, 86.3 percent in 2000, 94.4 percent in interim 2000, and 80.0 percent in interim 2001. *Id*.

from 1999 to 2000, and were 11.4 percent lower in interim 2001 than in interim 2000.[116] Inventories relative to U.S. commercial shipments remained at relatively high levels, ranging from 10.9 percent to 12.2 percent for the 1998 to 2000 period, and were 9.4 percent in interim 2000 and 10.6 percent in interim 2001.[117] Although the domestic industry accounted for the majority of apparent U.S. consumption in both the merchant and total U.S. markets, its market share increased from 1998 to 1999 but then declined from 1999 to 2000.[118]

Despite increased production and shipments, the domestic industry's financial performance was poor during most of the period of investigation. The domestic industry had operating losses on commercial and total U.S. sales in both 1999 and 2000.[119] Several domestic

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[116] USITC Pub. 3446 at Tables III-4 and C-2. The domestic industry's commercial shipments were 20.0 million short tons in 1999, 21.4 million short tons in 1999, 21.3 million short tons in 2000, 6.0 million short tons in interim 2000, and 5.4 million short tons in interim 2001. *Id*. The industry's total U.S. shipments were 62.2 million short tons in 1998, 65.0 million short tons in 1999, 65.2 million short tons in 2000, 18.0 million short tons in interim 2000, and 15.0 million short tons in interim 2001. *Id*. at Tables III-4 and C-1. Total U.S. shipments increased by 4.8 percent from 1998 to 2000, and were 16.5 percent lower in interim 2001 than in interim 2000. *Id*. The domestic industry's internal consumption was 42.4 million short tons in 1998, 43.6 million short tons in 1999, 44.2 million short tons in 2000, 12.0 million short tons in interim 2000, and 9.7 million short tons in interim 2001. *Id*. at Table VI-5A. Internal consumption increased by 4.3 percent from 1998 to 2000, and was 19.4 percent lower in interim 2001 than in interim 2000. *Id*.

[117] USITC Pub. 3446 at Table C-2. Inventories relative to total U.S. shipments were lower but followed similar trends throughout the period of investigation. USITC Pub. 3446 at Tables III-9 and C-1.

[118] USITC Pub. 3446 at Tables C-1 and C-2. The domestic industry's share of the merchant market was 63.0 percent in 1998, 77.0 percent in 1999, and 74.4 percent in 2000; it was 75.2 percent in interim 2000 and 86.4 percent in interim 2001. *Id*. at Table C-2. The domestic industry's total U.S. market share was 84.1 percent in 1998, 91.1 percent in 1999, and 89.9 percent in 2000; it was 90.0 percent in interim 2000 and 94.7 percent in interim 2001. *Id*. at Table C-1.

[119] The domestic industry's operating income/loss for commercial market sales was $79.2 million in 1998, negative $257.2 million in 1999, negative $21.4 million in 2000, $98.6 million in interim 2000, and negative $273.8 million in interim 2001. USITC Pub. 3446 at Tables VI-1 and C-2. The industry's operating income/loss for the total U.S. market was $333.2 million in 1998, negative $1.2 billion in 1999, negative $705.0 million in 2000, $90.5 million in interim 2000, and negative $954.1 million in interim 2001. *Id*. at Tables VI-5 and C-1.

The domestic industry's ratio of operating income/loss to net sales for commercial market sales was 1.2 percent in 1998, negative 4.2 percent in 1999, negative 0.3 percent in 2000, 4.9 percent in (Continued...)

producers entered Chapter 11 bankruptcy proceedings and two ceased operations altogether, despite increases in both commercial shipments and production.[120] The number of production and related workers employed in the domestic industry, the hours worked, and the wages paid declined throughout the period of investigation.[121] The industry's productivity increased from 1998 to 2000, but was lower in interim 2001 than in interim 2000.[122] Total capital expenditures increased between 1998 and 2000 but expenditures on research and development declined.[123]

We recognize that the domestic industry's performance in the early portion of the period of investigation reflected the adverse effects of unfairly traded hot-rolled steel imports from Brazil, Japan, and Russia and that the industry had gained some benefit from the import relief imposed on such imports by mid-1999. For a brief time, domestic shipments increased, prices increased (although prices generally remained below peak 1998 levels), and the domestic industry's financial performance improved. This brief improvement is evident in the industry's

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(…Continued)
interim 2000, and negative 19.8 percent in interim 2001. USITC Pub. 3446 at Tables VI-1 and C-2. The industry's ratio of operating income/loss to net sales for the total U.S. market was 1.6 percent in 1998, negative 6.6 percent in 1999, negative 3.5 percent in 2000, 1.6 percent in interim 2000, and negative 25.6 percent in interim 2001. *Id*. at Tables VI-5 and C-1.

The domestic industry also suffered operating losses on its internal consumption in 1999 and 2000. *Id*. at Table VI-5A.

[120] USITC Pub. 3446 at III-1 n.1.

[121] USITC Pub. 3446 at Tables III-10, C-1 and C-2.

[122] USITC Pub. 3446 at Tables III-10, C-1 and C-2. The industry's productivity increased from 870.7 short tons per 1,000 hours in 1998 to 952.2 short tons per 1,000 hours in 2000, but was lower at 935.2 short tons per 1,000 hours in interim 2001 than at 977.1 short tons per 1,000 hours in interim 2000. *Id*.

[123] USITC Pub. 3446 at Table VI-8. We also have considered the producers' comments describing any actual or potential negative effects of imports of hot-rolled steel from subject CVD countries on their growth, investment, ability to raise capital and/or their development efforts in our analysis. INV-Y-141 at Appendix E.

substantially better performance in first quarter 2000 not only compared to first quarter 2001, but also relative to its performance for full years 1999 and 2000.[124]

This improvement did not last. Despite increases in apparent U.S. consumption in the merchant market from 1999 to 2000, the domestic industry's commercial shipments declined at the same time as subject CVD imports continued to increase and reached peak period levels in late 1999 and the first half of 2000.[125] Moreover, U.S. importers' inventories of subject CVD imports almost doubled from 1999 to 2000 and remained at high levels in the first quarter of 2001.[126] These increases in subject CVD imports in the first half of 2000 (prior to the November 2000 filing of the petitions) that coincided with peak levels of purchasers' inventories, to which low-priced subject CVD imports contributed, adversely affected the performance of the domestic industry. Virtually every financial and production indicator was lower in interim 2001 than in interim 2000.[127] For example, shipments by the domestic industry to the merchant market in interim 2001 were 11.4 percent lower than in interim 2000; operating loss per ton of net commercial sales was $50 in interim 2001 compared to a positive income per ton of $16 in

[124] For example, the value per ton of net domestic commercial sales declined from $335 in 1998 to $292 in 1999, but was $323 in the first quarter of 2000 and only $310 for full year 2000; this unit value was at a period low of $254 in first quarter of 2001. USITC Pub. 3446 at Tables VI-1 and C-2. Similarly, operating income on commercial sales fluctuated from a positive $4 per short ton in 1998 to a negative $12 per short ton in 1999, but was a positive $16 per short ton in first quarter of 2000 and yet a negative $1 for full year 2000; this unit value was at a period low of negative $50 per short ton in first quarter of 2001. USITC Pub. 3446 at Tables VI-1 and C-2.

[125] Based on quarterly data, subject CVD import volumes were 340,653 short tons in third quarter 1999, 466,976 short tons in fourth quarter 1999, 362,028 short tons in first quarter 2000, 623,212 short tons in second quarter 2000, 360,830 short tons in third quarter 2000, and 258,660 short tons in fourth quarter 2000. Calculated from USITC Pub. 3446 at V-10-V-11.

[126] Calculated from INV-Y-141 at Table VII-12.

[127] USITC Pub. 3446 at Tables C-1 and C-2.

interim 2000.[128] Operating losses were widespread in the industry, affecting 17 of 21 reporting firms in 2000; only 12 of 21 firms reported losses in 1998, and only 13 of 21 had reported losses in 1999, when imports from Brazil, Japan, and Russia were adversely affecting the domestic industry.[129]

We recognize that the volume of subject CVD imports was lower in interim 2001 than in interim 2000, but find that the filing of the petitions in November 2000 and substantial U.S. importer inventories of subject CVD imports contributed to these lower levels. As discussed above, we have found that the volume and market share of subject CVD imports increased significantly over the period of investigation and that there has been substantial underselling, which has adversely affected the domestic prices. Domestic shipments and production contracted at a time when overall apparent U.S. consumption was strong and subject CVD imports substantially increased. As a result, the overall condition of the domestic industry declined. Accordingly, we find that the subject CVD imports are having a significant adverse impact on the domestic industry.[130]

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[128] USITC Pub. 3446 at Tables VI-1 and C-2. Similarly, total U.S. shipments were 16.5 percent lower in interim 2001 than in interim 2000; operating loss per ton of total U.S. sales was $63 in interim 2001 compared to a positive income per ton of $5 in interim 2000. *Id*. at Tables VI-5 and C-1.

[129] USITC Pub. 3446 at Tables VI-1 and VI-5.

[130] Respondent GOI contends that the Commission should consider the results of the COMPAS model relating to subject CVD imports in its analysis. GOI Comments at 19 and 20. We do not find the COMPAS model to be a useful tool in our analysis. COMPAS modeling was one analytic tool that appeared in Commission staff reports during the 1990s and early 2000s; it was in the staff report in the original Final Determinations. The results of the COMPAS model were never used by a majority of the Commission as its sole form of analysis in a Commission opinion because of its limitations. As the Commission explained shortly after it stopped providing the COMPAS model in its reports, we prefer to rely on the actual empirical data in the record. *See, e.g., Circular Seamless Stainless Steel Hollow Products from Japan*, Inv. No. 731-TA-859 (Remand), USITC Pub. 3475 at 7 and n.24 (December 2001); *accord Altx, Inc. v. United States*, 370 F.3d 1108, 1121 (Fed. Cir. 2004).

We have considered factors other than subject CVD imports to ensure that we are not attributing any injury from other such factors to subject imports. We recognize that the domestic industry's condition was affected by a decline in apparent U.S. consumption in the latter part of 2000,[131] but also find that domestic shipments and production contracted at a time when overall apparent consumption was still strong and while rapidly increasing subject imports gained sales from the domestic industry largely through underselling. Specifically, the decline in demand for hot-rolled steel did not occur until the end of 2000, yet the substantial drop in the domestic industry's commercial shipments began in the beginning of 2000 as low-priced subject CVD import volumes reached peak period levels.[132]

We have also closely examined the role of nonsubject imports in this proceeding. While nonsubject imports had a significant presence in the U.S. market, they accounted for a substantially declining share of the U.S. merchant and total market during the period of investigation. Nonsubject imports declined from 11.5 million short tons in 1998 to 5.7 million short tons in 2000, or by 50.8 percent.[133] Nonsubject imports' share of apparent U.S. consumption in the merchant market declined from 36.2 percent in 1998 to 19.7 percent in

[131] The industrial production index peaked in the third quarter of 2000 and declined thereafter. USITC Pub. 3446 at II-7.

[132] USITC Pub. 3446 at Table III-5 and calculated from V-10-V-11. Based on quarterly data, the domestic industry's commercial shipments were 6.0 million short tons in first quarter 2000, 5.6 million short tons in second quarter 2000, 4.9 million short tons in third quarter 2000, and 4.7 million short tons in fourth quarter 2000. *Id*. at Table III-5. Moreover, commercial shipments, which compete directly with subject CVD imports, declined by 19.2 percent from first quarter 2000 to third quarter 2000, whereas internal consumption declined only by 5.3 percent for the same period. *Id*.

[133] INV-NN-093 at Table HRS-1.

2000, and was 20.3 percent in interim 2000 and 11.9 percent in interim 2001.[134] Moreover, the available pricing data for imports from six nonsubject sources (China, Kazakhstan, Netherlands, Romania, Taiwan, and Ukraine) indicate that nonsubject imports as a group were priced higher than subject CVD imports in 231 of 453 quarterly price comparisons.[135] In addition, we have already discussed the impact that the imports from Brazil, Japan, and Russia had on the domestic industry at the beginning of the period of investigation.

Finally, Respondent GOI urges the Commission to consider any injury to the domestic industry resulting from the decline in productivity.[136] While we recognize that the domestic industry's productivity was lower in interim 2001 than 2000, as discussed above, it increased substantially from 870.7 short tons in 1998 to 952.2 short tons in 2000.[137]

Consequently, none of the alternative potential causes can explain the poor and declining performance of the domestic industry during the period of investigation. We therefore find that cumulated CVD subject imports have had a significant adverse impact on the domestic industry. Accordingly, we determine the domestic industry is materially injured by reason of subject CVD imports.

## IV. Conclusion

For the reasons stated above, we make an affirmative determination regarding subsidized hot-rolled steel imports from India.

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[134] INV-NN-093 at Table HRS-1. Nonsubject imports' share of apparent U.S. consumption in the total market declined from 15.6 percent in 1998 to 7.9 percent in 2000, and was 8.2 percent in interim 2000 and 4.7 percent in interim 2001. *Id*.

[135] INV-NN-093 at Table B-1. We note that the available nonsubject pricing data is for the six countries that were subject to concurrent AD investigations. Subject imports from India were priced lower than these nonsubject imports as a group in 77 of 128 quarterly price comparisons. *Id*.

[136] GOI Comments at 21-25.

[137] USITC Pub. 3446 at Table C-1.

## INTRODUCTION

On December 19, 2014, the dispute settlement body ("DSB") of the World Trade Organization ("WTO") adopted its recommendations and rulings in the dispute entitled *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436). On January 16, 2015, the United States informed the DSB of the U.S. intention to comply with its WTO obligations in this dispute. On November 6, 2015, the U.S. International Trade Commission ("the Commission") received a request from the Office of the United States Trade Representative ("USTR") for a consistency determination under section 129(a)(4) of the Uruguay Round Agreements Act ("URAA") that would render the Commission's action in connection with its countervailing duty investigation regarding imports of hot-rolled steel from India not inconsistent with the DSB recommendations and rulings in *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (DS436).[1]

The Commission instituted this proceeding effective November 6, 2015.[2] The Commission gave notice that it would issue a supplemental staff report on December 21, 2015, and receive written submissions on January 8, 2016. The Commission must issue its consistency determination within 120 days of the section 129(a)(4) request, or by March 7, 2016.

## SUMMARY OF DATA

The data presented in this supplemental report are compiled from the original staff report (*Hot-Rolled Steel Products From Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, Staff Report, INV-Y-141, August 6, 2001), associated memoranda (*Additions, Errata, and Supplements to the Final Staff Report*, INV-Y-148, August 9, 2001), and USITC publications for Inv. Nos. 701–TA–404–408 and 731–TA–899–904 and 906–908 (Final) (USITC Publication 3446 (August 2001)[3] and USITC Publication 3468 (November 2001)).[4] The tabular presentations in the following sections of this report aggregate import data, pricing data, and foreign industry data with respect to the subject merchandise from the five countries subject to the original countervailing duty investigations:  Argentina, India, Indonesia, South Africa, and Thailand.

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[1] This proceeding involves the Commission's affirmative determination in the countervailing duty investigation regarding imports of hot-rolled steel from India in Inv. Nos. 701-TA-404-408 and 731-TA-899-904 and 906-908 (Final), USITC Publications 3446 (August 2001) and 3468 (November 2001). The original petition was filed on November 13, 2000 on behalf of Bethlehem Steel Corporation; Gallatin Steel Company; IPSCO Steel, Inc.; LTV Steel Co., Inc.; National Steel Corporation; Nucor Corporation; Steel Dynamics, Inc.; U.S. Steel Group, division of USX Corp, Weirton Steel Corp.; and the labor union representing the organized workers at Weirton known as the Independent Steelworkers Union.

[2] 80 F.R. 75132, *Hot-Rolled Steel Products From India; Scheduling of a Countervailing Duty Proceeding Under the Uruguay Round Agreements Act (URAA)*, December 1, 2015.

[3] *Hot-Rolled Steel Products from Argentina and South Africa, Inv. No. 701-TA-404 (Final) and 731-TA-898-905 (Final)*, USITC Publication 3446, August 2001.

[4] *Hot-Rolled Steel Products from China, India, Indonesia, Kazakhstan, The Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. Nos. 701-TA-405-408 and 731-TA-899-904 and 906-908 (Final)*, USITC Publication 3468, November 2001.

# U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

**Table HRS-1**
**Hot-rolled steel: U.S. imports, U.S. shipments, apparent U.S. consumption, and market shares, 1998-2000, January-March 2000, and January-March 2001**

| | Import volume | | | | | | Period changes | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Calendar years | | | January - March | | | Calendar years | | | January - March |
| Item | 1998 | 1999 | 2000 | 2000 | 2001 | | 1998-2000 | 1998-1999 | 1999-2000 | 2000-2001 |
| <u>CVD</u>: | | | | | | | | | | |
| Argentina | 0 | 116,950 | 118,920 | 30,769 | 21,474 | | N/A | N/A | 1.7 | -30.2 |
| India | 109,941 | 504,155 | 876,264 | 116,905 | 49,911 | | 697.0 | 358.6 | 73.8 | -57.3 |
| Indonesia | 38,163 | 301,264 | 259,166 | 148,265 | 10,726 | | 579.1 | 689.4 | -14.0 | -92.8 |
| South Africa | 80,434 | 173,044 | 167,773 | 61,153 | 2,881 | | 108.6 | 115.1 | -3.0 | -95.3 |
| Thailand | 18,050 | 38,637 | 233,762 | 6,673 | 15,847 | | 1,195.1 | 114.1 | 505.0 | 137.5 |
| **Subtotal (CVD only)** | 246,588 | 1,134,050 | 1,655,885 | 363,765 | 100,839 | | 571.5 | 359.9 | 46.0 | -72.3 |
| | | | | | | | | | | |
| **Subtotal (AD only)** | 1,152,742 | 1,982,417 | 2,589,780 | 818,998 | 213,131 | | 124.7 | 72.0 | 30.6 | -74.0 |
| | | | | | | | | | | |
| **All 11 Subject Countries (AD + CVD)** | 1,399,330 | 3,116,468 | 4,245,666 | 1,182,763 | 313,971 | | 203.4 | 122.7 | 36.2 | -73.5 |
| | | | | | | | | | | |
| **All Other Sources** | 10,354,907 | 3,255,768 | 3,070,958 | 811,971 | 526,743 | | -70.3 | -68.6 | -5.7 | -35.1 |
| | | | | | | | | | | |
| **AD Only + All Other Sources** | 11,507,649 | 5,238,185 | 5,660,738 | 1,630,969 | 739,874 | | -50.8 | -54.5 | 8.1 | -54.6 |
| | | | | | | | | | | |
| **TOTAL** | **11,754,238** | **6,372,236** | **7,316,624** | **1,994,733** | **840,714** | | **-37.8** | **-45.8** | **14.8** | **-57.9** |

*Table continued on the following page.*

**Table HRS-1--*Continued***

**Hot-rolled steel: U.S. imports, U.S. shipments, apparent U.S. consumption, and market shares, 1998-2000, January-March 2000, and January-March 2001**

| Item | U.S. total and commercial shipments | | | | | Period changes | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Calendar years | | | January - March | | Calendar years | | | January - March |
| | 1998 | 1999 | 2000 | 2000 | 2001 | 1998-2000 | 1998-1999 | 1999-2000 | 2000-2001 |
| Total U.S. shipments | 62,214,973 | 65,023,453 | 65,219,129 | 17,969,555 | 15,012,017 | 4.8 | 4.5 | 0.3 | -16.5 |
| U.S. commercial shipments | 20,009,019 | 21,385,471 | 21,278,667 | 6,048,566 | 5,361,817 | 6.3 | 6.9 | -0.5 | -11.4 |

*Table continued on the following page.*

**Table HRS-1--*Continued***

**Hot-rolled steel: U.S. imports, U.S. shipments, apparent U.S. consumption, and market shares, 1998-2000, January-March 2000, and January-March 2001**

| Item | Apparent U.S. consumption and market shares (total U.S. market) | | | | | Period changes | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Calendar years | | | January - March | | Calendar years | | | January - March |
| | 1998 | 1999 | 2000 | 2000 | 2001 | 1998-2000 | 1998-1999 | 1999-2000 | 2000-2001 |
| **Apparent U.S. consumption** | 73,969,211 | 71,395,689 | 72,535,753 | 19,964,288 | 15,852,731 | -1.9 | -3.5 | 1.6 | -20.6 |
| **Producers' market share** | 84.1 | 91.1 | 89.9 | 90.0 | 94.7 | 5.8 | 7.0 | -1.2 | 4.7 |
| | | | | | | | | | |
| **CVD**: | | | | | | | | | |
| Argentina | 0.0 | 0.2 | 0.2 | 0.2 | 0.1 | 0.2 | 0.2 | 0.0 | -0.0 |
| India | 0.1 | 0.7 | 1.2 | 0.6 | 0.3 | 1.1 | 0.6 | 0.5 | -0.3 |
| Indonesia | 0.1 | 0.4 | 0.4 | 0.7 | 0.1 | 0.3 | 0.4 | -0.1 | -0.7 |
| South Africa | 0.1 | 0.2 | 0.2 | 0.3 | 0.0 | 0.1 | 0.1 | -0.0 | -0.3 |
| Thailand | 0.0 | 0.1 | 0.3 | 0.0 | 0.1 | 0.3 | 0.0 | 0.3 | 0.1 |
| **Subtotal (CVD only)** | 0.3 | 1.6 | 2.3 | 1.8 | 0.6 | 2.0 | 1.3 | 0.7 | -1.2 |
| | | | | | | | | | |
| **Subtotal (AD only)** | 1.6 | 2.8 | 3.7 | 4.1 | 1.4 | 2.1 | 1.2 | 0.9 | -2.7 |
| | | | | | | | | | |
| **All 11 Subject Countries (AD + CVD)** | 1.9 | 4.4 | 5.9 | 5.9 | 2.0 | 4.0 | 2.5 | 1.5 | -3.9 |
| | | | | | | | | | |
| **All Other Sources** | 14.0 | 4.6 | 4.2 | 4.1 | 3.3 | -9.8 | -9.4 | -0.3 | -0.7 |
| | | | | | | | | | |
| **AD Only + All Other Sources** | 15.6 | 7.4 | 7.9 | 8.2 | 4.7 | -7.7 | -8.2 | 0.5 | -3.5 |
| | | | | | | | | | |
| **TOTAL** | **15.9** | **8.9** | **10.1** | **10.0** | **5.3** | **-5.8** | **-7.0** | **1.2** | **-4.7** |

*Table continued on the following page.*

**Table HRS-1--*Continued***
**Hot-rolled steel: U.S. imports, U.S. shipments, apparent U.S. consumption, and market shares, 1998-2000, January-March 2000, and January-March 2001**

| Item | Apparent U.S. consumption and market shares (commercial market) | | | | | | Period changes | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Calendar years | | | January - March | | | Calendar years | | | January - March |
| | 1998 | 1999 | 2000 | 2000 | 2001 | | 1998-2000 | 1998-1999 | 1999-2000 | 2000-2001 |
| **Apparent U.S. consumption** | 31,763,257 | 27,757,707 | 28,595,291 | 8,043,299 | 6,202,531 | | -10.0 | -12.6 | 3.0 | -22.9 |
| **Producers' market share** | 63.0 | 77.0 | 74.4 | 75.2 | 86.4 | | 11.4 | 14.0 | -2.6 | 11.2 |
| | | | | | | | | | | |
| **CVD:** | | | | | | | | | | |
| Argentina | 0.0 | 0.4 | 0.4 | 0.4 | 0.3 | | 0.4 | 0.4 | -0.0 | -0.0 |
| India | 0.3 | 1.8 | 3.1 | 1.5 | 0.8 | | 2.7 | 1.5 | 1.2 | -0.6 |
| Indonesia | 0.1 | 1.1 | 0.9 | 1.8 | 0.2 | | 0.8 | 1.0 | -0.2 | -1.7 |
| South Africa | 0.3 | 0.6 | 0.6 | 0.8 | 0.0 | | 0.3 | 0.4 | -0.0 | -0.7 |
| Thailand | 0.1 | 0.1 | 0.8 | 0.1 | 0.3 | | 0.8 | 0.1 | 0.7 | 0.2 |
| **Subtotal (CVD only)** | 0.8 | 4.0 | 5.8 | 4.6 | 1.6 | | 5.0 | 3.2 | 1.8 | -3.0 |
| | | | | | | | | | | |
| **Subtotal (AD only)** | 3.6 | 7.1 | 9.0 | 10.2 | 3.4 | | 5.4 | 3.5 | 1.9 | -6.8 |
| | | | | | | | | | | |
| **All 11 Subject Countries (AD + CVD)** | 4.4 | 11.2 | 14.8 | 14.7 | 5.1 | | 10.4 | 6.8 | 3.6 | -9.6 |
| | | | | | | | | | | |
| **All Other Sources** | 32.6 | 11.7 | 10.7 | 10.1 | 8.5 | | -21.9 | -20.9 | -1.0 | -1.6 |
| | | | | | | | | | | |
| **AD Only + All Other Sources** | 36.2 | 18.8 | 19.7 | 20.3 | 11.9 | | -16.5 | -17.4 | 0.9 | -8.4 |
| | | | | | | | | | | |
| **TOTAL** | **37.0** | **23.0** | **25.6** | **24.8** | **13.6** | | **-11.4** | **-14.0** | **2.6** | **-11.2** |

Note.--U.S. import, U.S. shipment, and apparent consumption data are reported in short tons; period change and market share data are reported in percent.

*Source*: Data calculated for purposes of this table were based on rounded figures presented in *Hot-Rolled Steel Products from Argentina and South Africa, Inv. No. 701-TA-404 (Final) and Inv. Nos. 731-TA-898 and 905 (Final)*, USITC Publication 3446, August 2001, tables C-1 and C-2.

**Table HRS-2**
**Hot-rolled steel: Ratio of U.S. imports to production, 1998-2000, January-March 2000, and January-March 2001**

| Item | Ratio of imports to production | | | | | | Period changes | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Calendar years | | | January - March | | | Calendar years | | | January - March |
| | 1998 | 1999 | 2000 | 2000 | 2001 | | 1998-2000 | 1998-1999 | 1999-2000 | 2000-2001 |
| **U.S. production** | 62,456,688 | 65,279,659 | 65,898,724 | 18,132,724 | 15,258,602 | | 5.5 | 4.5 | 0.9 | -15.9 |
| | | | | | | | | | | |
| **CVD:** | | | | | | | | | | |
| Argentina | 0.0 | 0.2 | 0.2 | 0.2 | 0.1 | | 0.2 | 0.2 | 0.0 | -0.1 |
| India | 0.2 | 0.8 | 1.3 | 0.6 | 0.3 | | 1.1 | 0.6 | 0.5 | -0.3 |
| Indonesia | 0.1 | 0.5 | 0.4 | 0.8 | 0.1 | | 0.3 | 0.4 | -0.1 | -0.7 |
| South Africa | 0.1 | 0.3 | 0.3 | 0.3 | 0.0 | | 0.2 | 0.2 | 0.0 | -0.3 |
| Thailand | 0.0 | 0.1 | 0.4 | 0.0 | 0.1 | | 0.4 | 0.1 | 0.3 | 0.1 |
| **Subtotal (CVD only)** | 0.4 | 1.7 | 2.5 | 2.0 | 0.7 | | 2.1 | 1.3 | 0.8 | -1.3 |
| | | | | | | | | | | |
| **Subtotal (AD only)** | 1.8 | 3.0 | 3.9 | 4.5 | 1.4 | | 2.1 | 1.2 | 0.9 | -3.1 |
| | | | | | | | | | | |
| **All 11 Subject Countries (AD + CVD)** | 2.2 | 4.8 | 6.4 | 6.5 | 2.1 | | 4.2 | 2.6 | 1.6 | -4.4 |
| | | | | | | | | | | |
| **All Other Sources** | 16.6 | 5.0 | 4.7 | 4.5 | 3.5 | | -11.9 | -11.6 | -0.3 | -1.0 |
| | | | | | | | | | | |
| **AD Only + All Other Sources** | 18.4 | 8.0 | 8.6 | 9.0 | 4.8 | | -9.8 | -10.4 | 0.6 | -4.2 |
| | | | | | | | | | | |
| **TOTAL** | 18.8 | 9.8 | 11.1 | 11.0 | 5.5 | | -7.7 | -9.0 | 1.3 | -5.5 |

Note.--U.S. production data is reported in short tons; ratios and percent change data are reported in percent.

*Source*: Data calculated for purposes of this table were based on rounded figures presented in *Hot-Rolled Steel Products from Argentina and South Africa, Inv. No. 701-TA-404 (Final) and Inv. Nos. 731-TA-898 and 905 (Final)*, USITC Publication 3446, August 2001, table C-1.

**Table HRS-3**
**Hot-rolled steel: Negligibility, November 1999 – October 2000**

| Item | Country | | | | |
|---|---|---|---|---|---|
| | Argentina | India | Indonesia | South Africa | Thailand |
| **Share of total imports** | 1.74 | 11.99 | 3.97 | 2.26 | 2.40 |

Section 771(24)(B) of the Act provides for the termination of a countervailing duty investigation if the imports of the subject product from a developing country are less than 4 percent of the volume of all such merchandise imported, or if there are more than one such country, their combined share is less than or equal to 9 percent, during the most recent 12 months preceding the filing of the petition. The combined shares of developing countries under countervailing duty investigation with less than 4 percent of total imports--Argentina, Indonesia, South Africa and Thailand--was 10.37 percent of total imports for the period November 1999 through October 2000.

Note.--Share of total import data are reported in percent.

*Source*: *Hot-Rolled Steel Products from Argentina and South Africa, Inv. No. 701-TA-404 (Final) and Inv. Nos. 731-TA-898 and 905 (Final)*, USITC Publication 3446, pp. IV-5 (data presented) and IV-6 (explanatory note).

# PRICE DATA

**Table HRS-4**

**Hot-rolled steel: Instances of underselling/overselling, by country, January 1998-March 2001**

| Country | Underselling (number of quarters) | Overselling (number of quarters) |
|---|---|---|
| ***CVD countries:*** Argentina | 6 | 24 |
| India | 28 | 9 |
| Indonesia | 18 | 2 |
| South Africa | 10 | 9 |
| Thailand | 12 | 6 |
| **CVD countries subtotal** | 74 | 50 |
| ***AD-only countries:*** China | 34 | 23 |
| Kazakhstan | 5 | 0 |
| Netherlands | 40 | 29 |
| Romania | 36 | 6 |
| Taiwan | 15 | 22 |
| Ukraine | 28 | 0 |
| **AD-only countries subtotal** | 158 | 80 |
| **All subject countries total** | 232 | 130 |

Note.--Shaded cells indicate minor differences compared to table V-13 in USITC Publication 3446 (August 2001).

Source**:** *Hot Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. No. 701-TA-404 (Final) and Inv. Nos. 731-TA-898 and 905 (Final)*, Staff Report, INV-Y-141.

**Table HRS-5**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 1 sold to service centers, processors, and cold-strip users, by quarters, January 1998-March 2001**

* * * * * * *

**Table HRS-6**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 1 sold to pipe and tube producers, by quarters, January 1998- March 2001**

* * * * * * *

**Table HRS-7**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 1 sold to other end users, by quarters, January 1998-March 2001**

* * * * * * *

**Table HRS-8**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 2 sold to service centers, processors, and cold-strip users, by quarters, January 1998-March 2001**

* * * * * * *

**Table HRS-9**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 2 sold to pipe and tube producers, by quarters, January 1998-March 2001**

* * * * * * *

**Table HRS-10**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 2 sold to other end users, by quarters, January 1998-March 2001**

* * * * * * *

**Table HRS-11**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 3 sold to service centers, processors, and cold-strip users, by quarters, January 1998-March 2001**

*       *       *       *       *       *       *

**Table HRS-12**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 3 sold to pipe and tube producers, by quarters, January 1998- March 2001**

*       *       *       *       *       *       *

**Table HRS-13**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 3 sold to other end users, by quarters, January 1998-March 2001**

*       *       *       *       *       *       *

**Table HRS-14**

**Hot-rolled steel: Weighted-average f.o.b. prices and quantities of product 4 sold to service centers, processors, and cold-strip users, by quarters, January 1998-March 2001**

*       *       *       *       *       *       *

# THE HOT-ROLLED STEEL INDUSTRIES IN ARGENTINA, INDIA, INDONESIA, SOUTH AFRICA, AND THAILAND

**Table HRS-15**
**Hot-rolled steel: Foreign industry data for Argentina, India, Indonesia, South Africa, and Thailand, 1998-2000, January – March 2000, and January – March 2001**

| Item | Actual experience | | | | | Projections | |
|---|---|---|---|---|---|---|---|
| | Calendar year | | | January to March | | Calendar year | |
| | 1998 | 1999 | 2000 | 2000 | 2001 | 2001 | 2002 |
| | Quantity (short tons) | | | | | | |
| Capacity | 20,806,954 | 20,779,950 | 22,092,015 | 4,395,530 | 4,486,841 | 20,320,597 | 20,836,800 |
| Production | 13,387,634 | 16,816,312 | 18,640,200 | 3,708,123 | 3,702,610 | 17,630,452 | 17,710,484 |
| End-of-period inventories | 1,542,756 | 1,180,725 | 1,530,775 | 787,053 | 1,100,194 | 1,225,528 | 1,229,304 |
| Shipments: Home market shipments: Internal consumption/ transfers | 5,031,109 | 6,145,096 | 6,171,561 | 1,294,684 | 1,468,912 | 6,778,388 | 6,935,936 |
| Home market shipments | 6,509,003 | 7,746,310 | 9,046,501 | 1,985,117 | 1,935,508 | 8,258,531 | 8,799,607 |
| Subtotal, home market shipments | 11,540,112 | 13,891,406 | 15,218,062 | 3,279,801 | 3,404,420 | 15,036,919 | 15,735,543 |
| Export shipments to: United States | 275,187 | 1,137,409 | 1,339,170 | 323,524 | 0 | 361,281 | 522,224 |
| All other markets | 1,601,730 | 2,141,806 | 1,800,154 | 345,841 | 441,366 | 2,262,539 | 2,485,015 |
| Total exports | 1,876,917 | 3,279,216 | 3,139,323 | 669,364 | 441,366 | 2,623,820 | 3,007,239 |
| Total shipments | 13,417,030 | 17,170,623 | 18,357,386 | 3,949,165 | 3,845,787 | 17,660,737 | 18,742,782 |

*Source*: *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. No. 701-TA-404 (Final) and Inv. Nos. 731-TA-898 and 905 (Final)*, Staff Report, INV-Y-141, August 6, 2001.

The discussion and data for the foreign industry in each of the subject countries subject to the original countervailing duty investigations can be found in INV-Y-141 at: Argentina, p. VII-2, India, p. VII-6, Indonesia, p. VII-8, South Africa, p. VII-16, and Thailand, p. VII-21.

# APPENDIX A

## *FEDERAL REGISTER* NOTICE

The Commission makes available notices relevant to its investigations and reviews on its website, www.usitc.gov. In addition, the following tabulation presents the *Federal Register* notice issued by the Commission during the current proceeding.

| Citation | Title | Link |
|---|---|---|
| 80 FR 75132 December 1, 2015 | *Hot-Rolled Steel Products From India; Scheduling of a Countervailing Duty Proceeding Under the Uruguay Round Agreements Act (URAA)* | https://www.gpo.gov/fdsys/pkg/FR-2015-12-01/pdf/2015-30441.pdf |

# APPENDIX B

# PRICE COMPARISONS OF CVD COUNTRIES VS. AD-ONLY COUNTRIES

**Table B-1**

**Hot-rolled steel: Summary of underselling/(overselling), by CVD countries vs. all AD-only countries combined, January 1998-March 2001**

| Country | Underselling (number of quarters) | Overselling (number of quarters) | Total (number of quarters) |
|---|---|---|---|
| Argentina | 32 | 87 | 119 |
| India | 77 | 51 | 128 |
| Indonesia | 52 | 30 | 82 |
| South Africa | 41 | 22 | 63 |
| Thailand | 29 | 32 | 61 |
| Total | 231 | 222 | 453 |

Source: *Hot Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. No. 701-TA-404 (Final) and Inv. Nos. 731-TA-898 and 905 (Final)*, Staff Report, INV-Y-141.

**Table B-2**

**Hot-rolled steel: Summary of underselling/(overselling), by CVD countries vs. all AD-only countries, January 1998-March 2001**

| | Argentina vs. AD-only countries | | | India vs. AD-only countries | | | Indonesia vs. AD-only countries | | |
|---|---|---|---|---|---|---|---|---|---|
| Country | Number of quarters | Argentina lower | Argentina higher | Number of quarters | India lower | India higher | Number of quarters | Indonesia lower | Indonesia higher |
| China | 30 | 7 | 23 | 30 | 28 | 2 | 18 | 14 | 4 |
| Kazakhstan | 4 | 0 | 4 | 4 | 0 | 4 | 4 | 0 | 4 |
| Netherlands | 27 | 12 | 15 | 25 | 20 | 5 | 18 | 18 | 0 |
| Romania | 22 | 0 | 22 | 29 | 10 | 19 | 18 | 6 | 12 |
| Taiwan | 24 | 13 | 11 | 21 | 18 | 3 | 14 | 14 | 0 |
| Ukraine | 12 | 0 | 12 | 19 | 1 | 18 | 10 | 0 | 10 |
| Total | 119 | 32 | 87 | 128 | 77 | 51 | 82 | 52 | 30 |

| | South Africa vs. AD-only countries | | | Thailand vs. AD-only countries | | |
|---|---|---|---|---|---|---|
| Country | Number of quarters | South Africa lower | South Africa higher | Number of quarters | Thailand lower | Thailand higher |
| China | 18 | 15 | 3 | 16 | 11 | 5 |
| Kazakhstan | 2 | 0 | 2 | 1 | 0 | 1 |
| Netherlands | 19 | 13 | 6 | 11 | 7 | 4 |
| Romania | 12 | 6 | 6 | 12 | 4 | 8 |
| Taiwan | 10 | 7 | 3 | 10 | 7 | 3 |
| Ukraine | 2 | 0 | 2 | 11 | 0 | 11 |
| Total | 63 | 41 | 22 | 61 | 29 | 32 |

Source: *Hot Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Inv. No. 701-TA-404 (Final) and Inv. Nos. 731-TA-898 and 905 (Final)*, Staff Report, INV-Y-141.