UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STAINLESS STEEL PLATE FROM BELGIUM, CANADA, ITALY, KOREA, SOUTH AFRICA, AND TAIWAN
Investigations Nos. 701-TA-376, 377, and 379 (Final) and
Investigations Nos.731-TA-788-793 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3188, May 1999)

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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines:[2]

(1) pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Belgium, Italy, and South Africa of certain hot-rolled stainless steel plate in coils[3] that have been found by the Department of Commerce to be subsidized by the Governments of Belgium, Italy, and South Africa;[4]

(2) pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports of certain hot-rolled stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that have been found by Commerce to be sold in the United States at less than fair value (LTFV);[5]

(3) pursuant to section 705(b) of the Act (19 U.S.C. §1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium of certain cold-rolled

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

[2] In these investigations, Vice Chairman Marcia E. Miller and Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey find two domestic like products, voting in the affirmative with respect to certain hot-rolled stainless steel plate in coils and voting in the negative or finding imports to be negligible with respect to certain cold-rolled stainless steel plate in coils. Chairman Lynn M. Bragg and Commissioner Stephen Koplan find one domestic like product encompassing both certain hot-rolled stainless steel plate in coils and certain cold-rolled stainless steel plate in coils, and vote in the affirmative.

[3] Imports of certain stainless steel plate in coils, both hot-rolled and cold-rolled, are provided for in subheadings 7219.11.00, 7219.12.00, 7219.31.00, 7219.90.00, 7220.11.00, 7220.20.10, 7220.20.60, and 7220.90.00 of the Harmonized Tariff Schedule of the United States. For purposes of these investigations, the Commission defines certain hot-rolled stainless plate in coils as all domestic product corresponding to the scope of the investigations except for certain cold-rolled stainless steel plate in coils. The Commission defines certain cold-rolled stainless steel plate in coils as all domestic product corresponding to the scope of the investigations that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after cold reduction.

[4] Chairman Bragg and Commissioner Koplan made affirmative determinations on a single domestic like product encompassing both certain hot-rolled stainless steel plate in coils and certain cold-rolled stainless steel plate in coils.

[5] Ibid.

stainless steel plate in coils that have been found by Commerce to be subsidized by the Government of Belgium;[6]

(4) pursuant to section 735(b) of the Act (19 U.S.C. §1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium and Canada of certain cold-rolled stainless steel plate in coils that have been found by Commerce to be sold in the United States at LTFV;[7] and

(5) pursuant to section 771(24)(A) of the Act (19 U.S.C. § 1677(24)(A)), that imports of certain cold-rolled stainless steel plate in coils from Italy, Korea, South Africa, and Taiwan that have been found by Commerce to be subsidized and/or sold in the United States at LTFV are negligible.[8] [9]

BACKGROUND

The Commission instituted these investigations effective March 31, 1998, following receipt of a petition filed with the Commission and the Department of Commerce on behalf of Armco, Inc., Pittsburgh, PA; J&L Specialty Steel, Inc., Pittsburgh, PA; Lukens Inc., Coatesville, PA, North American Stainless, Ghent, KY; and the United Steelworkers of America, AFL-CIO/CLC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan were being subsidized and/or sold in the United States at LTFV within the meaning of sections 703(b) and 733(b) of the Act (19 U.S.C. §§ 1671b(b) and 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 9, 1998 (63 FR 67918). The hearing was held in Washington, DC, on March 23, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Investigations regarding such imports are therefore terminated.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 3, 1999. The views of the Commission are contained in USITC Publication 3188 (May 1999), entitled *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan: Investigations Nos. 701-TA-376, 377, and 379 (Final) and Investigations Nos. 731-TA-788-793 (Final)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry producing certain hot-rolled[1] stainless steel plate in coils in the United States is materially injured by reason of imports of certain hot-rolled stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, that have been found by the Department of Commerce ("Commerce") to be subsidized and/or sold at less than fair value ("LTFV").

We further find that an industry producing certain cold-rolled stainless steel plate in coils in the United States is not materially injured or threatened with material injury by reason of imports of certain cold-rolled stainless steel plate in coils from Belgium and Canada, and that imports of certain cold-rolled stainless steel plate in coils from Italy, Korea, South Africa and Taiwan are negligible.[2]

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[3] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[4]

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[5] No single factor is dispositive, and the Commission

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[1] For purposes of these views, we define certain "hot-rolled" stainless steel plate in coils as all domestic product corresponding to the scope of these investigations except for certain cold-rolled stainless steel plate in coils, and refer to such certain hot-rolled stainless steel plate in coils as "hot-rolled" or "HRAP" (hot-rolled, annealed and pickled) plate. We define certain cold-rolled stainless steel plate in coils as all domestic product corresponding to the scope of these investigations that has undergone a cold-reduction process that reduced the thickness of the steel by twenty-five percent or more, and has been annealed and pickled after cold reduction.

[2] Chairman Bragg and Commissioner Koplan find one domestic like product in these investigations, certain stainless steel plate in coils. They determine that an industry in the United States is materially injured by reason of imports of certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that are subsidized and/or sold in the United States at LTFV.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(10).

[5] *See, e.g.*, NEC Corp. v. Dep't of Commerce, Slip. Op. 98-164 at 8 (Ct. Int'l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

may consider other factors relevant to a particular investigation.[6] The Commission looks for clear dividing lines among possible like products, and generally disregards minor variations.[7] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise found to be subsidized and/or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[8]

Commerce has defined the imported merchandise within the scope of these investigations as:

> [C]ertain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of the investigations are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.[9]

Certain stainless steel plate in coils ("plate" or "coiled plate") is used for the fabrication of storage tanks, process vessels, and equipment in the chemical, dairy, restaurant, pulp and paper, pharmaceutical, and other industries where the corrosion resistance, heat resistance or ease of maintenance of stainless steel is needed. From the coiled form, the product can be cut to the exact length required.[10]

B. Domestic Like Product Issues in These Investigations

In the preliminary phase of these investigations, the Commission found a single domestic like product, "certain stainless steel plate in coils," corresponding with Commerce's description of the subject merchandise.[11] It indicated, however, that it would reconsider two like product issues in the final phase: whether to include stainless steel sheet and strip in the domestic like product, and whether HRAP and cold-rolled stainless steel plate in coils are separate domestic like products.

The Commission subsequently discussed the first of those issues in detail in Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan and the

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

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

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

[9] *See, e.g.*, 64 Fed. Reg. 15444 (Mar. 31, 1999).

[10] Confidential Report ("CR") at I-6, Public Report ("PR") at I- 5.

[11] Stainless Steel Plate in Coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan Inv. Nos. 731-TA-788-793 and 701-TA-376-379 (Preliminary), USITC Pub. 3107 at 5-15 (May 1998). Commissioner Crawford found hot-rolled and cold-rolled plate to be separate like products in the preliminary phase. The Commission also determined in the preliminary phase that the domestic like product should not be expanded beyond the scope to include stainless steel plate not in coils, or stainless steel plate not annealed and pickled (*i.e.*, black plate). No party has challenged those determinations and we do not reconsider them here.

United Kingdom.[12] In that case, after performing a detailed comparison of stainless steel plate in coils and stainless steel sheet and strip applying the traditional like product factors, the Commission reaffirmed its preliminary determination from the instant investigations that stainless steel plate in coils and stainless steel sheet and strip are not the same domestic like product.[13] There is no new information in the record of these investigations that leads us to question the Commission's reasoning in the SSSS-Prelim.[14] Accordingly, for the reasons set forth in the SSSS-Prelim., we determine that the domestic like product in these investigations does not include stainless steel sheet and strip.

The second issue is whether hot-rolled and cold-rolled stainless steel plate in coils, both of which are within the scope of investigation, should be defined as separate domestic like products. As noted above, for purposes of these views, we define cold-rolled plate as all stainless steel plate in coils corresponding to the scope that has undergone a cold-reduction process that reduced the thickness of the steel by twenty-five percent or more, and has been annealed and pickled after cold reduction. We define all other certain stainless steel plate in coils corresponding to the scope as "hot-rolled" or "HRAP" plate.

While there is extensive domestic production both of HRAP plate in coils and of HRAP plate in coils with a light "temper pass,"[15] domestic production of cold-rolled stainless steel coiled plate, as defined here, is quite limited.[16] All domestic producers have the ability to produce cold-rolled stainless steel coiled plate, but only a few producers produced this product during the period of investigation.[17] However, cold-rolled plate was produced for commercial sale and in response to customer orders, and was domestically produced during every year of the period of investigation. Thus, we find that there is domestic production of cold-rolled stainless steel coiled plate,[18] [19] and proceed to consider whether HRAP and cold-rolled

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[12] Inv. Nos. 701-TA-380-382 and 731-TA-797-804 (Preliminary), USITC Pub. 3118 (Aug. 1998) ("SSSS-Prelim.").

[13] SSSS Prelim., USITC Pub. 3118 at 9, n.51. The Commission concluded that although the products shared similar chemical compositions and properties, distinctions in thickness between the two products corresponded to different end-uses and channels of distribution, and resulted in limited interchangeability. The Commission also observed that virtually all (97 percent of) sheet and strip, but a very small proportion of HRAP plate, undergoes the more extensive additional processing of cold-rolling. Id. at 9-10; *see also* Stainless Steel Sheet and Strip from the Federal Republic of Germany and France and Stainless Steel Sheet and Strip and Plate from the United Kingdom, Inv. Nos. 731-TA-92 and 95, and Inv. Nos. 701-TA-195 and 196, USITC Pub. 1391 (June 1983).

[14] The Italian Respondent continued to argue that the domestic like product in these investigations should be expanded to include stainless steel sheet and strip, Italian Respondent's Prehearing Brief at 9-19 and Posthearing Brief at 2-7, but provided no new information or argument that would lead us to a different conclusion.

[15] We classify hot-rolled stainless steel plate that has been finished in a temper mill or cold-rolling mill with a very light cold-rolling pass, known as a temper pass or a skin pass, as hot-rolled stainless steel plate. This is because the temper pass or skin pass does not significantly reduce the thickness of the product, does not require a further annealing and pickling process, and does not change the character or classification of the finished hot-rolled product. CR at I-8-9 and n.9; PR at I-6 and n.9.

[16] Table C-2, CR at C-5, PR at C-5; CR at I-9 and n.9, PR at I-6 and n.9.

[17] Table III-2, n.1, CR at III-8, PR at III-5. Domestic production of cold-rolled stainless steel plate was *** short tons in 1995, *** short tons in 1996, *** short tons in 1997, and *** short tons in interim (Jan.-Sept.) 1998. *Id.* at nn.2-3. Domestic production of cold-rolled stainless steel plate accounted for *** percent of domestic production of certain stainless steel plate in 1997 and less than that in all other periods. Calculated from Tables III-2 and III-3, CR at III-8 and III-10, PR at III-5 and III-7.

[18] *Compare* Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34, USITC Pub. 3112 at 5 (June 1998) (because, *inter alia*, "there has been no production of food-grade ERT for commercial sale," domestic production of food-grade ERT product "does not exist in any practical sense" and could not be considered a domestic like product); Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 at 7-11 (Apr. 1992) (since nepheline

(continued...)

stainless steel coiled plate are separate like products, applying our traditional six-factor test.[20] [21] For the reasons discussed below, we find that HRAP and cold-rolled stainless steel plate in coils are separate domestic like products.

Physical Characteristics and Uses. The chemical composition of cold-rolled plate in coils is generally similar to that of HRAP plate. Both are corrosion resistant and are available in similar dimensions.[22] The cold-rolled product, however, generally has a smoother finish with greater freedom from surface imperfections than HRAP plate, and can also be produced to tighter tolerances than the HRAP product.[23]

All stainless steel plate is used for tanks and equipment for industries for which the corrosion resistance, heat resistance, and/or ease of maintenance of stainless steel are needed; it is also used for stainless steel tubing for the same industries.[24] Cold-rolled plate is used in a limited number of specialized applications such as containers and tanks for food processing, beer making, and dairies, where a smooth surface that can be easily cleaned is essential.[25]

Interchangeability. There is general agreement that cold-rolled plate in coils can be used for HRAP plate applications.[26] HRAP plate, however, is generally not interchangeable in applications calling for cold-rolled plate, at least without a further grinding/polishing process, and even then it would be substantially more expensive and may not meet required tolerances.[27]

Channels of Distribution. Stainless steel plate in coils, whether HRAP or cold-rolled, is sold primarily to service centers/distributors, with some sales to end-users, (*i.e.*, pipe and tube producers.)[28]

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[18] (...continued)
syenite was not produced in the United States, the Commission defined the domestic like product to include two similar products, feldspar and aplite), *aff'd*, Feldspar Corp. v. United States, 825 F. Supp. 1095 (Ct. Int'l Trade 1993).

[19] As Commissioner Crawford stated in Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34, USITC Pub. 3112 (June 1998), it is the fact of production -- not the amount -- that determines whether there is domestic production of a like product. *See id.* at 17-18. Here, admittedly there is actual domestic production of cold-rolled plate.

[20] In the preliminary determinations, the Commission conducted a semi-finished product analysis to determine whether HRAP and cold-rolled plate should be treated as separate domestic like products. *See* USITC Pub. 3107 at 14-15. Based on the more complete information available to us in these final phase investigations, we conclude that since such a small proportion of domestic HRAP production is cold-rolled, it is not appropriate to treat HRAP plate as a "semifinished" product.

[21] Chairman Bragg and Commissioner Koplan do not join the remainder of this like product analysis. *See* their dissenting views.

[22] Table I-2, CR at I-12, PR at I-7.

[23] Tables I-2 and I-3, CR at I-11-I-13, PR at I-7; Petitioners' Prehearing Brief at 15. We note that it may be possible to achieve a similarly smooth finish for HRAP plate, but only with additional grinding and polishing.

[24] CR at I-6; PR at I-5.

[25] CR at I-9; PR at I-6.

[26] Tables I-2 and I-3, CR at I-11 and I-13, PR at I-7; Transcript of Commission Hearing (March 23, 1999) ("Tr.") at 33. It is noted, however, that the additional cost of cold-rolled plate might set practical limitations on when cold-rolled plate might be used in place of HRAP plate.

[27] Tables I-2-I-3, CR at I-3 and I-11-I-13, PR at I-3 and I-7; Avesta Posthearing Brief at 4 and Attachment; Belgian Respondents' Posthearing Brief at 7.

[28] Table II-1, CR at II-2; PR at II-2.

The record does not reflect any differentiation between the channels of distribution for HRAP and cold rolled stainless steel plate.

Customer and Producer Perceptions. In our final phase questionnaires, we asked domestic producers and importers to compare HRAP and cold-rolled plate in terms of several characteristics. These entities identified varying degrees of differences between HRAP and cold-rolled plate, thus indicating that market participants generally perceive HRAP and cold-rolled plate to be distinct products.[29] Moreover, customers specifically order cold-rolled product.[30]

Manufacturing Facilities, Production Processes, and Production Employees. The production of cold-rolled plate typically begins with HRAP plate; thus the two products generally share the same production processes and equipment through the hot-rolling and initial annealing and pickling processes.[31] To produce cold-rolled plate, an HRAP coil is cold-reduced by twenty-five percent or more to the final ordered thickness. This process takes place on a separate line from those used to produce HRAP and involves separate employees. Following cold-reduction, cold-rolled plate must be further annealed and pickled. The record reflects that the annealing and pickling after cold reduction is generally performed on a different line than annealing and pickling operations that occur after hot-rolling.[32] An industry representative testified at our hearing that cold-rolling and associated annealing and pickling add $150 to $200 per ton to production costs.[33] Either HRAP or cold-rolled plate also may be further finished in a temper mill or cold-rolling mill with a temper or skin pass to provide improved surface finish.[34]

Price. Prices for cold-rolled plate generally are higher than those for HRAP plate due to the additional processing involved.[35] Reported unit values for both imported and domestic cold-rolled plate were generally higher than for domestic hot-rolled plate.[36]

Overall, because cold-rolled plate differs somewhat from HRAP plate in surface finish and dimensional tolerances, resulting in limited interchangeability and different end uses; cold-rolling involves substantial additional processing steps that are performed on separate lines using separate production workers; producers and customers perceive HRAP and cold-rolled coiled plate to be separate products and request cold-rolled plate specifically when placing orders; and cold-rolled plate commands a price premium, we find there to be a clear dividing line between HRAP plate and cold-rolled plate. Accordingly, we find two domestic like products in these investigations, certain hot-rolled stainless steel plate in coils (HRAP plate), and certain cold-rolled stainless steel plate in coils (cold-rolled plate).

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[29] Tables I-2 and I-3, CR at I-11-13, PR at I-7. Although petitioners stressed that the ASTM standard for stainless steel plate does not distinguish between HRAP and cold-rolled plate, we do not consider ASTM's methodology for classifying products and processes determinative of our domestic like product analysis. Petitioners' Prehearing Brief at 16 and 17; *see* ASTM standard attached at Exhibit 2.

[30] Tr. at 120; Petitioners' Posthearing Brief, Exhibit 1 at 6-7; Avesta Posthearing Brief at Attachment (letter from ***).

[31] CR at I-7- I-9 and I-11, PR at I-5-I-7.

[32] Tr. at 113.

[33] Tr. at 113. While petitioners contend that HRAP plate may be suitable for applications calling for cold-rolled plate after extensive grinding and polishing, they concede that this further processing may be even more expensive than cold-rolling. Petitioners' Prehearing Brief at 20.

[34] CR at I-7 - I-9, PR at I-5-I-6.

[35] Table I-2, CR at I-11-I-12, PR at I-7; Tr. at 113 and 120.

[36] Unit values for subject Belgian cold-rolled plate ranged from $*** to $*** over the period of investigation. Unit values for domestic cold-rolled plate ranged from $*** to $***. Unit values for domestic HRAP plate ranged from $*** to $***. Table C-2 and C-3, CR at C-6-C-7, PR at C-6-C-7.

C. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product."[37] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[38] Based on our domestic like product determination, we find two domestic industries in these investigations, consisting, respectively, of all domestic producers of HRAP and cold-rolled coiled plate.[39] [40]

II. NEGLIGIBLE IMPORTS[41]

If imports from a subject country corresponding to a domestic like product account for less than three percent of all such merchandise imported into the United States during the most recent 12 months preceding the filing of the petition for which data are available, the statute provides that, unless certain exceptions are applicable, the Commission is to find such imports "negligible."[42] By operation of law, a finding of negligibility terminates the investigation with respect to such imports without an injury determination.[43]

In 1997, the most recent twelve month period preceding the filing of the petitions for which data are available, there were no subject imports of cold-rolled stainless steel plate in coils from Italy, Korea, South Africa, and Taiwan.[44] Accordingly, we find that the statutory standard is met and that subsidized and dumped imports of cold-rolled plate from Italy, Korea, South Africa, and Taiwan are negligible.

We further determine that none of the statutory exceptions to negligibility applies in these investigations. Because there were no imports of cold-rolled plate from any of these four countries during the period of investigation, the seven percent standard for aggregating negligible imports under § 1677(24)(A)(ii) is not applicable. Further, we do not find, pursuant to § 1677(24)(A)(iv), that imports of dumped and/or subsidized merchandise from Italy, Korea, South Africa, or Taiwan will imminently account for more than three percent of the volume of total imports of cold-rolled plate. Although the Italian producer, AST, produced cold-rolled plate throughout the period of investigation, it used its production to

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[37] 19 U.S.C. §1677(4)(A).

[38] *See* United States Steel Group, et al. v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F. 3d 1352 (Fed. Cir. 1996).

[39] In these investigations, one domestic HRAP plate producer, ***, imported subject merchandise from *** during the period of investigation. Accordingly, we have considered whether appropriate circumstances exist to exclude it from the domestic industry pursuant to section 771(4)(B) of the Act. No party addressed this issue in these final investigations. The ratio of *** subject imports to its domestic production, *** indicate that its interests lie principally in domestic production rather than in importation. Table III-1, CR at III-2, PR at III-2; Petitioners' Posthearing Brief, Exhibit 1 at 10-11. Accordingly, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

[40] Based on their like product determination, Chairman Bragg and Commissioner Koplan find one domestic industry in these investigations, consisting of all domestic producers of certain stainless steel plate in coils. For the reasons set forth by the majority, Chairman Bragg and Commissioner Koplan do not exclude any domestic producer as a related party.

[41] Chairman Bragg and Commissioner Koplan do not join this section.

[42] 19 U.S.C. § 1677(24).

[43] 19 U.S.C. § 1671d(b).

[44] Table C-3, CR at C-7, PR at C-7.

serve home and third country markets, and it reported operating at a relatively high level of capacity utilization throughout the period.[45] Among the Korean producers, POSCO does not produce cold-rolled plate, and Sammi has never exported any stainless steel coiled plate to the United States.[46] The South African producer, Columbus, did not report any production of cold-rolled plate during the period of investigation and reported operating at a very high level of capacity utilization throughout the period.[47] None of the responding Taiwan producers reported any production of cold-rolled plate during the period of investigation.[48] Accordingly, we do not find that non-negligible imports of subsidized or dumped imports from Italy, Korea, South Africa or Taiwan are imminent.

III. CUMULATION

A. In General

Section 771(7)(G)(i) of the Act requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.[49] There is no dispute that the petitions on all six countries were filed on the same day. The only cumulation issue is whether the subject imports compete with each other and with the pertinent domestic like product. In assessing whether imports compete with each other and with the domestic like product,[50] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions;
(2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
(3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
(4) whether the imports are simultaneously present in the market.[51]

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[45] Table VII-9, CR at VII-14, PR at VII-5.

[46] CR at VII-15-VII-16, PR at VII-6-VII-7.

[47] Table VII-11, CR at VII-19, PR at VII-8; CR at VII-16 and VII-18, PR at VII-7.

[48] CR at VII-20, PR at VII-8.

[49] 19 U.S.C. §1677(7)(G)(i). There are four exceptions to the cumulation provision, none of which applies to these investigations. 19 U.S.C. § 1677(7)(G)(ii).

[50] The Statement of Administrative Action submitted to Congress in connection with the Uruguay Round Agreements Act (P.L. 103-465, approved Dec. 8, 1994) 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." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994) ("SAA") at 848 *citing* Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

[51] *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); Mukand Ltd. v. United States, 937 F. Supp. 910, 915 (Ct. Int'l Trade 1996).

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 imports compete with each other and with the domestic like product.[52] Only a "reasonable overlap" of competition is required.[53]

Because of our like product determination, we must consider the issue of cumulation separately with respect to imports of HRAP and cold-rolled plate.[54]

B. HRAP Plate

The record in the final phase indicates that there is a sufficient degree of fungibility[55] among subject imports of HRAP plate from all six subject countries. HRAP plate is generally viewed as a commodity product in which similar grades and dimensions offered by domestic producers and importers from the subject countries can be used interchangeably, if required specifications are met.[56] HRAP plate regardless of source is produced to standard industry specifications and dimensions that stipulate chemical, dimensional, mechanical and corrosion-resistant properties of the product.[57] The majority of purchasers stated that they required plate to be certified to standard specifications, most commonly ASTM, but also AISI and IOS.[58]

We find that the record shows a reasonable overlap among the grades and types of HRAP plate products offered by U.S. producers and those offered by importers from the subject countries. In particular, stainless steel plate in the most commonly used grades, *i.e.*, grades 304, 304L, and 316L, is available from all of the domestic producers and are imported from all of the subject countries.[59] We do not believe that the data on the "niche" products imported from Belgium, Italy, and Korea show that there is not a reasonable overlap of competition between these imports, on the one hand, and the domestic HRAP

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

[53] *See* Goss Graphic System, Inc. v. United States, 22 CIT __, Slip Op. 98-147 at 8 (Oct. 16, 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd. v. United States, 937 F. Supp. at 916 (Ct. Int'l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (Ct. Int'l Trade 1989) ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994).

[54] Chairman Bragg and Commissioner Koplan find that the majority's discussion of cumulation with respect to HRAP plate applies to the single domestic like product that they have found, *i.e.*, certain stainless steel plate in coils, as well.

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

[56] CR at II-11; PR at II-7.

[57] CR at II-11, PR at II -7.

[58] CR at II-10-II-11, PR at II -7. AISI stands for American Iron and Steel Institute. IOS stands for the International Organization for Standards.

[59] CR at II-1, PR at II-1.

like product and other subject imports, on the other.[60] While fungibility may be limited between imports of floor plate from Italy and both the domestic HRAP like product and other HRAP subject imports, floor plate constituted a relatively small proportion of subject HRAP merchandise from Italy, and the record indicates that there are other Italian imports of subject HRAP merchandise that are fungible with the domestic HRAP like product and other subject imports.[61] With respect to Belgium, although a substantial portion of Belgian imports is made up of coiled plate in wide widths, we find that there are sufficient other Belgian subject HRAP imports that are fungible with products produced in the United States and imported from other subject countries.[62] Furthermore, there is some domestic production of wide width plate,[63] as well as wide width imports from ***.[64] Finally, regarding Korea's asserted imports of plate of irregular dimensions, there is no indication in the record that the domestic like product or other HRAP subject products are not produced to any required dimension upon request. Furthermore, the record reflects that

[60] Belgian, Italian and Korean Respondents argue that certain niche products, such as extra-wide hot-rolled plate, cold-rolled/reduced plate, floor plate, and plate of irregular dimensions do not compete with the subject product made by U.S. producers, or, in the case of floor plate and plate of irregular dimensions, with other imports. The Belgian Respondents argue that Belgian imports of extra-wide plate do not compete but do not directly argue that Belgian subject imports should not be cumulated with the other imports. The Italian Respondents argue that "because floor plate is not interchangeable with imports from any countries subject to this investigation, it should not be cumulated with those imports for purposes of determining causation." The Korean Respondent maintains that its imports should not be cumulated because they are of irregular dimensions. Belgian Respondent's Prehearing Brief at 5-9 and Posthearing Brief at 1-2; Italian Respondents' Prehearing Brief at 19-20; Korean Respondent's Posthearing Brief at 7-9.

[61] Besides 304, 304L and 316L, imports from Italy include six additional grades that also are produced in the United States. Some of these grades also are imported from other subject countries. CR at II-1, PR at II-1. Imports from Italy of floor plate were *** short tons in 1995, *** short tons in 1996, *** short tons in 1997, *** short tons in interim 1997 and *** short tons in interim 1998. CR at IV-10, n.6; PR at IV-7 n..6. Italian imports of floor plate accounted for *** percent of all Italian subject imports in 1996, *** percent in 1997, *** percent in interim 1997 and *** percent in interim 1998. Calculated from *Id.* and Table IV-1, CR at IV-4, PR at IV-3.

[62] Besides 304, 304L and 316L, imports from Belgium include five additional grades that also are produced in the United States. Some of these grades are also imported from other subject countries. CR at II-1, PR at II-1. Although an estimated *** percent or *** short tons of the stainless steel plate sales of the U.S. importer of the Belgian product were over sixty inches in width, this figure includes a substantial amount of cold-rolled plate. CR at IV-7, PR at IV-2; Belgian Respondents' Prehearing Brief, Exhibit A (products ***); Belgian Respondents' Posthearing Brief at 4.

[63] Domestic producer Avesta reported that *** percent of its sales of HRAP in 1997 were in widths over 60 inches wide. Table III-6, CR at III-13, PR at III-10. Avesta's production in 1997 was *** short tons; thus Avesta produced approximately *** short tons of stainless steel plate in widths of over 60 inches in 1997. Calculated from CR at III-4 and Table III-6, CR at III-13, PR at III-10. Domestic producer Washington Steel also produced subject plate in widths over 60 inches wide accounting for *** percent of its sales and thus approximately *** short tons in 1997. CR at III-6, PR at III-4; Table III-3, CR at III-10, PR at III-7; and Table III-6, CR at III-13, PR at III-10. Thus, domestic production of HRAP plate in widths greater than 60 inches exceeded Belgian imports of wide HRAP plate in 1997. Neither Avesta nor Washington Steel produced cold-rolled plate during the period of investigation.

[64] Table IV-3, CR at IV-8, PR at IV-6. We additionally observe that end users (*i.e.*, fabricators of tanks and vessels) can weld together one or more pieces of stainless steel plate, narrower than sixty inches, and use them in place of a single wider plate. Thus, narrower HRAP can be competitive with wider HRAP, depending upon the relative costs and the amenability of the particular end use to additional welds. Tr. at 71.

there is sufficient overlap of Korean imports of subject merchandise with other subject HRAP and domestic HRAP product.[65]

The record also reflects a reasonable overlap of geographic markets. Domestic producers as well as Belgian, Italian and Taiwan importers market their products nationwide. South African and Korean subject imports are marketed on the East, West, and Gulf Coasts; South African imports are also marketed in the Midwest. Canadian imports are marketed principally in the eastern part of the United States.[66] Overall, we find that the presence of sales or offers to sell nationwide for domestic product and three of the subject countries, and the presence of sales or offers to sell in several geographical regions for the three remaining subject countries is sufficient to establish that the subject imports and domestic like product all compete in the same geographic market.

HRAP plate sold both by U.S. producers and importers from all subject countries is distributed primarily to service centers/distributors, which generally sell to end-users such as fabricators of vessels, pipe manufacturers, and makers of industrial equipment.[67] Some domestic HRAP product and a significant share of *** imports are sold to end users.[68] Thus, there is an overlap in the channels of distribution between the domestic product and imports from all subject countries.

Import statistics and questionnaire responses confirm that imports of certain stainless steel plate in coils from each of the subject countries and from domestic producers were simultaneously present in the market throughout the period of investigation.[69]

Based on the fungibility between the imports and the domestic like product, common geographic markets, similar channels of distribution, and the simultaneous presence of all the subject imports in the U.S. market during the period of investigation, we find that subject imports from all six countries compete with each other and with the domestic like product in the United States market. Consequently, we cumulate imports of HRAP plate from all subject countries for purposes of our determinations of material injury by reason of subject imports in these investigations.[70]

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[65] Besides 304, 304L and 316L, Korean imports include an additional grade that also is produced in the United States and imported from other subject countries. CR at II-1, PR at II-1. HRAP plate imports from Korea also fall within a similar range of widths to those sold domestically and imported from other subject countries. Commission questionnaire responses indicate that *** percent of Korea's U.S. sales of its imported product were over 36 inches wide but not over 48 inches wide. Table IV-3, CR at IV-8, PR at IV-6. Other subject countries also imported and domestic producers produced in this size range in 1997: *** percent of Canada's U.S. sales; *** percent of Italy's U.S. sales; *** percent of South Africa's U.S. sales; and an average of *** percent of the sales of U.S.-produced product. Table III-6, CR at III-13, PR at III-10; Table IV-3, CR at IV-8, PR at IV-6.

[66] CR at II-1 and II-3, PR at II-1 and II-3.

[67] Table II-1, CR at II-2, PR at II-2; and CR at II-1and II-3, PR at II-1 and II-3.

[68] Table II-1, CR at II-2, PR at II-2. U.S. producers shipped *** percent of domestic product to distributors and *** percent to end users in 1997. *See also* CR at III-11 and n.18, PR at III- and n.18. In 1997, *** percent of U.S. shipments of Korean product were to distributors and *** percent to end-users. In prior years, *** of Korean imports were shipped to end users.

[69] Table IV-1, CR at IV-4, PR at IV-3.

[70] Chairman Bragg and Commissioner Koplan cumulate all imports of certain stainless steel plate in coils from all subject countries for purposes of their determinations of material injury by reason of subject imports in these investigations.

C. Cold-Rolled Plate[71]

The only issue with respect to the degree of fungibility among the Belgian and Canadian products and the domestic cold-rolled like product concerns the width of the Belgian product.[72] While all domestic and Canadian cold-rolled stainless steel plate is 60 inches or below in width,[73] the Belgian producer ALZ reported that *** percent of its exports of the cold-rolled product to the United States in 1997 were below 61 inches in width, with the other *** percent being 61 inches or above in width.[74] We find this degree of overlap sufficient to establish fungibility.

With respect to geographic overlap, both domestic producers of the cold-rolled product as well as TrefilARBED, the principal importer of the Belgian product, reported ***, while Atlas Stainless, the importer of the Canadian product, reported ***.[75] Although we have no specific information on the cold-rolled product, we note that the large majority of sales of domestic, Belgian and Canadian stainless steel coiled plate are to distributors.[76] Finally, domestic cold-rolled stainless steel coiled plate and both Belgian and Canadian cold-rolled imports were simultaneously present in the U.S. market in each year of the period of investigation.[77]

Based on sales in the same geographic markets and through the same channels of distribution, the simultaneous presence of cold-rolled product from all three sources in the U.S. market throughout the period of investigation, the fact that about *** of Belgian imports are less than 61 inches in width, and the ability of some users to substitute narrower plate for wider plate by additional welding,[78] we find that subject imports from Belgium and Canada compete with each other and with the domestic like product in the United States market. We therefore cumulate imports of cold-rolled plate from Belgium and Canada for purposes of our determinations with respect to material injury by reason of subject imports in these investigations.[79]

IV. MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS OF HRAP PLATE FROM BELGIUM, CANADA, ITALY, KOREA, SOUTH AFRICA, AND TAIWAN

In a final antidumping or countervailing duty investigation, the Commission determines whether an industry in the United States is materially injured "by reason of" the imports under investigation.[80] [81] In

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[71] Chairman Bragg and Commissioner Koplan do not join this subsection.

[72] None of the parties addressed the issue whether the Commission should cumulate imports of cold-rolled stainless steel coiled plate.

[73] Table IV-3, CR at IV-8, PR at IV-6; Staff Field Trip notes (Dec. 17, 1998) at 3; Note to File by G. Houck, Industry Analyst, Re U.S. Producers (Apr. 29, 1998).

[74] ALZ Prehearing Brief, Exhibit A, 1997 export statistics (combining ***); ALZ Posthearing Brief at 4.

[75] CR at II-3, PR at II-1.

[76] Table II-1, CR at II-2, PR at II-2.

[77] Table C-3, CR at C-7, PR at C-7.

[78] Tr. at 99 (Dr. Shilling).

[79] We note that, had we not cumulated, it would not have changed our ultimate determination of no material injury or threat of material injury by reason of subject imports of cold-rolled plate from Belgium and Canada.

[80] 19 U.S.C. §§ 1671d(b) and 1673d(b).

[81] Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently

(continued...)

making this determination, the Commission must consider the volume of 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.[82] The statute defines "material injury" as "harm which is not inconsequential, immaterial or unimportant."[83] In assessing whether the domestic industry is materially injured by reason of dumped and subsidized imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[84] 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."[85]

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[81] (...continued)
are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

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

[82] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F. 3d 1478 (Fed. Cir. 1998).

[83] 19 U.S.C. § 1677(7)(A).

[84] 19 U.S.C. § 1677 (7)(C)(iii).

[85] 19 U.S.C. § 1677(7)(C)(iii). One domestic producer, ***, captively consumed HRAP during the period of investigation. Table III-7, n.1, CR at III-14, PR at III-11. Thus, we must determine whether to apply the statutory captive production provision with respect to the HRAP domestic like product. This provision is applicable if, *inter alia*, "domestic producers internally transfer significant production of the domestic like product for a downstream article and sell significant production of the domestic like product in the merchant market." 19 U.S.C. §1677(7)(C)(iv). No party has argued that the captive production provision should apply. *** captively consumed *** short tons of HRAP in 1996, *** short tons in 1997, and *** short tons in interim 1997. *** reported *** in interim 1998. Table III-7, n.1, CR at III-14, PR at III-11. Thus, approximately *** percent of total domestic HRAP production was captively consumed in 1996, 1997 and interim 1997. Calculated from Table III-7, n.1, CR at III-14, PR at III-11, and Table III-3, CR at III-10, PR at III-7. Based on these data, we conclude that the threshold requirement of significant captive consumption is not met in this instance.

For the reasons discussed below, we determine that the domestic industry producing HRAP coiled plate is materially injured by reason of subsidized imports from Belgium, Italy and South Africa and imports sold at LTFV from Belgium, Canada, Italy, Korea, South Africa, and Taiwan.[86]

A. Volume of Subject HRAP Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[87]

The increase in the volume of HRAP imports over the period of investigation was dramatic. Shipments of cumulated HRAP imports by quantity *** over the period, increasing from *** short tons in 1995, to *** short tons in 1996, and to *** short tons in 1997, an overall increase of 152 percent.[88] Cumulated HRAP import shipments were *** short tons in interim 1997 compared with *** short tons in interim 1998, a difference of 5.7 percent.[89] The value of U.S. importers' cumulated U.S. shipments of HRAP plate also increased over the period of investigation, but at a slower rate. The value of such shipments increased from $*** in 1995 to $*** in 1996 and then to $*** in 1997, an overall increase of 95.7 percent. U.S. importers' cumulated shipments of HRAP plate by value were $*** in interim 1997 compared with $*** in interim 1998.[90]

The volume of subject imports by quantity increased at a substantially faster rate than did apparent consumption, which increased over the period of investigation but was lower in interim 1998 than in interim 1997.[91] Consequently, the market share of the cumulated HRAP imports rose over the period of investigation. The cumulated subject HRAP imports' market share by quantity more than doubled, rising

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[86] Chairman Bragg and Commissioner Koplan determine that the domestic industry producing certain stainless steel plate in coils is materially injured by reason of cumulated subject imports in these investigations. They note that in each year of the period of investigation at least *** percent of the domestic production of certain stainless steel plate in coils was HRAP plate and *** to *** percent of the subject imports of certain stainless steel plate in coils was HRAP plate. Thus, the data corresponding to the single domestic like product they found is substantially the same as the data corresponding to HRAP plate. Further, they find that the views in this section substantially reflect the conditions in the market for the single domestic like product they found, *i.e.*, certain stainless steel plate in coils. Therefore, they join the majority's discussion in this section in concluding that cumulated subject import volume is significant. *See* Table C-1, CR at C-3, PR at C-3.

[87] 19 U.S.C. § 1677(7)(C)(i).

[88] Table C-2, CR at C-5, PR at C-5.

[89] Table C-2, CR at C-5, PR at C-5.

[90] Table C-2, CR at C-5, PR at C-5. Volume and value trends diverged because of falling import unit values over the period of investigation.

[91] U.S. apparent consumption of HRAP plate was *** short tons in 1995, declining to *** short tons in 1996, and increasing to *** short tons in 1997. U.S. apparent consumption was *** short tons in interim 1997, compared to *** short tons in interim 1998. It declined by 7.2 percent from 1995 to 1996, increased by 19.8 percent from 1996 to 1997, and was 11.2 percent higher in 1997 than in 1995. It was 7 percent lower interim 1998 than in interim 1997. Table C-2, CR at C-5, PR at C-5.

from *** percent in 1995 to *** percent in 1996 and *** percent in 1997. The market share of cumulated subject imports was *** percent in interim 1997 compared with *** percent in interim 1998.[92] Despite the overall growth in U.S. apparent consumption, the market share held by the domestic industry fluctuated between years but changed little between the beginning and the conclusion of the period of investigation. The domestic industry's market share by quantity was *** percent in 1995, *** percent in 1996, and *** percent in 1997.[93] Thus subject imports gained share at the expense of nonsubject imports' share, which fell from *** percent of the market in 1995 to *** percent in 1996 and to *** percent in 1997. The market share of nonsubject imports was *** percent in interim 1997 compared to *** percent in interim 1998.[94]

Based on the large increase in quantity of cumulated subject HRAP imports as well as their substantial increase in market share during the period of investigation, and particularly in light of their price effects as discussed in detail below, we find the volume of cumulated HRAP imports to be significant.[95]

[92] Table C-2, CR at C-5, PR at C-5. The market share by value for cumulated HRAP imports was *** percent in 1995, *** percent in 1996, and *** percent in 1997. In interim 1997 it was *** percent compared with *** percent in interim 1998. *Id*.

[93] Table C-2, CR at C-5, PR at C-5. The domestic industry's market share of HRAP by value was *** percent in 1995, *** percent in 1996, and *** percent in 1997; in interim 1997 it was *** percent compared with *** percent in interim 1998.

[94] Table C-2, CR at C-5, PR at C-5.

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

B. Price Effects of Subject HRAP Imports [96]

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports,

> the Commission shall consider whether --(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (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.[97]

There are a number of characteristics that make the U.S. market for HRAP plate particularly sensitive to price-based competition. Domestic producers and importers offer HRAP plate in many of the same grades,[98] which generally correspond to ASTM or similar industry specifications.[99] Both the domestic industry and subject producers offer HRAP plate in a broad range of widths, although few producers are capable of producing very wide plate.[100] In questionnaire responses, purchasers ranked price first more often than any other consideration in choosing a supplier.[101] Thus, we find that HRAP, once certified to required specifications, is a commodity product that sells largely on the basis of price regardless of country of origin.[102]

Prices for both the domestic HRAP like product and the subject imports ended the period of investigation lower than they began it. The Commission requested price data from producers and importers on eight hot-rolled products. With few exceptions, prices for all eight of these products increased from the first quarter of 1995 to a peak level in late 1995 or 1996 and then declined for the remainder of the period of investigation.[103] Thus, the price declines began just as subject imports made their largest gains in volume and market share in 1996.[106] Domestic prices for all products reached their lowest levels of the

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[96] Chairman Bragg and Commissioner Koplan note that the Commission did not collect price comparison data on any cold-rolled stainless steel plate products. Absent this price comparison data, they find that a comparison of average unit value data for domestic and imported cold-rolled plate supports their conclusion that cumulated subject imports of certain stainless steel plate in coils significantly depressed domestic prices. They therefore join the majority's discussion in this section.

[97] 19 U.S.C. § 1677(7)(C)(ii).

[98] The staff report lists 29 grades of domestically produced stainless steel plate, approximately 10 of which are imported from one or more subject countries. CR at II-1, PR at II-1.

[99] CR at II-11, PR at II-7.

[100] Staff Field Trip Notes (Dec. 17, 1998); File Note from G. Houck, Industry Analyst, re U.S. Producers (Apr. 29, 1998).

[101] Ten of twenty-seven reporting purchasers ranked price in first place. Nine others ranked price in second place. Twenty-one of the twenty-seven purchasers said that the lowest price for stainless steel plate would "usually" win a contract. CR at II-9-10, PR at II-6-II-7.

[102] As discussed previously, a substantial portion of Belgian imports consists of coiled plate in wide widths, which reduces the substitutability between the subject imports from Belgium and the other sources of HRAP. Based on this reduced substitutability, Commissioner Crawford finds that the subject imports from Belgium are moderate substitutes for the domestic product and the other subject imports. On the other hand, there is no substantial differentiation among the other subject imports and the domestic product. Therefore, Commissioner Crawford finds that the subject imports from Canada, Italy, Korea, South Africa, and Taiwan and the domestic product are all fairly good substitutes for each other.

[103] Tables V-2-V-14 and Figures V-2-V-14, CR at V-13-V-38, PR at V-9 to V-18.

[106] Table C-2, CR at C-5, PR at C-5.

period in 1998, as did those for subject imports for which we have 1998 data.[107] [108] The market share of subject imports was at or near peak levels in interim 1998.[109]

Comparisons for the products for which we obtained usable data show a mixed pattern of underselling and overselling between the domestic HRAP product and cumulated subject imports. In assessing the price comparison data, we have excluded data for Taiwan, since *** did not provide product-by-product price data, despite a request to do so.[110] Excluding Taiwan data, subject imports undersold the domestic like product in 115 of 277 quarters or 41.5 percent of the time.[111] Lacking reliable price comparison data for Taiwan, we instead compared the aggregate domestic average unit value for the seven products corresponding to those sold by Taiwan to the aggregate average unit value of Taiwan imports for

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[107] CR at V-11, PR at V-8.

[108] Commissioner Crawford does not find that the subject imports are having significant effects on domestic prices, and thus does not join the remainder of this discussion. To evaluate the effects of unfairly traded imports on domestic prices, Commissioner Crawford compares the domestic prices that existed when the imports were traded unfairly with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In these investigations, HRAP is quite substitutable among sources, and thus even relatively small margins of about 10 percent likely would have resulted in a shift in demand away from the subject imports. As noted previously, Belgian imports are only moderate substitutes for the domestic product and the other subject imports. Nonetheless, even with margins of about 10 - 11 percent at least some of the combined 1997 market share of *** percent for the subject imports from Belgium and Taiwan likely would have shifted away from these two sources of subject imports, had they been fairly traded. With margins of about 15 - 16 percent, a bit larger portion of the combined 1997 market share of *** percent for the subject imports from Canada and Korea likely would have shifted away from these two sources of subject imports. With margins exceeding 37 percent, it is likely that most of the combined 1997 market share of *** percent for the subject imports from Italy and South Africa would have shifted away from these two sources of subject imports. The overall shift in demand away from the cumulated subject imports would have consisted of at least some of the *** percent market share of subject imports from Belgium and Taiwan; a larger portion of the *** percent market share of subject imports from Canada and Korea; and most, if not all, of the *** percent market share of subject imports from Italy and South Africa. The combined shift in demand away from the cumulated subject imports would have been substantial. Nonsubject imports accounted for only *** percent of the market in 1997, and thus were not significant competition in the market in that year. However, nonsubject imports did account for *** percent in 1995, so it is likely that they would have captured some of a shift in demand away from subject imports, had they been sold at fairly traded prices. Nonetheless, the domestic industry likely would have captured most of the substantial shift in demand away from the subject imports, and the shift in demand toward the domestic product likely would have been substantial. However, the substantial shift in demand would not have allowed the domestic industry to raise its prices. During the period of investigation, there were six domestic producers that competed with each other in the U.S. market. In addition, the domestic industry's capacity utilization was only *** percent in 1997, and therefore it had substantial unused production capacity available, as well as substantial inventories, that would have been available to satisfy the increase in demand. Thus, available capacity and inventories and competition within the domestic industry would have enforced price discipline in the market. In these circumstances, any effort by a domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of these subject imports. Consequently, Commissioner Crawford finds that subject imports are not having significant effects on prices for domestic HRAP stainless steel plate.

[109] Table C-2, CR at C-5, PR at C-5.

[110] CR at V-11 and V-39, PR at V-8 and V-18.

[111] CR at V-39, PR at 18 .

each year during the period of investigation. This comparison shows that the average unit value of Taiwan shipments was consistently lower than that for domestic producers' shipments of the same products.[112]

We find the mixed pattern of overselling and underselling to constitute significant underselling in these investigations, for several reasons. First, in a commodity market characterized by intense price-based competition, a mixed pattern of under- and overselling is to be expected; such a pattern, together with increasing volume of subject imports, indicates that subject imports played a substantial role in the price declines in this market. Moreover, purchasers stated that they overwhelmingly perceive subject imports to be lower priced than the domestic product.[113] Finally, the number of confirmed lost sales and lost revenues allegations provide additional evidence that underselling by subject imports is adversely affecting domestic producers' sales and revenues.[114]

Our questionnaires asked purchasers to identify the price leader(s), if any, in this market.[115] Most responding purchasers named one or more domestic producers as price leaders. Among those purchasers that expressed this opinion, those that provided a basis for their opinion generally explained that they considered domestic producers to be price leaders because domestic producers tend to announce price changes publicly, or simply because they are recognized industry leaders. By contrast, all purchasers who explained why they had identified importers or foreign producers as price leaders indicated that such importers or foreign producers led the market by lowering prices.[116] This is consistent with the near universal view expressed by purchasers that importer prices tend to be lower than domestic prices.[117]

The price-depressing effects of subject HRAP imports may have been exacerbated by the presence of significant and growing subject import inventories. U.S. importers' reported inventories of HRAP plate rose significantly from *** short tons in 1995 to *** short tons in 1997 and were *** short tons in interim 1998 compared to *** short tons in interim 1997. As a percentage of U.S. shipments, importers' inventories rose from 6.5 percent in 1995 to 25.8 percent in 1997 and 68.6 percent in interim 1998.[118] The presence of these large inventories of subsidized and LTFV imports in the U.S. market increased the potential supply of low-priced subject imports and thus may have served to further depress prices for the domestically produced product.[119]

Overall, based on the substitutability of the subject imports and the domestic HRAP like product, the parallel declines in domestic and subject import prices that began as subject import volumes began to displace nonsubject imports and gain market share, the evidence of underselling and lost sales and revenues, the perceived role of subject imports as downward price leaders, and the price depressive effects

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[112] CR at V-48, PR at V-21.

[113] Tables II-2-II-7, CR at II-14-II-16, PR at II-10-II-12. Out of 61 responses to the question whether the U.S. produced product was superior or inferior in terms of a lower price, only one purchaser responded that the U.S. product was "superior," i.e., that it had a lower price. Sixteen responses said that the U.S. product was "comparable" to the imported product in terms of price and 44 responses said that the U.S. product was "inferior" in terms of having a lower price, i.e., it had a higher price.

[114] CR at V-50-V-57, PR at V-22-V-23.

[115] The questionnaire defined "price leader" as "(1) one or more firms that initiate a price change, either upward or downward, that is followed by other firms, or (2) one or more firms that have a significant impact on prices. A price leader does not have to be the lowest priced supplier." CR at V-49 n.12, PR at V-21 n.12.

[116] CR at V-49-V-50, PR at V-21-V-22.

[117] Tables II-2 -II-7, CR at II-14-II-16, PR at II-10-II-12.

[118] Table C-2, CR at C-5, PR at C-5.

[119] We note that domestic producers' inventories of HRAP plate also increased over the period of investigation, although not as much as importers' inventories (comparing end-of-period inventories for 1995 and interim 1998), and this increase may also have contributed to observed price trends. Table C-2, CR at C-5, PR at C-5.

of the steady build-up in subject import inventories, we find that the subject imports have depressed domestic prices for HRAP plate to a significant degree.

C. Impact of Subject HRAP Imports on the Domestic Industry[120] [121] [122]

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[123] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.

The domestic industry was unable to provide segregated data for HRAP and cold-rolled plate except with respect to production, shipments, and pricing. For all other factors, we assess the effect of the cumulated subject imports on the production of the narrowest group of products that includes HRAP plate for which the necessary information could be provided -- in this case, all certain stainless steel plate in coils.[124]

Consistent with rising apparent consumption,[125] most of the quantity-based statutory impact factors, including production,[126] domestic shipments,[127] employment,[128] capacity[129] and net sales by

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[120] As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 850. Section 771(35)(C) of the Act, 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a final determination as the last margin or margins published by Commerce prior to the closing of the administrative record in the Commission's investigations. In its final determinations, Commerce identified dumping margins as follows: Belgium - 9.86 percent; Canada - 11.10-15.35 percent; Italy - 39.69-45.09 percent; Korea - 16.26 percent; South Africa - 41.63 percent; and Taiwan - 7.39-10.20 percent. Table I-1, CR at I-3, PR at I-3.

[121] Chairman Bragg notes that she does not ordinarily consider the alleged margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

[122] Chairman Bragg and Commissioner Koplan join the majority's discussion in this section in concluding that cumulated subject imports, including both the hot-rolled and cold-rolled product, had a significant adverse impact on the domestic industry producing all certain stainless steel plate in coils. Consequently, they do not invoke the product line provision.

[123] 19 U.S.C. §1677(7)(C)(iii).

[124] *See* 19 U.S.C. §1677(4)(D).

[125] U.S. consumption of HRAP plate declined from *** short tons in 1995 to *** short tons in 1996 and then increased to *** short tons in 1997, an overall increase of 11.2 percent. U.S. consumption of HRAP was *** short tons in interim 1997, compared to *** short tons in interim 1998. Table C-2, CR at C-5, PR at C-5.

[126] Domestic production of HRAP declined from *** short tons in 1995 to *** short tons in 1996, and then increased to *** short tons in 1997, an overall increase of 20.0 percent. Domestic production of HRAP was *** short tons in interim 1997 compared to *** short tons in interim 1998. Table C-2, CR at C-5, PR at C-5.

[127] Domestic producers' U.S. shipments of HRAP plate declined from *** short tons in 1995 to *** short tons in 1996, and then increased to *** short tons in 1997, an overall increase of 11.0 percent. Domestic producers' shipments of HRAP plate were *** short tons in interim 1997, compared to *** short tons in interim 1998. Table C-2, CR at C-5, PR at C-5.

[128] The number of production and related workers employed in the production of certain stainless steel plate in coils declined from 218 in 1995 to 198 in 1996 and then increased to 236 in 1997. The number of production and related workers employed in the production of certain stainless steel plate in coils was 238 in interim 1997 compared to 225 in interim 1998. Although the number of production and related workers fell over the period of investigation, hourly wages increased 3.7 percent and wages paid increased 12.9 percent between 1995 and 1997 and were higher in interim 1998

(continued...)

quantity[130] increased between 1995 and 1997, but were lower in interim 1998 than in interim 1997. By contrast, domestic shipments by value declined in 1996 and 1997 and were also lower in interim 1998 than in interim 1997.[131]

Net sales values declined notwithstanding the increasing sales volumes and production because of the large price declines that occurred during the period of investigation. The declines in sales values were also contemporaneous with a decline in production costs, but were much larger in magnitude. Between 1995 and 1997, per unit cost of goods sold declined from $1,845.41 to $1,657.75, a decline of 10.2 percent. Interim 1998 unit cost of goods sold, at $1,517.65, was 10.5 percent lower than interim 1997 unit cost of goods sold of $1,696.46.[132] By contrast, per unit sales values declined by 27.4 percent, from $2,382.08 to $1,729.13, from 1995 to 1997, and the interim 1998 unit sales value of $1,513.54 was 16.4 percent lower than the interim 1997 unit sales value of $1,809.85.[133] That declines in net sales values far outstripped declines in production costs is a function of the increasing volumes of LTFV and subsidized HRAP imports with their significant price-depressing effects.[134]

Because unit sales values declined more rapidly than unit cost of goods sold, the domestic industry's profitability suffered, notwithstanding increasing production. The domestic industry's operating income declined from $47.4 million in 1995 to $6.6 million in 1996, and the industry incurred an operating loss of $1.1 million in 1997. In interim 1998, the industry incurred an operating loss of $6.8 million, as compared to a $3.0 million operating profit in interim 1997.[135] The industry's operating income margin dropped from 19.0 percent in 1995 to 3.6 percent in 1996, to negative 0.6 percent in 1997. In interim 1997, the operating margin was 1.8 percent but in interim 1998 it was a negative 5.3 percent.[136] [137]

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[128] (...continued)
than in interim 1997. Table C-1, CR at C-3, PR at C-3.

[129] Domestic capacity to produce certain stainless steel plate in coils increased from 183,600 short tons in 1995 to 204,800 short tons in 1996, and increased further to 237,700 short tons in 1997. Interim 1997 capacity of 179,750 short tons was higher than interim 1998 capacity of 176,750 short tons. Table C-1, CR at C-3, PR at C-3. Because domestic producers' reported capacity and capacity utilization depend on imprecise allocations of production capacity between certain stainless steel plate in coils and other products that are produced on the same lines, we give limited weight to capacity trends in reaching our determinations.

[130] Domestic net sales by quantity of certain stainless steel plate in coils declined from 104,803 short tons in 1995 to 94,548 short tons in 1996, and then increased to 117,414 short tons in 1997, for an overall increase of 12 percent. Domestic net sales by quantity were 92,779 short tons in interim 1997 compared to 84,244 short tons in interim 1998. Table C-1, CR at C-3, PR at C-3.

[131] The value of domestic producers' U.S. shipments of HRAP plate declined from $*** in 1995 to $*** in 1996, and then increased to $*** in 1997, for an overall decrease of 19.2 percent. Domestic producers' shipments of HRAP plate by value were $*** in interim 1997, compared to $*** in interim 1998. Table C-2, CR at C-5, PR at C-5.

[132] Table VI-2, CR at VI-3, PR at VI-3.

[133] Table VI-2, CR at VI-3, PR at VI-3.

[134] Commissioner Crawford does not join the conclusion that the difference in the rates of declines for net sales and production costs is caused by increasing volumes of the subject imports.

[135] Table VI-1, CR at VI-2, PR at VI-2.

[136] CR at VI-1 and VI-8, PR at VI-1.

[137] Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors in her determination of material injury by reason of the subject imports, but concurs in the conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of unfairly traded imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were traded unfairly with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors,
(continued...)

Declining profitability, in turn, adversely affected the industry's ability to invest in process improvements and expanded product lines. While the value of domestic producers' fixed assets rose over the entire period of investigation with the completion of ongoing capital improvement projects, new capital expenditures declined steadily over the period.[138] All but one domestic producer stated that imports had actual or anticipated negative effects in their investment plans, cash flow or credit ratings.[139] Finally, two domestic production facilities were idled in late 1998 and 1999.[140]

Low subject import prices forced the domestic industry to lower prices to the point where it was unable to maintain profitability despite rising demand and falling costs, eventually resulting in declining investment and plant closures (with associated drops in production and employment). Thus, we find that subject imports have had a significant adverse effect on the domestic industry producing HRAP plate.[141]

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[137] (...continued)
output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact. As she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had the subject imports been priced fairly. Therefore, any impact on the domestic industry would have been on the domestic industry's output and sales. As noted, there is only limited competition from nonsubject imports, and thus most of the shift in demand away from the subject imports would have shifted to the domestic product. The increase in demand for the domestic product would have been substantial, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured enough of the demand for the subject imports that its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been unfairly traded. Therefore, the domestic industry would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that the domestic industry is materially injured by reason of the subject imports.

[138] Table VI-6, CR at VI-14, PR at VI-6.

[139] CR at F-3-F-4, PR at F-3.

[140] CR at III-4 and III-6, PR at III-3 and III-4; CR at F-3-F-4, PR at F-3. While Avesta does not contend that the idling of its Baltimore facility was caused by competition from subject imports, we are not persuaded that it would have abandoned a facility in which it had so recently made substantial investments had it not been for the adverse pricing conditions in the U.S. market.

[141] Based upon the foregoing, Chairman Bragg and Commissioner Koplan determine that an industry in the United States producing all certain stainless steel plate in coils is materially injured by reason of subject imports from Belgium, Canada, Italy, Korea, South Africa, and Taiwan. They do not join the remainder of these views.

IV. NO MATERIAL INJURY OR THREAT OF MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS OF COLD-ROLLED PLATE FROM BELGIUM AND CANADA

A. No Material Injury to the Domestic Industry Producing Cold-Rolled Plate By Reason of Subject Imports from Belgium and Canada

1. Volume of the Subject Cold-Rolled Imports

The U.S. market for cold-rolled plate is extremely small relative to the market for HRAP plate, and is highly dependent on imports. The volume of cumulated subject imports of cold-rolled plate rose from *** short tons in 1995 to *** short tons in 1996, then declined somewhat to *** short tons in 1997. Cumulated subject imports were *** short tons in interim 1998, compared with *** short tons in interim 1997.[142] The market share of cumulated subject imports rose from *** percent in 1995 to *** percent in 1997 and *** percent in interim 1998, with nonsubject imports making up the difference.[143] The rising volume and dominant market share of subject imports suggest that the volume of cumulated subject imports of cold-rolled plate is significant.[144] We note, however, that the domestic industry's production of cold-rolled plate is very limited and that the industry itself has characterized cold-rolled plate as a tiny and unimportant part of its business.[145] Throughout the period of investigation, the domestic industry's market share, by quantity, never reached *** percent, and there is no indication that the domestic producers lost market share to subject imports.

2. Price Effects of the Subject Cold-Rolled Imports

Although we did not collect price comparison data on any cold-rolled plate products,[146] we do have data on the average unit value of domestic and subject import shipments of cold-rolled plate.[147] The average unit value of domestic shipments declined irregularly between 1995 and 1997 and was lower in interim 1998 than in interim 1997.[148] The average unit value of cumulated subject imports declined steadily over the period of investigation, beginning at a higher level than that for the domestic like product

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[142] Table C-3, CR at C-7, PR at C-5.

[143] Alternate Table C-3, derived from Table C-3, CR at C-7, PR at C-5, as modified by nonsubject import data provided in response to importer questionnaires.

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

[145] Tr. at 50-51 and 114; Petitioners' Posthearing Brief, Exhibit 5.

[146] In its preliminary determinations, the Commission stated that it would consider whether cold-rolled and HRAP plate were separate like products in any final phase of the investigations. Nevertheless, when given an opportunity to comment on draft questionnaires in the final phase, no party requested that the Commission collect pricing data on a cold-rolled product.

[147] *Cf.* United States Steel Group v. United States, 96 F.3d 1352, 1364 (Fed. Cir. 1996) (Commission may employ rebuttable presumption that product mix is constant in using AUV trends as a proxy for price trends).

[148] The average unit value of domestic shipments was $*** in 1995, $*** in 1996, $*** in 1997, $*** in interim 1997, and $*** in interim 1998. Table C-3, CR at C-8, PR at C-5.

and falling below in 1997 and interim 1998.[149] There is no clear connection between the subject imports and the domestic price declines, since, during much of the period, the domestic price decreased even though subject imports were priced substantially higher.[150] Moreover, petitioners did not allege that domestic producers of cold-rolled plate experienced any lost sales or incurred any adverse price effects due to the cold-rolled subject imports.[151] Accordingly, we do not find that subject imports depressed or suppressed the prices of the domestic like product; nor do we find significant underselling by subject cold-rolled imports.

3. Impact of the Subject Cold-Rolled Imports on the Domestic Industry[152]

The record makes clear that despite the universal ability among domestic HRAP plate producers to produce cold-rolled plate, none of these domestic producers actively markets or promotes the product.[153] Indeed, high level marketing personnel from the domestic industry were unaware in some instances that

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[149] The average unit value of shipments of cumulated subject imports was $*** in 1995, $*** in 1996, $*** in 1997, $*** in interim 1997, and $*** in interim 1998. Table C-3, CR at C-7, PR at C-5.

[150] Commissioner Crawford concurs that the subject imports are not having significant effects on domestic prices. Her method for analyzing the price effects of subject imports is described in note 106, *supra*. Only two domestic producers produce very small quantities of cold rolled plate, consistent with the industry's characterization of the product as a "fringe" product, and thus the domestic industry focuses almost exclusively on the hot-rolled market. The margins for Belgium and Canada are not very large, about 10 % and 15%, respectively, and thus prices for the subject imports would not have increased substantially had they been sold at fairly traded prices. Given these margins and the domestic industry's lack of interest in the cold-rolled market, it is likely that none of the demand for the subject imports would have shifted away from the subject imports had they been priced fairly. Therefore, there would have been no shift in demand toward the domestic product had the subject imports been fairly traded. Absent a shift in demand to the domestic product, the domestic industry would not have been able to increase its prices. In these circumstances, significant effects on domestic prices cannot be attributed to the unfair pricing of these subject imports. Consequently, Commissioner Crawford finds that subject imports are not having significant effects on prices for domestic cold-rolled stainless steel plate.

[151] Petitioners' main argument about subject cold-rolled imports at the Commission hearing was the claim that such imports are sold to fill orders for HRAP plate by foreign producers that are unable to achieve normal HRAP tolerances using their production equipment. Tr. at 52, 98-99, 121. The Belgian producer responsible for the vast majority of subject cold-rolled imports refuted this claim in its posthearing brief, noting that customers specifically request a cold-rolled product. Belgian Respondents' Posthearing Brief at 7-8, 11-12.

[152] As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 850. Section 771(35)(C) of the Act, 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a final determination as the last margin or margins published by Commerce prior to the closing of the administrative record in the Commission's investigations. In its final determinations, Commerce identified dumping margins as follows: Belgium - 9.86 percent; Canada - 11.10-15.35 percent; Italy - 39.69-45.09 percent; Korea - 16.26 percent; South Africa - 41.63 percent; and Taiwan - 7.39-10.20 percent. Table I-1, CR at I-3, PR at I-3.

[153] Tr. at 50-51 (Washington Steel, Allegheny and J& L all indicate that they do not see any real market for cold-rolled) and 114 (any domestic production of cold-rolled plate is "accidental"); Petitioners' Posthearing Brief, Exhibit 5.

their companies could or did produce a cold-rolled product.[154] The limited data regarding domestic cold-rolled plate operations does not indicate that subject cold-rolled imports are adversely impacting the domestic cold-rolled industry. As discussed above, domestic cold-rolled production remained stable, albeit at a very low level, and the record does not indicate that subject imports affected domestic prices and, thereby, domestic revenues.

Because the domestic industry was unable to provide segregated trade and financial data for cold-rolled stainless steel coiled plate, pursuant to the production line provision of 19 U.S.C. § 1677(4)(D), we also assess the effect of the cumulated subject imports on the production of the narrowest group of products that includes cold-rolled plate for which the necessary information could be provided -- in this case, all stainless steel coiled plate. As discussed above with respect to the industry producing HRAP plate, despite rising demand during most of the period of investigation, the domestic industry experienced declining financial performance and capital investment throughout the period as well as declines in employment and capacity at the end of the period.[155]

Due to the extremely small magnitude of subject imports of cold-rolled plate relative to domestic production of all certain stainless steel plate in coils, we do not find that cumulated subject imports of cold-rolled plate, despite their large share of the cold-rolled market and declining average unit values, are having an adverse impact on the domestic industry. In light of the limited commercial interchangeability between subject cold-rolled imports and domestic HRAP plate, which represents the vast majority of domestic production of certain stainless steel plate in coils, we find that subject cold-rolled imports are too small in magnitude to have contributed to the observed declines in the profitability, employment or capacity of the domestic industry producing certain stainless steel plate in coils.[156] Accordingly, we determine that the domestic industry producing cold-rolled stainless steel plate in coils is not materially injured by reason of cumulated subject imports of cold-rolled plate from Belgium and Canada.

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[154] *Compare* Tr. at 120-121 (Mr. Arnold testified that NAS sells cold-rolled plate; Mr. Pudelsky was not sure whether J&L produces cold-rolled plate in response to orders for cold-rolled), *with* Petitioners' Posthearing Brief, Exhibit 1 at 5-7 (indicating that after research, Allegheny and J&L discovered that they have produced cold-rolled plate during the period of investigation, while NAS discovered that it did not).

[155] *See* section IV.C *infra*. Domestic producers did provide segregated production and shipment quantity and value data for cold-rolled plate. These data indicate large annual fluctuations. Production quantity and U.S. shipment quantity and value rose from 1995 to 1996, declined from 1996 to 1997, and were higher in interim 1998 than in interim 1997. Table C-3, CR at C-8, PR at C-5.

[156] Commissioner Crawford concurs that the subject imports are not having a significant impact on the domestic industry. Her method for analyzing the impact of the subject imports on the domestic industry is described in note 135, *supra*. As she has found, there would have been no shift in demand toward the domestic product, and thus the domestic industry would not have been able to increase its prices, had the subject imports been fairly traded. Likewise, absent a shift in demand toward the domestic product, the domestic industry would not have been able to increase its output and sales had the subject imports been fairly traded. Thus, the domestic industry's revenues would not have increased significantly had the subject imports been sold at fairly traded prices. Therefore, Commissioner Crawford finds that the domestic industry would not have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that the domestic industry is not materially injured by reason of the subject imports of cold-rolled stainless steel plate.

B. No Threat of Material Injury by Reason of Subject Imports of Cold-rolled Plate from Belgium and Canada

1. Cumulation for Purposes of Threat Analysis

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury.[157] In deciding whether to cumulate for purposes of making our threat determinations, we also consider whether the subject imports are increasing at similar rates and have similar pricing patterns.[158] Neither the volumes nor the average unit values of shipments of Belgian and Canadian cold-rolled plate followed the same trends during the period of investigation. Nevertheless, because the requirements for cumulation in the context of present injury are met, and in order to give the benefit of the doubt to the domestic industry, we have exercised our discretion to cumulate subject imports from Belgium and Canada for purposes of our threat determinations.

2. Statutory Factors

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[159] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[160] In making our determination, we have considered all statutory factors[161] that are relevant to these investigations.[162]

Commerce did not find that Belgian imports benefitted from any export subsidies, and petitioners concede that the subsidies found are not large enough to be considered seriously prejudicial under the

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[157] 19 U.S.C. § 1677(7)(H). Petitioners argue that the Commission should cumulate imports for purposes of its threat determinations. Petitioners' Prehearing Brief at 72. Neither the Belgian nor the Canadian respondents addressed this issue.

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

[159] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

[160] 19 U.S.C. § 1677(7)(F)(ii). While the language referring to imports being imminent (instead of "actual injury" being imminent and the threat being "real") is a change from the prior provision, the SAA indicates the "new language is fully consistent with the Commission's practice, the existing statutory language, and judicial precedent interpreting the statute." SAA at 854.

[161] The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the WTO Antidumping Agreement and Subsidies and Countervailing Measures Agreement, although "[n]o substantive change in Commission threat analysis is required." SAA at 855.

[162] 19 U.S.C. § 1677(7)(F)(I). Factor VII regarding raw and processed agriculture products is inapplicable to the products at issue. Additionally, there are no known antidumping or countervailing duty findings or remedies in effect in other countries with respect to cold-rolled stainless steel coiled plate from Belgium or Canada.

Subsidies Agreement.[163] Thus, we do not find that any subsidies to the Belgian producers are of such a nature as to make an increase in subject imports likely.

Both the Belgian and Canadian producers operated at high rates of capacity utilization throughout the period of investigation and neither plan capacity expansions in the near future.[164] Thus, we do not find that there is existing unused production capacity or imminent, substantial increases in production capacity in those countries that are likely to result in substantially increased imports of the subject merchandise into the United States. Because subject cold-rolled imports account for nearly all of the market share already, no significant further increase in the market penetration of subject imports is possible. Nor, based on our conclusions with respect to the capacity of the Belgian and Canadian producers, do we find that any significant increase in the volume of the subject imports is imminent. Therefore, we find that further dumped or subsidized imports are not imminent.

As discussed in the context of present material injury, we did not find that the subject imports, despite their rising volume, large market share and declining average unit values, are having a significant adverse impact on the domestic industry. Nothing in the record suggests that subject import prices are likely to have such an effect in the imminent future.

Importer inventories of the subject merchandise have increased over the period of investigation.[165] This factor alone, however, does not support an affirmative threat determination. Moreover, while it is true that foreign producers have ample capacity for the production of HRAP plate, stainless sheet and strip, and other stainless products that could be converted to the production of cold-rolled stainless steel coiled plate, there is no evidence of record that domestic demand exists to support any significant expansion of cold-rolled plate imports, nor is there any evidence that the Belgian and Canadian producers would abandon established markets for such other products in order to export more cold-rolled plate to the United States. Finally, given the small share of domestic producers' total production of stainless products represented by coiled plate, and the even smaller share of that total represented by cold-rolled plate, we do not find that subject imports have had, or are likely to have in future, negative effects on the development and production efforts of the domestic industry.

For all these reasons, we find further dumped and subsidized imports from Belgium and Canada are not imminent, and we do not find that material injury by reason of such imports would occur unless orders are issued. Therefore, we determine that the domestic industry producing cold-rolled stainless steel coiled plate is not threatened with material injury by reason of cumulated subject imports from Belgium and Canada.

CONCLUSION

For the foregoing reasons, we find that the domestic industry producing HRAP plate is materially injured by reason of subject imports of HRAP plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan. We further find that the domestic industry producing cold-rolled plate is neither materially injured nor threatened with material injury by reason of subject imports of cold-rolled plate from Belgium and Canada, and that subject imports of cold-rolled plate from Italy, Korea, South Africa, and Taiwan are negligible.

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[163] Table I-1, CR at I-3, PR at I-1; 64 Fed. Reg. 15567 (Mar. 31, 1999); Petitioners' Prehearing Brief at 75. There was no countervailing duty investigation of imports from Canada.

[164] CR at VII-1-VII-11, PR at VII-1-VII-4.

[165] Table C-3, CR at C-7, PR at C-5.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG AND COMMISSIONER STEPHEN KOPLAN

Based on the record in these investigations, we find that an industry in the United States producing certain stainless steel plate in coils is materially injured by reason of imports of certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, that have been found by the Department of Commerce to be subsidized and/or sold at less than fair value. We respectfully dissent from the majority's finding of two separate like products in these investigations.

For the reasons discussed below, we define one domestic like product in these investigations, encompassing both hot-rolled and cold-rolled stainless steel plate in coils, and one domestic industry comprised of U.S. producers of the like product. Our single like product definition corresponds to the imported merchandise defined by the Department of Commerce to be within the scope of these investigations.

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

We first note that in its preliminary determination, the Commission observed that the record at that time did not clearly indicate whether there was actual domestic production of cold-rolled stainless steel plate in coils ("SS coiled plate") during the period of investigation.[1] The record in the final phase of these investigations indicates that, while all domestic producers have the ability to produce cold-rolled SS coiled plate, only two producers did in fact produce this product, and only in limited quantities, during the period of investigation.[2] Because this production, although small, was for commercial purposes and in response to customer orders, and because of the general ability of domestic producers to make a cold-rolled product on request, we find that there is domestic production of cold-rolled SS coiled plate like the subject imports.

Second, we note that in its preliminary determination, the Commission employed a semi-finished product analysis to determine whether hot-rolled and cold-rolled stainless steel plate in coils ("SS coiled plate") are separate like products. At the time of the preliminary determinations, the Commission had only fragmentary information concerning cold-rolled SS coiled plate, and thus focused its analysis on the general cold-rolling process in the steel industry. The more complete information available in these final phase investigations indicates, however, that both hot-rolled and cold-rolled SS coiled plate should be treated as finished products; consequently, our analysis of this issue is based upon consideration of the traditional factors examined by the Commission for determining like product.[3]

Physical Characteristics and Uses: SS coiled plate products, whether hot-rolled or cold-rolled, share similar physical characteristics. The chemical composition of the cold-rolled product is generally similar to that of hot-rolled SS coiled plate. Both are corrosion resistant and are available in similar

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[1] Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Invs. Nos. 701-TA-376-379 (Preliminary) and Invs. Nos. 731-TA-788-793 (Preliminary), USITC Pub. No. 3107, at 14 (May 1998).

[2] CR\PR at Table III-2, n.1. Domestic production of cold-rolled SS coiled plate was *** in 1995, *** in 1996, *** in 1997, and *** in interim period 1998. *Id*. at n.2 and n.3. Domestic production of cold-rolled SS coiled plate accounted for *** of domestic production of certain SS coiled plate in 1997 and less than that in all other periods. Calculated from CR\PR at Tables III-2 and III-3.

[3] These factors include: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customers' and producers' perceptions; (5) common manufacturing facilities and production employees; and (6) where appropriate, price.

dimensions.[4] While the cold-rolled product generally has a smoother finish with greater freedom from surface imperfections than hot-rolled SS coiled plate, a similarly smooth finish can be achieved for the hot-rolled product with additional grinding and polishing.[5] Although cold-rolled SS coiled plate can generally achieve tighter tolerances,[6] there is evidence that technological advances in producing tighter tolerances for hot-rolled SS coiled plate via "Steckel" mill production has reduced the need to apply the additional process of cold-rolling to achieve such tighter tolerances.[7]

SS coiled plate is used to produce tanks and equipment for industries for which the corrosion resistance, heat resistance, and/or ease of maintenance of stainless steel are needed; it is also used for stainless steel tubing for the same industries.[8] Cold-rolled SS coiled plate is used for a limited number of specialized applications for stainless steel plate, such as containers and tanks for food processing, beer making, and dairies where a smooth surface that can be easily cleaned is essential.[9]

Interchangeability: Questionnaire responses indicate that cold-rolled SS coiled plate can be used for hot-rolled SS coiled plate applications.[10] It is less clear that hot-rolled SS coiled plate is interchangeable with the cold-rolled product, at least without a further grinding/polishing process.

Channels of Distribution: Stainless steel coiled plate, whether hot-rolled or cold-rolled, is sold primarily to service centers/distributors, with some sales to end-users such as pipe and tube producers.[11]

Customer and Producer Perceptions: While there is some disagreement by Petitioners, customers and producers generally appear to perceive hot-rolled and cold-rolled SS coiled plate as somewhat different products.[12] We note, however, that the ASTM[13] standard for stainless steel plate does not distinguish between hot-rolled and cold-rolled plate, but specifies a number of finishes that are applied to stainless steel plate.[14]

Manufacturing Facilities, Production Processes, and Production Employees: Cold-rolled SS coiled plate typically shares the same production processes, equipment, and employees as the hot-rolled product, up to the cold-rolling stage of production.[15] To produce the cold-rolled product, a hot-rolled and pickled or descaled coil is cold-reduced by twenty-five percent or more to the final ordered thickness. Following cold-reduction, the cold-rolled plate must be annealed and pickled. Either hot-rolled or cold-rolled SS plate also

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[4] CR\PR at Table I-2.

[5] CR at I-9; PR at I-6. CR\PR at Table I-3 (response of ***) and Petitioners' Prehearing Brief at 15.

[6] CR\PR at Tables I-2 and I-3.

[7] Transcript of Commission Hearing (March 23, 1999) ("Tr.") at 51-53 (Petitioners' response to questioning by Chairman Bragg).

[8] CR at I-6; PR at I-4.

[9] CR at I-9; PR at I-6.

[10] CR\PR at Tables I-2 and I-3; Tr. at 33. Indeed, the record raises the possibility that subject cold-rolled imports compete directly with the domestic hot-rolled product because foreign producers are unable to achieve the specifications demanded of the hot-rolled product for certain applications absent the additional cold-rolling process. Tr. at 51-53 (Petitioners' response to questioning by Chairman Bragg). We note, however, that absent unfair trade practices, the additional cost of cold-rolling SS coiled plate may set practical limitations on when the cold-rolled product may be used in lieu of hot-rolled SS coiled plate.

[11] CR\PR at Table II-1.

[12] CR/PR at Tables I-2 and I-3.

[13] American Society for Testing and Materials, Philadelphia, Pennsylvania. CR at I-5; PR at I-4.

[14] Petitioners' Prehearing Brief at 16 and 17; *see* ASTM standard, attached as Exhibit 2 to Petitioners' Prehearing Brief.

[15] CR at I-7 - I-9 and I-11, PR at I-5-I-7. *** notes that "***."

may be further finished in a temper or cold-rolling mill with a temper or skin pass, to provide improved surface finish.[16]

Price: Prices for cold-rolled SS coiled plate are generally higher than for the hot-rolled product due to the additional processing involved.[17] However, hot-rolled SS coiled plate which has undergone grinding and polishing (to achieve a surface finish similar to the cold-rolled product) may be priced similarly to cold-rolled SS coiled plate.[18]

In sum, because hot-rolled and cold-rolled SS coiled plate share similar physical characteristics, chemical composition, and dimensions; can be used in most of the same corrosion resistant applications; share the same channels of distribution; share the same production process through production of the hot-rolled product; and because cold-rolled SS coiled plate is substitutable for the hot-rolled product while hot-rolled SS coiled plate may be substitutable for the cold-rolled product with further grinding and polishing, we find that there is no clear dividing line between hot-rolled and cold-rolled SS coiled plate. Consequently, we find a single domestic like product in these investigations, consisting of all certain stainless steel plate in coils, which corresponds to the scope definition provided by the Department of Commerce.

With regard to defining the domestic industry, as we note in the majority views, we define one domestic industry in these investigations consisting of all domestic producers of certain stainless steel plate in coils. We concur in the majority's finding that appropriate circumstances do not exist to exclude *** from the domestic industry.

II. CONCLUSION

We find that our analysis, consistent with our definition of one like product in these investigations, applies equally to the majority's analysis with regard to hot-rolled SS coiled plate. In light of the relatively small volumes of domestically produced and imported cold-rolled product during the period of investigation, the additional data for these products does not materially alter the analysis set forth by the majority; indeed, it only strengthens our injury determinations.

Accordingly, as we note further in the majority views, we find that an industry in the United States producing certain stainless steel plate in coils is materially injured by reason of imports of certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, that have been found by the Department of Commerce to be subsidized and/or sold at less than fair value.

[16] CR at I-7 - I-9, PR at I-5 and I-6.

[17] Table I-2, CR at I-11, PR at I-7. Petitioners contend that hot-rolled SS coiled plate which has undergone special finishing is priced similarly to the cold-rolled product. Petitioners' Prehearing Brief at 20.

[18] Petitioners' Prehearing Brief at 20.