

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIN- AND CHROMIUM-COATED STEEL SHEET FROM JAPAN

Investigation No. 731-TA-860 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3337, August 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of tin- and chromium-coated steel sheet, provided for in subheadings 7210.11.00, 7210.12.00, 7210.50.00, 7212.10.00, and 7212.50.00 if of non-alloy steel and under subheadings 7225.99.00 and 7226.99.00 if of alloy steel (other than stainless steel) of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective October 28, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Weirton Steel Corp., Weirton, WV, the Independent Steelworkers Union, and the United Steelworkers of America, AFL-CIO. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of tin- and chromium-coated steel sheet from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation 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 April 24, 2000 (65 FR 21791). The hearing was held in Washington, DC, on June 29, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Chairman Stephen Koplman and Commissioner Thelma J. Askey dissenting.

VIEWS OF THE COMMISSION

Based on the record in this investigation,³ we determine that an industry in the United States is materially injured by reason of subject imports of tin- and chromium-coated steel sheet (“TCCSS”) from Japan that the Department of Commerce (“Commerce”) found to be sold in the United States at less than fair value (“LTFV”).⁴

I. DOMESTIC LIKE PRODUCT

A. In General

To determine whether an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁵ 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.”⁶ 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”⁷

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁹ The

³ Respondents have asked us to strike an exhibit to Petitioners’ final comments from the record on the grounds that it constitutes new factual information not permitted under Commission Rule 207.30, 19 C.F.R. §207.30 because it was submitted after the record closing date. When the Commission adopted Rule 207.30 it specifically stated that while comments not directed to new factual information were “strongly discouraged,” only “new factual information” contained in final comments would be disregarded. 61 Fed. Reg. 37818, 37827 (July 22, 1996). We note that Petitioners’ exhibit is largely a reinterpretation of facts already on the record. Accordingly, we deny respondents’ request to strike.

⁴ Chairman Stephen Koplun and Commissioner Thelma J. Askey dissenting. They join Sections I and II of these views.

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

⁸ See, e.g., NEC Corp. v. Dep’t of Commerce and U.S. Int’l Trade Comm’n, 36 F. Supp. 2d 380 (Ct. Int’l Trade 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).

⁹ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

Commission looks for clear dividing lines among possible like products, and disregards minor variations.¹⁰ Although the Commission must accept Commerce's determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as:

tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin-plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed, or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS"), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel.¹²

TCCSS is a downstream product made by electroplating both sides of a cold-rolled steel sheet with a thin layer of tin, chromium, or chromium oxide. A variety of steel thicknesses and widths, coating thicknesses, tempers, and surface finishes are available.¹³ The resulting merchandise is used primarily to manufacture "tin cans" for food and other products.¹⁴

C. Domestic Like Product

¹⁰ 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).

¹¹ 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 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹² Notice of Final Determination, 65 Fed. Reg. 39364, 39365 (June 26, 2000). Products outside the scope and products specifically excluded from the investigation appear in Commerce's Notice of Final Determination, presented in the Staff Report at Appendix A.

¹³ Confidential Report ("CR") at I-6 - I-7, and Public Report ("PR") at I-5 - I-6.

¹⁴ CR at I-7, PR at I-6.

In the preliminary phase of this investigation, the Commission found a single like product covering both tin- and chromium-coated steel sheet.¹⁵ The Commission found that tin-coated and chromium-coated steel sheet are physically similar in that they consist of a flat steel substrate covered by a layer of another metal, and are generally sold in similar thicknesses, widths, coating thicknesses, tempers, and surface finishes.¹⁶ In making its finding, the Commission noted that: (1) tin- and chromium-coated steel are technically interchangeable; (2) both are used primarily in the production of metal cans for storing food, paints, and other substances; (3) the channels of distribution are the same; (4) most companies that produce tin-coated steel also produce chromium-coated steel, using the same production facilities, workers, and production process; and (5) there is some overlap in prices between the two products.¹⁷

None of the parties advocated that the Commission should alter its like product finding from the preliminary phase of the investigation. Moreover, no new evidence has been obtained in this final phase of the investigation that would call this finding into question. Consequently, we reaffirm our finding in the preliminary determination that the domestic like product consists of both tin- and chromium-coated steel sheet corresponding to Commerce's definition of the scope of the investigation.¹⁸

II. DOMESTIC INDUSTRY AND RELATED PARTIES

A. In General

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a [w]hole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product”¹⁹ In defining the domestic industry, the Commission's general practice has been to include producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.²⁰

B. Domestic Industry

¹⁵ Tin- and Chromium-Coated Steel Sheet From Japan, Inv. No. 731-TA-860 (“Preliminary”), USITC Pub. 3264 (Dec. 1999) (“Preliminary Determination”) at 5.

¹⁶ Preliminary Determination at 5.

¹⁷ Preliminary Determination at 5.

¹⁸ In its Final Determination the Department of Commerce modified its original scope to exclude certain products not produced by the domestic industry after the Commission's Preliminary Determination. See Department of Commerce Notice of Final Determination 65 Fed. Reg. 39364, 39365 (June 26, 2000).

¹⁹ 19 U.S.C. § 1677(4)(A).

²⁰ See, e.g., DRAMs from Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan, Inv. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see generally, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 (Final) and Inv. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise, and lower levels of employment”).

Based on its findings in the preliminary determination of a single domestic like product, the Commission found that the domestic industry consisted of all domestic producers of TCCSS.²¹ In the final phase of the investigation, no party challenged this finding. Further, the parties have not presented any new evidence which would call into question the Commission's preliminary finding on this point. We find, therefore, that the domestic industry consists of all domestic producers of tin- and chromium-coated steel sheet.

C. Related Parties

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.²² Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²³

In its preliminary determination the Commission found that National Steel is a related party as defined under the statute because NKK Corp., a foreign producer and exporter of subject merchandise, owns 70 percent of National Steel.²⁴ However, the Commission ultimately found that appropriate circumstances did not exist to exclude National Steel from the domestic industry²⁵ because: (1) National Steel is a major producer of the domestic like product; (2) it did not import any subject merchandise during the period of examination; and (3) it ***.²⁶

The Commission also found in its preliminary determination that Ohio Coatings was not a related party even though an importer of the subject merchandise owns shares in the company. The importer's

²¹ Preliminary Determination at 6.

²² 19 U.S.C. § 1677(4)(B).

²³ 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (CIT 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Open-End Spun Rayon Singles Yarn from Austria, Inv. No. 731-TA-751 (Preliminary), USITC Pub. 2999, at 7 n.39 (Oct. 1996).

²⁴ Preliminary Determination at 6. The Commission has previously decided that "control does not exist, absence evidence to the contrary, if the ownership interest is less than that necessary, in and of itself, to establish control." Certain Structural Steel Beams From Germany, Japan, Korea, and Spain, Invs. Nos. 701-TA-401 & 731-TA-852-855 (Prelim.), USITC Pub. 3225 at 8, n. 40 (Sept. 1999); see also Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Prelim.), USITC Pub. 2976 at 8 (July 1996). *** is likely to be enough, by itself, to constitute control.

²⁵ Preliminary Determination at 6.

²⁶ Preliminary Determination at 6-7.

shares are ***.²⁷ Moreover, the Commission determined that the record did not contain any additional information illustrating direct or indirect control by the importer over the company.²⁸

In the final phase of the investigation the parties have presented no new arguments and little new evidence which would call into question the Commission's preliminary findings on these points.²⁹ We therefore find that appropriate circumstances do not exist to exclude any domestic producer from the domestic industry.

III. CONDITIONS OF COMPETITION

We consider several conditions of competition to be relevant to our analysis in this investigation. Purchasers require TCCSS for the manufacture of metal containers. While these containers are used primarily in food processing, other significant uses include the manufacture of aerosol cans, oil filters, snuff containers, bottle tops, paint containers, pails, furniture, toys, household utilities, computer applications, and bake ware.³⁰ Most purchasers indicated that there has been no change in demand since 1997, and the record indicates that U.S. demand for TCCSS has been relatively stable for many years.³¹ Producers and importers also reported "flat" demand, but noted the effects of a poor harvest in 1998.³² Responding purchasers, however, indicated that there was very little or no effect of the agricultural cycle on demand.³³

All domestic producers and a majority of importers and purchasers reported that TCCSS products are used interchangeably.³⁴ The majority of importers and purchasers noted the higher quality and consistency, as well as the lower overall prices, of Japanese TCCSS and some niche products,³⁵ but purchasers also cited domestic producers' superiority to Japanese producers in terms of both availability and delivery time.³⁶

The record indicates that non-price factors such as product quality, product consistency, and on time delivery are very important in choosing suppliers. However, the record also reflects that during annual contract negotiations, price is a critical factor. The market is therefore characterized by a high degree of price sensitivity. TCCSS supply contracts are negotiated annually and establish both price and

²⁷ Preliminary Determination at 7.

²⁸ Preliminary Determination at 7.

²⁹ But see, *** Memorandum of January 8, 1999 (negotiations with *** Director, Procurement & Transportation, ***): In negotiations with ***, the company ***."

³⁰ CR at I-7, II-1, PR at I-6, II-1.

³¹ CR at II-3-4, PR at II-2.

³² CR at II-3, PR at II-2.

³³ CR at II-3, PR at II-2. We note that changes in the apparent U.S. consumption of TCCSS have tended to be moderate, decreasing by 5.1 percent between 1997 and 1998 and then increasing between 1998 and 1999 by 3.2 percent. Overall, apparent consumption declined from *** short tons in 1997 to *** short tons in 1999. Apparent U.S. consumption in the first quarter of 2000 (*** short tons) was nearly identical to the level in the first quarter of 1999 (*** short tons). CR and PR at Table IV-3. The relative stability of apparent U.S. consumption of TCCSS in the United States over the period examined in this investigation reflects a lack of symmetry between fluctuations in the agricultural cycle and demand for TCCSS.

³⁴ CR at II-6, PR at II-4.

³⁵ CR and PR at Table II-5.

³⁶ CR and PR at Table II-5.

target quantities for the coming year.³⁷ In negotiating prices, the domestic producers first establish a base-level price, based on an industry price list ***, and then offer the buyers percentage discount rates from the list price. The domestic producers generally announce increases in the list price in October.³⁸ During the negotiation process, the sellers (i.e., the domestic producers and importers) and purchasers reach agreement on the applicable percentage discount to be deducted from the list price. Hence, the final pricing formula is based on the current list price minus the discount agreed to by the seller and the purchaser.³⁹ In most years, producers increase the list price.⁴⁰ However, no increase in the list price was announced for 1999.⁴¹

The TCCSS market is characterized by a relatively small number of sellers and buyers. Specifically, there are seven domestic producers, approximately two dozen importers, and some 22 purchasers. Most of the concentration in the purchasing segment occurred over the last decade, and by 1999 six purchasers accounted for 75 percent of all TCCSS purchases. While the degree of purchaser consolidation increased somewhat between 1997 and 1999, most of this consolidation took place prior to the Commission's period of investigation.⁴²

Another characteristic of the purchaser - seller relationship in this market is the location of four can manufacturers with facilities on Weirton's property. These purchasers have leasing agreements with *** which require the purchasers to satisfy *** percent of their TCCSS requirements through ***.⁴³ Because these particular can-making operations represent *** of apparent U.S. consumption, we find that these supply arrangements provide, at most, limited insulation to *** from import competition, and no insulation whatsoever to the remainder of the industry.⁴⁴

The market for TCCSS is a national market. While most domestic producers are located in the East and Midwest and many tend to ship much of their production to destinations near their plants, one U.S. producer, USS Posco, is located on the West Coast, and another, ***, ships nearly half of its volume to purchasers located on the West Coast.⁴⁵ With one exception, ***, all domestic producers sell to purchasers on the West Coast, notwithstanding the fact that generally they must absorb the cost of transporting their shipments to these purchasers.⁴⁶ Moreover, Japanese merchandise also competes throughout the United States.⁴⁷ Indeed, only nonsubject imports do not compete throughout the United States, as significant head-to-head competition in the West is limited to U.S. and Japanese TCCSS.⁴⁸

Finally, nonsubject imports (primarily from Europe, Canada, Mexico, and Asia) are a significant competitive factor in the market. However, while nonsubject imports accounted for a somewhat greater

³⁷ CR at V-4, PR at V-3.

³⁸ Hearing Tr. at 118.

³⁹ Hearing Tr. at 118-119.

⁴⁰ CR at V-4, PR at V-3.

⁴¹ CR at V-4, PR at V-3.

⁴² Petitioners' Posthearing Br. at A-14 - A-18. This issue is discussed in greater detail infra.

⁴³ CR at V-5, PR at V-4.

⁴⁴ We note that *** lessees do not comply with this purchase requirement, and purchase additional volumes, including Japanese TCCSS. CR at V-5, PR at V-4; *** Memorandum to file of October 2, 1998.

⁴⁵ CR at III-2, footnote 2, PR at III-2, footnote 2.

⁴⁶ CR at II-1 and V-1, PR at II-1 and V-1. Freight equalization requires a producer to charge its customers the equivalent shipping expenses of the nearest producer in that region, forcing producers to absorb the excess freight costs. We note that, both the western and non-western markets display similar downward price trends, similar conditions of competition, and adverse effects from the subject imports.

⁴⁷ CR at II-12 - II-13, PR at II-7.

⁴⁸ See e.g., Respondents Posthearing Br. Vol II, Exhibit 1.

proportion of total U.S. market share than subject imports during most of the period of investigation,⁴⁹ subject imports' total market share increased at a substantially greater rate than nonsubject imports.⁵⁰ Moreover, by the end of the period of investigation, subject imports' total market share had surpassed that of all other imports combined.

IV. MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

In the final phase of an antidumping duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.⁵¹ In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵² The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁵³ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵⁴ 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."⁵⁵

A. Volume of the Subject Imports

Section 771(7)(C)(I) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁵⁶

The volume of subject imports grew rapidly over the period of investigation. In absolute terms, the quantity of imports of the subject merchandise from Japan was 181,287 short tons in 1997; 245,872 short tons in 1998; 336,961 short tons in 1999; and 98,854 short tons in the first quarter of 2000.⁵⁷ The quantity of imports of subject merchandise increased by 35.6 percent between 1997 and 1998; by 37.0 percent between 1998 and 1999; and was 8.1 percent higher in the first quarter of 2000 than in the first

⁴⁹ CR and PR at Table IV-4. Nonsubject imports' market share increased from *** percent in 1997 to *** percent by 1999. See *id.* Subject imports' market share increased from *** percent in 1997 to *** percent by 1999. See *id.*

⁵⁰ CR and PR at Table IV-4.

⁵¹ 19 U.S.C. § 1673d(b).

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

⁵³ 19 U.S.C. § 1677(7)(A).

⁵⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁶ 19 U.S.C. § 1677(7)(C)(i).

⁵⁷ Table IV-2, CR at IV-3, PR at IV-3. Similarly, the value of imports of the subject merchandise from Japan was \$115.6 million in 1997; \$150.8 million in 1998; \$195.8 million in 1999; and \$56.4 million in the first quarter of 2000. *Id.*

quarter of 1999.⁵⁸ Thus the quantity of subject imports increased in absolute terms by 85.9 percent between 1997 and 1999, and continued to increase rapidly through the first quarter of 2000.

These significant increases in the volume of subject imports occurred during a period of declining domestic consumption of TCCSS, as noted above. Thus, the market shares of subject imports increased significantly. Relative to consumption of TCCSS in the United States, the quantity of imports of the subject merchandise from Japan was *** percent in 1997; *** percent in 1998; *** percent in 1999; and *** percent in the first quarter of 2000.⁵⁹ ⁶⁰ Relative to consumption of TCCSS in the United States, the quantity of imports of the subject merchandise from Japan increased by *** percentage points between 1997 and 1998; by *** percentage points between 1998 and 1999; and was *** percentage points higher in the first quarter of 2000 than in the first quarter of 1999.⁶¹ Thus, the quantity of subject imports, relative to consumption of TCCSS in the United States increased by *** percentage points between 1997 and 1999, and continued to increase rapidly through the first quarter of 2000.⁶²

We thus find the volume of subject imports and the increase in the volume of subject imports both absolutely and relative to domestic consumption, to be significant.

We are not persuaded by Respondents' argument that the volume and rate of increase in the volume of subject imports is insignificant because half of the subject imports are sold on the West Coast. On the contrary, we find that imports from Japan to the West Coast did not attenuate subject imports' negative impact on the domestic industry as a whole. As stated above, the market for TCCSS is a national one. U.S. producers, although mainly located in the East and the Midwest, compete throughout the United States.⁶³ Also, subject imports increased over the period of investigation not only in the West Coast but also in the remainder of the United States. At the same time, domestic shipments also declined both on the West Coast and elsewhere.⁶⁴ Finally, we note that the only U.S. producer located on the West Coast, USS-Posco, experienced declines in shipments, price, and financial performance similar to those declines experienced by other domestic producers over the same period.⁶⁵

⁵⁸ Table IV-2, CR at IV-3. Similarly, the value of imports of the subject merchandise from Japan increased by 30.4 percent between 1997 and 1998; by 29.9 percent between 1998 and 1999; and was 5.1 percent higher in the first quarter of 2000 than in the first quarter of 1999. Id.

⁵⁹ Table IV-4, CR at IV-5, PR at IV-5. Similarly, on a value basis, subject merchandise from Japan held *** percent of the U.S. market in 1997; *** percent in 1998; *** percent in 1999; and *** percent in the first quarter of 2000. Id.

⁶⁰ Because the U.S. industry's production includes a significant volume of export shipments (see Table III-3, CR at III-7, PR at III-5), we find that a comparison of the volume of subject imports to apparent U.S. consumption reflects the nature and extent of competition in the United States more fully than a comparison of the volume of subject imports to production in the United States.

⁶¹ CR and PR Table IV-4. Similarly, on a value basis, the market share held by imports of the subject merchandise from Japan increased by *** percentage points between 1997 and 1998; by *** percentage points between 1998 and 1999; and was *** percentage points higher in the first quarter of 2000 than in the first quarter of 1999. Id.

⁶² We note that a portion of nonsubject imports entered a free trade zone and were subsequently exported. To the extent that such shipments never entered the customs area of the United States as imports for consumption, nonsubject import volume is inflated. See questionnaire response of ***.

⁶³ CR at III-2, footnote 2, PR at III-2, footnote 2.

⁶⁴ Investigations Memorandum INV-X-144, Table IV-2a.

⁶⁵ CR and PR Table VI-3. USS-Posco's operating income declined from *** million in 1997 to *** million in 1999.

B.

Price Effects of the Subject Imports

Section 771 (C) (ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether there has been significant price underselling by the imported merchandise as compared with the price of the domestic like product, and whether 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.⁶⁶

As noted earlier, the U.S. market for TCCSS is price sensitive. The domestic TCCSS market is concentrated, with a small number of sellers and a relatively small number of purchasers. Price, in the form of discount rates, is negotiated intensely, often down to the hundredths of one percent.⁶⁷ Therefore, because of the critical nature of the annual pricing negotiations between a small number of buyers and sellers, the Commission gathered comprehensive data on list prices and discount rates as well as detailed information on the bidding process, including data on opening and final bids.

The evidence shows a clear trend of generally declining prices paid by purchasers over the period of investigation.⁶⁸ Even though the list price increased slightly in 1997 and 1998, discount rates increased significantly in both years resulting in a net decline in prices.⁶⁹ In 1999, this trend was magnified by the fact that domestic producers were not able to increase the list price while discount rates continued to increase.

Coinciding with this declining trend in pricing, the frequency and the magnitude of underselling by subject merchandise increased dramatically over the period of investigation.⁷⁰ In 1997, four Japanese bids out of thirteen undersold the domestic producers' bids. In 1998, seven out of sixteen bids undersold domestic bids. By 1999 that number had risen to 21 out of 25 bids.⁷¹ Compounding this trend was the significant increase in the magnitude of the underselling. In 1997 Japanese bids were generally not underselling domestic bids. In 1998 Japanese bids undersold domestic bids by 0.70 percent on average and

⁶⁶ 19 U.S.C. § 1677(7)(C)(ii).

⁶⁷ See, e.g., Letter from *** to *** (February 19, 2000), summarizing agreement on discount rates of *** percent and *** percent from 1999 and 2000 list prices, respectively. Petitioners' Posthearing Br. at Exhibit 27; Internal *** Memorandum (from ***, dated August 6, 1998), summarizing *** proposal to increase the discount rate from *** percent to *** percent. Respondents' Posthearing Br. at Vol. IV; Internal *** Memorandum (from ***, dated May 18, 1998), contrasting *** discount rate of *** percent with other suppliers' discount rates of *** and higher and stating that *** Respondents' Posthearing Br. at Vol. IV.

⁶⁸ Major purchasers (***) reported data in terms of discounts. For each of these companies, discounts from all sources of supply (domestic, Japan, and others) increased for each period examined. However, increases in the list prices at least partially offset rising discounts in 1998 and 2000. For companies reporting in terms of bid prices, domestic prices were mixed between 1997 and 1998 (up for ***, mixed for ***, down for ***) but down across the board (except for ***) in 1999. More limited information regarding 2000 was mixed. Japanese price movements were mixed between 1997 and 1998 (down for ***, stable for ***, and mixed for ***) but down across the board (except for ***) in 1999. Except for sales to ***, Japanese prices appear to have firmed in 2000, following the filing of the petition. CR and PR Tables V-1 through V-13.

⁶⁹ Product mix issues may lessen the utility of average unit values as a consistent proxy for market prices. We note, however, that reported purchaser prices are broadly consistent with the trends in average unit values. The average unit values of U.S. shipments fell by 1.1 percent between 1997 and 1998, while those of subject imports fell by 3.9 percent. Between 1998 and 1999, the average unit values of U.S. shipments fell by 3.6 percent, while those of subject imports fell by an additional 6.8 percent. In the first quarter of 2000, the average unit values of U.S. shipments increased by 0.1 percent, while those of the subject imports decreased by 2.2 percent. CR and PR Table C-1.

⁷⁰ CR and PR at V-1 through V-13.

⁷¹ In interim 2000, thirteen out of eighteen Japanese bids undersold domestic bids. CR at V-22, PR at V-8

by 1999, when subject import volume was greatest, the magnitude of underselling had risen to 5.77 percent on average.⁷²

Given the recognized quality and substitutability of Japanese TCCSS and the very price sensitive nature of the TCCSS market, we find this aggressive pricing of the Japanese TCCSS to be significant. Indeed, the record reflects that the aggressive pricing by importers of Japanese TCCSS has been used by at least some purchasers in their price negotiations with the domestic suppliers, and Japanese supply is recognized as an important factor affecting U.S. prices. See for example:

- Internal *** Memorandum (from ***, dated February 9, 1998), summarizing ***'s price negotiations with *** and stating that: "**** A separate internal *** Memorandum (from ***, dated February 9, 1998), summarizes the same meeting and states that ***. See Respondents Posthearing Br. Vol. IV, "Customer A."
- Internal *** (from ***, dated September 4, 1998), summarizing tin mill product supply for 1999 and stating that: ***. See Respondents Posthearing Br. Vol. IV, "Customer C."
- Internal *** Memorandum (from ***, dated February 14, 2000), evaluating current tin mill product pricing and stating that: ***. See Respondents Posthearing Br. Vol. IV, "Customer C."
- Internal *** Memorandum (from ***, dated January 24, 2000), evaluating negotiating strategies with domestic and foreign mills for ***, ***. See Respondents Posthearing Br. Vol. IV, "Customer C."

Moreover, *** provided credible testimony that the much greater availability of low-priced imports from Japan depressed prices in 1999. ***, stated that the company did not attempt a price increase for 1999 shipments because of the availability of low-priced Japanese TCCSS.⁷³

The adverse effect of subject imports is also reflected in, among other things, confirmed lost revenues allegations made by ***. Four purchasers confirmed that *** either had been forced to reduce its price to these purchasers because of lower prices by sellers of Japanese TCCSS or had lost a sale outright.⁷⁴

⁷² CR and PR Table V-16.

⁷³ We find the *** affidavit credible because the statements made therein about the intentions of two major purchasers to increase their purchases of Japanese TCCSS due to its low price is borne out by the purchasing history of these two companies. Specifically, in 1999, *** increased its purchases of Japanese TCCSS by *** short tons in (while reducing its purchases from domestic suppliers by *** short tons). CR and PR Table II-1.

⁷⁴ With respect to the three largest unconfirmed lost sales, we note the following:

*** alleged that it lost *** short tons of sales to *** in 1999. *** contends that ***'s correspondence did
(continued...)

Respondents make much of the fact that the four purchasers that participated in the Commission's hearing claim that imports from Japan have no effect on TCCSS prices. These purchasers asserted repeatedly that the negotiations with foreign suppliers, including Japanese, take place only after the negotiations with the domestic producers are completed.⁷⁵ Even if the negotiations were conducted sequentially (i.e., with domestic supply negotiations completed in the autumn and winter and import supply negotiations completed in the spring), the purchasers would know and be able to use the subject import supply prices in the next round of domestic supply negotiations. More importantly, we find the purchasers' testimony on this issue not to be credible because it is not supported by the record evidence. The record shows that negotiations with importers often take place simultaneously with domestic supply negotiations. See for example:

- Supplemental Questionnaire Response of *** (July 10, 2000), stating that ***
- Supplemental Questionnaire Response of *** (July 6, 2000), ***
- Supplemental Questionnaire Response of *** (July 25, 2000), attaching various documents, including: (1) an internal *** memorandum (from ***, dated October 18, 1999), ***, (2) internal *** memorandum (from ***, dated August 10, 1999), ***, and (3) internal *** memorandum (from ***,

⁷⁴ (...continued)

not constitute a bid (although the company purchased a significant volume from *** in 1999). ***'s purchases of TCCSS from Japan increased from *** short tons in 1998 to *** short tons in 1999.

*** alleged that it lost *** short tons of sales to *** in 1999. *** contends that any domestic producer that lost a bid in 1998 did so to another domestic producer. ***'s purchases of TCCSS from domestic sources fell from *** short tons in 1998 to *** short tons in 1999, and its purchases of TCCSS from Japan increased from *** short tons in 1998 to *** short tons in 1999.

*** alleged that it lost *** short tons of sales to *** in 1999. *** contends that it did not purchase chromium-coated steel sheet from Japan in 1998 and 1999. ***'s purchases of tin-plated steel sheet from Japan increased from *** in 1998 to *** short tons in 1999. Compare CR at V-23-25 with CR at II-7-8.

As we discuss in greater detail below, the evidence of lost revenue and sales undermined the credibility of purchaser testimony and Respondents' argument that Japanese and domestic suppliers do not compete for the same business.

We take note that Respondents dispute these allegations and take this into account in our evaluation.

⁷⁵ For instance, Mr. Yurko of U.S. Can stated at the Commission's Preliminary Conference that: "From our perspective as a purchaser, our domestic suppliers and our foreign suppliers compete in separate arenas in the market," adding that "the foreign suppliers compete with the foreign suppliers" and "the domestic suppliers compete with domestic suppliers." Conf. Tr. at 93. He reiterated this argument at the Commission's Hearing claiming that "first, domestic suppliers compete against each other. Only after this is completed do foreign suppliers compete against each other. The two processes are basically different." Hearing Tr. at 194 (Yurko); See also, Testimony of Mr. Rourke of Bway ("so there's a traditional experience to want to get the domestic mills' understanding of what pricing is going to go to in a given year, and then a lot of times the foreign guys will follow suit." Hearing Tr. at 207; *** Questionnaire Response (May 16, 2000) ("We then negotiate with each group of suppliers separately – Typically, we negotiate with the domestic mills first and then the foreign mills.").

dated July 16, 1999), reporting that *** The July 16 memorandum also indicates that ***.⁷⁶

- Internal *** Memorandum (from ***, dated September 27, 1999), reporting on ***'s negotiations with *** for 2000 shipments and also referencing ***'s negotiations with ***, and others. Respondents. See Respondents Posthearing Br. Vol. IV, "Customer C."
- Letter from *** to *** (dated December 8, 1998), providing ***'s "revised proposal for 1999 ex-***" shipments. APO document 200007255024 Correspondence Filed by *** to Commission staff member.
- Letter from *** (dated November 9, 1998), *** See Respondents Posthearing Br. Vol. IV, "Customer C."
- *** Memorandum (dated October 5, 1998), reporting that *** had submitted a proposal to *** and indicating that *** the next week. See Respondents Posthearing Br. Vol. III, "Trading Company A."
- Internal *** Memorandum (from ***, dated February 9, 1998), *** and indicating that *** had informed *** of the ***. See Respondents Posthearing Br. Vol. IV, "Customer A."
- Letter from *** to *** (dated November 20, 1997), *** See Respondents Posthearing Br. Vol. III, "Trading Company A."
- *** Memorandum (dated November 12, 1997), reporting that *** (representing ***) had made a proposal to *** for 1998 shipments. See Respondents Posthearing Br. Vol. III, "Trading Company A."

Therefore, given the substitutability of the Japanese product, the intensity with which price terms are negotiated, the significant underselling by Japanese suppliers, and the fact that the purchasers often negotiate simultaneously with domestic and Japanese suppliers, we do not accept the notion that the sharply increasing volume of imports from Japan is not having significant adverse price effects.

⁷⁶ Thus, these documents show that *** had entered its supply contracts with Japanese suppliers for year 2000 shipments in July 1999, well before the start of the autumn negotiation process. These documents flatly contradict Mr. Owen's testimony at the Commission's hearing in which he stated that "once you settle with the domestics the foreign guys say what did the domestics settle out at..." Tr. at 232.

Respondents alleged that declining domestic prices during the period of investigation were a direct result of rapid purchaser consolidation and not of underselling from subject merchandise. We are not persuaded by this argument, however. As noted earlier, with only seven domestic producers, there is a similar degree of concentration between the major U.S. purchasers and the domestic producers. Moreover, the most significant buyer consolidation occurred between 1990 and 1996, when the percent of total purchases accounted for by the top six purchasers increased from *** percent to *** percent.⁷⁷ The consolidation that occurred in those years did not substantially affect domestic prices. Weirton demonstrated that its weighted average price remained within a narrow range of between *** and *** per net ton from 1990 and 1996.^{78 79} The only large-scale acquisition during the period of investigation was *** purchase of *** in 1998. This acquisition accounted for *** short tons in a total market of *** short tons in 1998.⁸⁰ The overall quantity of TCCSS consumed by just the top 6 purchasers ***. Thus, we find the effect that purchaser consolidation had on domestic price declines during the period of investigation was slight.

The Respondents also claim that there is no contemporaneous documentation linking Japanese prices to domestic prices.⁸¹ In fact, however, there are documents indicating the significant price effects of imports from Japan, as discussed above.⁸² Moreover, given the selective presentation of documents, we are unable to draw any firm conclusions from the relative dearth of specific references to the price effects of imports from Japan. We find it significant, in this regard, that the purchasers failed to provide any documentation regarding their contract negotiations with importers of Japanese product even though they were asked to do so. Lastly, we note that during contract negotiations purchasers typically do not disclose to their suppliers the identity of competing suppliers.⁸³ It is therefore not surprising that Japanese suppliers are not routinely identified in ***'s documents.

Respondents concede that imports from nonsubject countries were a “dominant force” in the market, but attribute no such significance to subject merchandise.⁸⁴ Although nonsubject imports were a significant factor in the domestic market during the period of investigation, subject imports grew more rapidly and were generally priced more aggressively.⁸⁵ By 1999, the volume of imports from Japan alone nearly equaled the volume of imports from all other sources combined. High quality subject imports frequently undersold high quality nonsubject imports and even undersold lesser quality nonsubjects as

⁷⁷ Respondents Prehearing Br. at 10-11; Petitioner Posthearing Br. at A-18.

⁷⁸ Petitioner Posthearing Br. at A-18 and Exhibit 13.

⁷⁹ Respondents Prehearing Br. at 11. Between 1997 and 1998 purchaser concentration rose slightly from *** to *** percent but then dipped between 1998 and 1999 to *** percent.

⁸⁰ Petitioner Posthearing Br. at A-14.

⁸¹ Respondents Final Comments at 2.

⁸² We note that *** annual supply contract with *** contains a provision indicating that *** prices are expected to be competitive with other domestically produced tin mill products of comparable quality and quantities. See *** Questionnaire Response at Attachment III (May 11, 2000). The fact that a company may undertake to match other domestic suppliers does not mean that imports from Japan are having no adverse price effects in the U.S. market.

⁸³ Both Petitioners and purchasers alike agree that in the bargaining process, the identity of other suppliers are kept strictly confidential. See e.g., Hearing Tr. at 150-151 (Weirton executive stating “I only know that competitors are quoting different types of prices. I don’t know specifically who’s doing it, so consequently, I could not identify that it was a specific Japanese product. . .;” See also, Declaration of *** of ***, filed Nov. 23, 1999; Internal *** Memorandum from ***, dated October 11, 1999, showing that *** stipulated to *** in its 1999-2000 negotiations that ***, Internal *** Memorandum from ***, dated May 18, 1998.

⁸⁴ Respondents Final Comments at 11.

⁸⁵ CR and PR Tables V-1 through V-13.

well.⁸⁶ Therefore, because subject imports' market share is comparable to the nonsubject imports' market share, and because in recent years subject imports generally undersold nonsubject imports, we find that subject imports have a significant adverse effect on domestic prices distinct from any adverse price effects of nonsubject imports.

Based on the foregoing considerations and the other evidence on the administrative record, we find that there has been significant price underselling by subject merchandise, and that significant volumes of subject imports have depressed prices and prevented increases in prices that would otherwise have occurred to a significant degree.

C. Impact of Subject Imports on the Domestic Industry

Section 771(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."⁸⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."⁸⁸ ⁸⁹ For the reasons discussed below, we conclude that the significant volume of subject imports at declining prices, and their frequent underselling of the domestic like product, have adversely affected the domestic TCCSS industry.

The domestic industry's output, or production, declined from 3,728,441 short tons in 1997 to 3,433,592 short tons in 1999, a net decline of 7.9 percent.⁹⁰ Capacity utilization fell from 76.8 percent in 1997 to 74.5 percent in 1999.⁹¹ The number of production workers producing TCCSS fell from 6,922 in 1997 to 6,004 in 1999 and to 5,677 in the first quarter of 2000. Hours worked exhibited a similar trend, decreasing by 13.0 percent between 1997 and 1999 and by 2.6 percent between the first quarter of 1999 and the first quarter of 2000.⁹²

⁸⁶ Compare CR and PR Tables V-1 through V-13, with CR and PR Table II-6. A summary of these data indicates that TCCSS from Canada, Germany, and the Netherlands (countries that, like Japan, are sources of high quality TCCSS) were priced higher than TCCSS from Japan in five of seven comparisons. In 1997-98, imports from Japan generally oversold imports from other nonsubject countries (those whose principal sales advantages are favorable prices and/or discounts), but in 1999-2000, imports from Japan matched or undersold imports from these countries in half of the comparisons. See Staff Document of July 31, 2000.

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

⁸⁸ 19 U.S.C. § 1677(7)(C)(iii).

⁸⁹ The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final antidumping duty margins are 95.29 percent and an all others rate of 32.52 percent. Final Determination, 65 Fed. Reg 39364 (June 26, 2000).

⁹⁰ Table III-2, CR at III-6, PR at III-4. We note that the generally-stable levels of production in 1999 and the first quarter of 2000 reflect a significant increase in exports by the domestic industry, rather than U.S. shipments.

⁹¹ Table III-2, CR at III-6, PR at III-4.

⁹² Table III-2, CR at III-6, PR at III-4. Wages paid fell during 1997-99, as declining hours worked overwhelmed
(continued...)

As discussed previously, the share of the U.S. market held by the domestic industry declined from *** percent in 1997 to *** percent in 1999, and was *** percent in the first quarter of 2000. The significant increase in the volume of subject imports from Japan displaced a substantial volume of U.S. shipments, and accounted for the largest portion of the domestic industry's reduced market share. U.S. shipments decreased markedly over the period examined in this investigation, declining from 3,554,766 short tons in 1997 to 3,227,134 short tons in 1999 (a net decrease of 9.2 percent) and continuing to fall in the first quarter of 2000.⁹³ Moreover, the value of U.S. shipments decreased even more markedly, reflecting the dual impact of decreasing volume and falling average unit values.⁹⁴ Despite sustained export sales volumes, net sales exhibited a depressed trend, due to declining sales in the United States.

As the domestic industry suffered declining sales volume, sales prices, and market share, its financial performance deteriorated between 1997 and 1999, with the worst results occurring the 1999, when annual subject import volume was at its peak.⁹⁵ The domestic industry's operating losses widened from \$21 million in 1997 to \$64 million in 1998 and to \$132 million in 1999. On average, domestic producers lost \$6 per ton sold in 1997, \$18 in 1998, and \$38 in 1999. Operating losses as a ratio to net sales soared from 0.9 percent in 1997 to 3.0 percent in 1998 and to 6.5 percent in 1999. In the first quarter of 2000, the domestic industry's operating losses narrowed to \$12 per ton sold (1.9 percent on net sales); this improvement, however, reflected a marked decline in unit costs, rather than an increase in unit sales values. Similarly, the domestic industry's cash flow sank from \$54 million in 1997 to \$33 million in 1998, and to a cash outflow of \$46 million in 1999.⁹⁶

Finally, the domestic industry's capital expenditures fluctuated over the period examined, declining between 1997 and 1998; increasing between 1998 and 1999; and declining in the first quarter of 2000. The domestic industry's research and development expenditures also fluctuated over the period examined, declining between 1997 and 1998; increasing between 1998 and 1999; and declining in the first quarter of 2000.⁹⁷

Respondents claimed that the majority of the increase in the volume of imports from Japan (147,000 tons total over the period of investigation) was by a few large customers due to non-price reasons. Respondents cite to purchasers' testimony and documents that raise delivery and quality issues of domestic suppliers. While it is true that some domestic producers' on-time performance was poor during the period of investigation,⁹⁸ we are not persuaded by respondents' inconsistent and contradictory testimony that purchasers turned to Japanese sourcing solely because of non-price reasons.

For instance, U.S. Can claimed that it began shifting more business to Japanese suppliers because of their willingness to supply its increasingly global operations, and the shift accelerated in 1999 due to domestic suppliers' poor performance.⁹⁹ U.S. Can accounted ***, increasing its purchases of Japanese TCCSS by ***, representing roughly *** of the total increase in subject imports. Thomas Yurco of U.S.

⁹² (...continued)

the effects of generally stable wages rates (\$24.89 per hour in 1997; \$25.37 in 1998; and \$25.89 in 1999). Wage rates increased in the first quarter of 2000 to \$26.01 per hour. Productivity increased moderately over the period examined, contributing to a slight decrease in unit labor costs. *Id.*

⁹³ Table III-3, CR at III-7, PR at III-5.

⁹⁴ Table III-3, CR at III-7, PR at III-5. The average unit value of the domestic industry's U.S. shipments fell throughout 1997-99, and did not stabilize until the first quarter of 2000. *Id.*

⁹⁵ CR at VI-1, PR at VI-1.

⁹⁶ Tables VI-1 and VI-2.

⁹⁷ Table VI-5.

⁹⁸ *** Memorandum to ITC dated November 22, 1999. ***. See also, Memorandum from *** to File dated January 6, 1998. See Respondents Posthearing Br. Vol. IV, "Customer A."

⁹⁹ Conf. Tr. at 95; see also, internal *** memorandum from ***, dated February 2000.

Can testified at the Commission's Preliminary Conference that his company had reduced volume purchased from Weirton because of delivery problems and had switched that volume to other domestic suppliers, rather than to imports from Japan or other nonsubject country sources. However, U.S. Can's purchasing history shows that in 1999 the company reduced its purchases from domestic producers by approximately *** short tons while it increased its purchases of Japanese TCCSS by approximately *** short tons. Its purchases of nonsubject TCCSS did not increase in 1999. Thus, contrary to the statements in the *** internal memorandum cited above (and contrary to the representations made by *** to *** officials), other U.S. producers – specifically *** – were not beneficiaries of Weirton's alleged delivery problems in 1999.¹⁰⁰

Therefore, we find that subject imports are having a significant adverse impact on the domestic industry. As noted above, subject imports have taken substantial volume and market share from the domestic producers, which resulted in a significant reduction in industry revenues and employment. Moreover, we are persuaded that the much greater availability of this substitutable product at low prices has depressed and suppressed domestic prices to a significant degree. Accordingly, we find that the record of this investigation indicates that the subject imports have had a significant impact on the domestic industry's condition.

CONCLUSION

For the reasons stated above, we determine that an industry in the United States is materially injured by reason of imports of tin- and chromium-coated steel sheet from Japan that are sold in the United States at less than fair value.

¹⁰⁰ We note that *** was the only U.S. producer to increase its U.S. shipments between 1997 and 1999, other than a one-percent increase by ***. Even between 1998 and 1999, when apparent U.S. consumption increased, only *** were able to increase their U.S. shipments. Questionnaire Responses of U.S. producers. Mr. Yurco also testified that U.S. mills are not willing to compete for their European business. However, Weirton exports to five countries in Europe, including Germany, the United Kingdom and Italy, where U.S. Can facilities are located, and Weirton's exports to Europe in 1999 exceeded the combined tonnage of all Japanese producers. Petitioners Posthearing Br. At 36.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in these investigations, I determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of tin- and chromium-coated steel sheet (“tin mill products”) from Japan. I discuss the reasons for my determination below. Because I concur with the Commission majority’s findings concerning the domestic like product and domestic industry, I join their opinion with respect to those issues.

I. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF TIN MILL PRODUCTS FROM JAPAN

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.¹⁰¹ In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁰² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁰³ In assessing whether the domestic industry is materially injured by reason of subject imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.¹⁰⁴ 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.”¹⁰⁵

A. Conditions of Competition

The U.S. market for tin mill products is characterized by the following conditions of competition: First, tin mill products are primarily used in the production of cans and containers for the food processing industry; a smaller portion is used in the production of non-food containers, such as paint cans, aerosol cans and oil filters.¹⁰⁶ Accordingly, demand for tin mill products in the U.S. market is predominantly derived from demand for cans used in the food processing industry.¹⁰⁷ As a result of this linkage to demand in the food processing industry, demand for tin mill products is also indirectly dependent on the size of the U.S. food and vegetable crop¹⁰⁸ and fluctuations in the supply of agricultural products can have a significant effect on demand for tin mill products. Nonetheless, most purchasers reported that

¹⁰¹ 19 U.S.C. § 1673d(b).

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

¹⁰³ 19 U.S.C. § 1677(7)(A).

¹⁰⁴ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰⁵ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰⁶ CR at II-1, PR at II-1.

¹⁰⁷ CR at II-3, PR at II-2.

¹⁰⁸ CR at II-3, PR at II-2.

agricultural production in the United States had little or no impact on demand for cans and tin mill products during the period of investigation.¹⁰⁹

Demand for tin mill products in the United States has fluctuated somewhat throughout the period of investigation but has generally remained stable. Apparent U.S. consumption of tin mill products declined somewhat between 1997 and 1998, decreasing from *** million short tons in 1997 to *** million short tons in 1998. U.S. consumption then grew somewhat between 1998 and 1999, increasing to *** million short tons in that year.¹¹⁰ Consumption has remained essentially flat between interim 1999 and 2000, staying at the *** thousand short ton level during the first quarter of each year.¹¹¹

Second, the domestic industry consists of seven producers, six of whom are integrated steel producers that produce the flat-rolled material used as the raw material input for their tin mill production process. Each of the integrated firms produces a relatively similar share of domestic production; during 1999, for example, all six integrated firms had a share of domestic production that was in the *** to *** percent range. Only one domestic producer, Ohio Coatings, is not an integrated producer; that company coats flat-rolled steel purchased from other steel producers, including its parents, Wheeling Pittsburgh and the Korean producer Dongyang.¹¹² Ohio Coatings entered the tin mill market as a start-up operation in January 1997 and has accounted for an increasing share of domestic production during the period of investigation.¹¹³ The record indicates that Ohio Coatings has a ***.¹¹⁴

Third, purchasers of tin mill products have become significantly more concentrated during the past decade. In 1990, according to petitioners, the six largest purchasers accounted for only *** percent of tin mill consumption.¹¹⁵ In 1999, however, the six largest tin mill purchasers accounted for nearly three-quarters of apparent domestic consumption of tin- and chromium-coated steel sheet.¹¹⁶ The significant consolidation and increasing concentration of purchasers has continued during the period of investigation, with several of the largest tin mill purchasers acquiring smaller purchasers or joining purchasing alliances.¹¹⁷ As a result, the six largest tin mill purchasers have gained significant market power in the tin mill market and have used this market power to obtain lower prices from their suppliers.¹¹⁸ In fact, an official at Weirton explicitly recognized the impact of consolidation on lowering prices during the course of this proceeding, informing Commission staff that the result of purchaser consolidation in the industry was a greatly diminished power on the part of the suppliers to negotiate and a general decrease in market prices.¹¹⁹

¹⁰⁹ CR at II-3, PR at II-2.

¹¹⁰ CR and PR at Table IV-4.

¹¹¹ CR and PR at Table IV-4.

¹¹² CR at VI-4, PR at VI-1, n. 2.

¹¹³ See CR and PR at Table VI-3. Ohio Coating's net sales quantities increased from *** thousand short tons in 1997 to *** thousand short tons in 1998 to *** thousand short tons in 1999. Their net sales quantities increased even further between interim 1999 and 2000, rising from *** thousand short tons in 1999 to ***. Ohio Coating accounted for *** percent of domestic production in 1999.

¹¹⁴ CR and PR at Table VI-3 & VI-10, n. 3. ***

¹¹⁵ CR at V-6, PR at V-4.

¹¹⁶ CR at V-6, PR at V-4.

¹¹⁷ CR at V-6-7, PR at V-4-5. For example, *** acquired the can-making plants of *** in ***, thus increasing its tin mill purchases by *** thousand tons. Similarly, *** entered into a buying alliance with ***, while *** acquired the *** plants of ***. Purchasers' Questionnaire Responses.

¹¹⁸ CR at V-7, PR at V-5.

¹¹⁹ Staff Report on Trip to Weirton, dated May 22, 2000, at 4.

Fourth, the large majority of tin- and chromium-coated steel sheet is sold in the United States pursuant to annual contracts that establish annual prices and target volume for annual purchases by a particular customer. Purchasers typically negotiate these contracts with both domestic producers and importers during the fourth quarter of each year for the following calendar year.¹²⁰ Although negotiations with domestic and foreign suppliers can and do often occur simultaneously, the record indicates that purchasers generally keep their domestic supplier negotiations separate from their foreign supply negotiations.¹²¹ For example, several purchasers specifically reported that they negotiate for their supply contracts with domestic producers first, then turn to Japanese and other producers after finalizing their domestic contracts.¹²² Moreover, the large volume of sales negotiation documents supplied by both the domestic industry and foreign suppliers in this case contain little evidence indicating that purchasers use subject import prices to drive down domestic prices during the course of their negotiations with domestic suppliers.¹²³

Fifth, the tin mill market in the United States is highly regionalized. Due to freight cost issues, domestic producers ship the large bulk of their production to purchasers located less than five hundred miles from the producers' facilities.¹²⁴ This regionalization of supply is most pronounced in the Western region of the United States, where two domestic suppliers, ***, account for nearly *** percent of domestic shipments in 1999.¹²⁵ The record indicates that the other five domestic suppliers ship only a small percentage of their tin mill production to the Western United States.¹²⁶ Moreover, the record indicates that nearly one-half of tin mill imports from Japan enter the Western market,¹²⁷ despite the fact that the Western market accounts for only a quarter of total U.S. consumption of tin mill products.¹²⁸

Sixth, reliability in meeting delivery schedules is the most important purchase factor for U.S. purchasers, apparently because tin mill purchasers are subject to contractual delivery requirements for their own customers.¹²⁹ Accordingly, tin mill purchasers place a premium on their suppliers' ability to respond quickly to changes in their needs. Since domestic producers are closer than foreign suppliers to domestic

¹²⁰ See, generally, Domestic Producer's Questionnaire Responses at Question IV-A-5(i).

¹²¹ CR at V-6, PR at V-4.

¹²² CR at V-6, PR at V-4. For example, *** reported that *** Similarly, *** stated that *** Finally, the procurement officer at *** reported that *** Purchaser Questionnaire Responses of *** at Question V-6; Purchaser Questionnaire Response of *** at 7.

¹²³ See generally Petitioners' Posthearing Brief at Ex. 27; Japanese Respondents Posthearing Brief at Volume III and IV.

¹²⁴ CR at III-2, PR at III-2. The domestic producers report shipping approximately *** percent of their shipments to purchasers located less than 101 miles from their facilities, approximately *** percent of their shipments to purchasers located between 101 and 300 miles from their facilities, and approximately *** percent of their shipments to purchasers located between 301 and 500 miles from their facilities. Producer Questionnaire Responses at Question IV-A-7(b).

¹²⁵ See also CR at III-2, n. 2, PR at III-2, n. 2.

¹²⁶ *Id.* The other producers report shipping between *** and *** percent of their shipments to the Western regions of the United States, which are defined as being west of the Rocky Mountains.

¹²⁷ CR and PR at Table IV-4-2a.

¹²⁸ The record indicates that, in 1999, there were 11.4 thousand short tons of imports of tin mill products from non-subject sources, 162 thousand short tons of imports from Japan, and *** thousand short tons of tin mill products shipped from domestic sources into the Western United States. Investigations Memorandum INV-X-144; CR at Table IV-2a. Thus, total apparent Western consumption was approximately *** thousand tons, which compares with a total U.S. consumption figure of *** million tons in 1999. CR and PR at Table IV-4; CR at Table IV-2a.

¹²⁹ CR at II-6, PR at II-4.

customers, they are better able to meet this need and are therefore able to command a price premium over subject and non-subject imported merchandise.¹³⁰ Domestic producers report that the lead times for their merchandise vary between 6 to 12 weeks while lead times for imports vary from 2.5 months to 7 months, with most importers reporting lead times of between 3 and 4.5 months.¹³¹ In fact, all responding purchasers reported that the domestic product was considered superior to the subject imports with respect to lead times.¹³² Although the domestic producers generally have a reputation for having better lead times than the subject imports, a number of purchasers reported that they experienced significant delivery delays for domestic product during 1998 and 1999.¹³³

Seventh, there is a limited level of substitutability between the domestic and subject merchandise. In addition to the fact that the domestic merchandise is unanimously rated as being superior to the subject merchandise in terms of delivery lead time and availability, purchasers also consistently rate the subject imports as superior to the domestic merchandise with respect to quality and product consistency.¹³⁴ Moreover, nine out of sixteen reporting purchasers stated that the subject and domestic product could not be used in the same applications.¹³⁵

Eighth, purchasers rate delivery time, availability, product consistency, product quality and reliability of supply as being the most important factors in the purchase decision.¹³⁶ This suggests that price is not normally the decisive factor with respect to a purchaser's choice of a vendor. In fact, purchasers rate price as only the seventh most important factor in the purchase decision, ranking it behind reliability of supply, delivery time, availability, consistency, quality and technical service and support.¹³⁷

Ninth, several major purchasers operate canning facilities on or near the grounds of Weirton's West Virginia mill. Four canning firms lease facilities at Weirton's Half Moon tin mill facility while one other purchaser operates a can production facility near the Half Moon plant. These five purchasers are subject to contracts requiring them purchase *** percent of their tin mill needs at these facilities from Weirton.¹³⁸ The contracts for these sales also provide that Weirton is obligated to ***.¹³⁹ Sales to these companies account for as much as *** percent of Weirton's tin mill plate production.

Finally, throughout the three full years of the period of investigation, nonsubject imports held a somewhat larger share of the market than the subject imports from Japan. The market share of the non-subject imports grew from *** percent in 1997 to *** percent in 1998 and then to *** percent in 1999.¹⁴⁰ The market share trends of the subject imports were similar during this period, increasing from *** percent in 1997 to *** percent in 1998 and then to *** percent in 1999.¹⁴¹ The market share of the subject imports was higher than the non-subject imports only in interim 2000, when the subject import share of the market

¹³⁰ CR at II-6-9, PR at II-4-5.

¹³¹ CR at II-13, PR at II-7.

¹³² CR and PR at Table II-5.

¹³³ See, e.g. Purchaser Questionnaire Responses of ***, ***, and *** at Question II-2.

¹³⁴ Six of eight purchasers rated the Japanese imports as being superior to the domestic merchandise with respect to product consistency, while seven of eight purchasers rated the Japanese imports as being superior to the domestic merchandise in terms of product quality. CR and PR at Table II-4.

¹³⁵ CR at II-12, PR at II-7.

¹³⁶ CR and PR at Table II-4.

¹³⁷ CR and PR at Table II-4.

¹³⁸ CR at V-5, PR at V-3-4.

¹³⁹ CR at V-5, PR at V-3-4.

¹⁴⁰ CR and PR at Table IV-4.

¹⁴¹ CR and PR at Table IV-4.

was *** percent while the non-subject market share was *** percent.¹⁴² Throughout this period, the average unit values of the non-subject imports were lower than the average unit values of the subject imports, usually significantly so.¹⁴³

I have taken all of these conditions of competition into account when performing my analysis in this case.

B. Volume of the Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁴⁴

In light of the conditions of competition in the tin mill products market, I find that the volume and market share of the subject imports of tin mill products from Japan are not significant. In making this finding, I note that the volume and the market share of the subject imports did increase consistently throughout the period of investigation. The quantity of the subject Japanese imports increased from 182 thousand short tons in 1997 to 246 thousand short tons in 1998 and then to 336 thousand short tons in 1999, for an increase of approximately 155 thousand tons during the three full years of the period.¹⁴⁵ The market share of the subject Japanese imports also increased during the period of investigation, rising from *** percent in 1997 to *** percent in 1998 and then to *** percent in 1999.¹⁴⁶ Nonetheless, I believe that the market share and volume increases exhibited by the subject imports during the period of investigation have been relatively modest, especially given that the domestic industry retains a dominant share of this market and that non-subject imports have exhibited similar volume and market share increases during the period.¹⁴⁷

Moreover, and perhaps more to the point, the record of this investigation clearly indicates that these modest volume and market share increases were not due, in significant part, to LTFV pricing competition from the subject imports. On the contrary, the record clearly indicates that purchasers generally began sourcing more merchandise from the Japanese primarily for reasons that had nothing to do with price.

First, the record indicates that several large purchasers shifted small volumes of their purchases to subject and non-subject import sources primarily because domestic producers were unable to supply them with tin mill products of sufficient quality in a timely fashion. For example, ***, one of the largest tin mill purchasers in the United States, accounted for the *** increase in subject import purchases by any purchaser during the POI.¹⁴⁸ Nonetheless, in its purchaser questionnaire response, *** clearly explained that it shifted a portion of its purchases to the subject imports because its domestic suppliers had been unable to provide the company with merchandise in a timely fashion in late 1998 and early 1999.¹⁴⁹ As

¹⁴² CR and PR at Table IV-4.

¹⁴³ CR and PR at Table C-3.

¹⁴⁴ 19 U.S.C. § 1677(7)(C)(i).

¹⁴⁵ CR and PR at Table IV-2. Between interim 1999 and interim 2000, the quantity of the subject imports increased from 91.4 thousand tons to 98.8 thousand tons.

¹⁴⁶ CR and PR at Table IV-4. The market share of the subject imports increased between interim 1999 and interim 2000 as well, from *** percent to *** percent.

¹⁴⁷ CR and PR at Table IV-4.

¹⁴⁸ CR and PR at Table II-2.

¹⁴⁹ Purchaser Questionnaire Response of *** at Question II-2.

*** reported in its questionnaire response, it discovered that ***¹⁵⁰ *** also reported that it faced similar delivery time issues with respect to its domestic suppliers *** and ***. As a result, the purchaser reported, it chose to increase shipments of merchandise from its more reliable subject and non-subject suppliers.¹⁵¹ Moreover, *** added, its decision to shift more business to Japanese suppliers was consistent with its objective of sourcing more merchandise for its increasingly global operations from globally oriented suppliers.¹⁵² In its questionnaire response, *** noted that the domestic producers were simply not interested in pursuing its European business. Clearly, given these considerations, ***'s decision to shift a somewhat small percentage of its tin mill purchases to the Japanese imports cannot be attributable to unfair import pricing. I note that the increase in ***'s purchases of subject imports accounts for nearly *** of the total increase in subject import volume during the period of investigation.¹⁵³

Other large tin mill purchasers also reported that they shifted a small portion of their purchases away from domestic producers in 1998 and 1999 due to the producers' inability to meet the purchasers' quality and on-time delivery requirements. For example, *** – also one of the largest tin mill purchasers -- only began purchasing tin mill products from Japan in 1999 because it disqualified two domestic mills, ***, when they were unable to meet ***'s quality and delivery requirements.¹⁵⁴ Moreover, *** noted, other domestic suppliers, such as ***, were unwilling to supply *** with product from their Eastern U.S. facilities to replace the disqualified product.¹⁵⁵ As a result, *** stated, it was forced to purchase approximately *** thousand tons of Japanese steel in 1999.¹⁵⁶ This increase in subject sourcing by *** represents approximately *** percent of the *** thousand ton increase in Japanese import volumes during the period from 1997 to 1999.

Similarly, the large purchaser *** reported that it had dropped *** as a supplier during the period of period of investigation because of quality concerns.¹⁵⁷ At the same time that *** was reducing its purchases of tin mill products from *** from *** thousand short tons in 1998 to *** thousand short tons in 1999, *** was also increasing its purchases of subject imports from *** thousand short tons in 1998 to *** thousand short tons.¹⁵⁸ This shift in sourcing suggests that ***'s decision to source more merchandise from the subject producers was due in significant part to quality and service issues on the domestic producers' part. Moreover, according to ***, it disqualified one Japanese producer because of poor performance, which indicates that ***'s purchasing decisions are based primarily on quality and service issues, not price.¹⁵⁹

Even the large purchaser ***, the only purchaser who stated that it began sourcing merchandise from foreign sources for price reasons, reported that its sourcing decisions in 1999 and 2000 were motivated by a concern “with supply disruptions at U.S. mills and quality and service issues” at other

¹⁵⁰ *Id.*

¹⁵¹ *** Purchasers' Questionnaire Response, at Question II-2.

¹⁵² *Id.*

¹⁵³ During the period of investigation, *** increased its purchases of tin mill products from Japan by approximately *** thousand tons. CR and PR at Table II-1. Because the volume of the subject imports increased by approximately *** thousand short tons during the period of investigation, *** accounted for nearly *** of the total increase in import volumes during the period. CR and PR at Table IV-4.

¹⁵⁴ *** Purchaser Questionnaire Response at Question II-2.

¹⁵⁵ *Id.*

¹⁵⁶ *** Purchaser Questionnaire Response at Question II-2; CR and PR at Table II-1 & V-2.

¹⁵⁷ *** Purchaser Questionnaire Response at Question II-2.

¹⁵⁸ CR and PR at Table V-9.

¹⁵⁹ *** Purchaser Questionnaire Response at Question II-2.

domestic mills.¹⁶⁰ However, I would note that *** also increased its purchases of domestic merchandise significantly in 1999,¹⁶¹ at the same time that it first began sourcing from foreign sources, which suggests that the increase in its purchases from subject sources did not have a significant impact on domestic volumes in 1999.

Finally, *** – the final large purchaser that shifted some merchandise to subject sources during the period¹⁶² -- made very clear in its questionnaire response that the shift in its sourcing patterns was not due to LTFV pricing by the subject imports. Instead, *** reported that the slight increase in the volume of merchandise sourced from Japan was the result of a number of non-price factors, such as the company's desire to reduce their number of global suppliers and its decision to shift a significant proportion of their can production operations from *** to their *** facility, which has been traditionally been supplied by the Japanese firms ***.¹⁶³ In fact, in its questionnaire response, ***'s chief procurement operator stated that ***'s allegations of unfair "competition with Japanese mills struck *** as quite odd...*** that was not *** impression of market dynamics" in the tin mill market.¹⁶⁴ On the contrary, the *** official reported, it had been ***'s experience that the domestic producers competed primarily with each other for certain segments of ***'s business, while the subject Japanese producers *** competed with each other for other segments of the company's business.¹⁶⁵ According to the official, winning business from *** was "about long term supplier relationships," not the "lowest price."

Given all of the foregoing, I find that the record clearly indicates that the large bulk of the modest volume and market share increases obtained by the subject imports during the period of investigation were the result of non-price-related purchasing decisions and cannot be attributed to LTFV pricing.

Moreover, as further support for my finding that these small volume and market share increases were not significant, I note that nearly half of all subject imports and nearly half of the increase in subject import volumes occurred in the Western region of the United States during the period from 1997 to 1999. Unlike the Eastern United States, which is served primarily by six of seven domestic producers, the Western tin mill market is served primarily by two domestic producers, ***. Although the bulk of the subject import volume increase occurred in the Western market, the record indicates that the shipments of these two producers to the Western region increased during the period from 1997 to 1999,¹⁶⁶ which suggests that the majority of the subject import volume changes did not have a significant volume effect on the two producers who focused on that region during the three year period of investigation. This further indicates that the modest volume and market share increases of the subject imports during the period had little appreciable effect on the industry as a whole.

Accordingly, I find the volume and market levels of subject imports of tin mill products from Japan are not significant in this marketplace. In this regard, I do not believe that the dumping laws were intended to prevent purchasers from seeking alternate sources of supply when domestic producers are unable to provide them with merchandise that meets their quality or lead time requirements.

¹⁶⁰ *** Questionnaire Response at II-2.

¹⁶¹ *** Questionnaire Response at Question II-1 (showing that *** increased its purchases of domestic merchandise from *** thousand tons in 1997 to *** thousand tons in 1999.)

¹⁶² During the period, *** reported that it increased its purchases of tin mill products from Japan from *** thousand short tons in 1997 its fiscal year 1998 (ending April 1998) to *** thousand short tons in its fiscal year 2000 (ending April 2000). *** Questionnaire Response at Question II-1.

¹⁶³ *** Questionnaire Response at Affidavit of ***, at 2-3.

¹⁶⁴ *** Questionnaire Response at Affidavit of ***, at 4.

¹⁶⁵ *** Questionnaire Response at Affidavit of ***, at 5-6.

¹⁶⁶ The quantity of domestic shipments made by the two producers *** increased from *** thousand short tons in 1997 to *** thousand short tons in 1999.

C.

Price Effects of the Cumulated Subject Imports

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

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁶⁷

I find that the subject imports of tin mill products from Japan have not had significant adverse effects on domestic prices during the period of investigation. In coming to this conclusion, I have closely examined the record data in this investigation which indicates that there have been declines in domestic and import prices throughout most of the period of investigation,¹⁶⁸ that the subject imports have been consistently offering deeper discounts from the standard industry price lists than have the domestic producers throughout the period,¹⁶⁹ that the Japanese imports appear to have been underbidding domestic producers on an increasing basis toward the end of the period of investigation,¹⁷⁰ and that the domestic industry's profitability levels have been declining throughout most of the period in the face of increasing costs.¹⁷¹ Nonetheless, even a superficial review of the record indicates that these price and profitability declines have not been caused, in significant part, by imports of subject Japanese tin mill products.

Several factors clearly establish that the subject imports have not been a significant cause of price suppression or depression during the period. First, and perhaps most importantly, purchasers in this market consistently report that they conduct their price negotiations separately for their suppliers and their foreign suppliers, including the subject suppliers, and that they do not use subject prices as leverage in their negotiations with domestic producers. Although the record indicates that purchasers can and do negotiate with domestic and foreign suppliers simultaneously, several purchasers specifically reported that they negotiate for their supply contracts with domestic producers first, then turn to Japanese and other producers after finalizing their domestic contracts.¹⁷² Indeed, one indication of the lack of significant price competition between the domestic and subject merchandise is that the domestic producers (including petitioner) specifically include provisions in a number of their contracts stating that they are not obligated to meet any price offered by foreign producers. Moreover, I note that the large volume of sales negotiation documents supplied by both the domestic industry and foreign suppliers in this case contain little evidence suggesting that purchasers actually used subject import prices to drive down domestic prices during the

¹⁶⁷ 19 U.S.C. § 1677(7)(C)(ii).

¹⁶⁸ CR and PR at Table C-1.

¹⁶⁹ CR and PR at Tables V-1-V-13.

¹⁷⁰ CR at V-22, PR at V-8.

¹⁷¹ CR and PR at Table VI-3.

¹⁷² CR at V-6, PR at V-4. For example, *** Purchaser Questionnaire Responses of *** at Question V-6; Purchaser Questionnaire Response of *** at 7.

course of their sales negotiations.¹⁷³ In light of this, I believe that there is limited, if any, record data suggesting a causal nexus between subject import prices and domestic price declines.

Second, although the record indicates that the subject producers consistently “underbid” the domestic merchandise throughout the period, the record suggests that these price declines are not the result of head-to-head price competition between the domestic and subject merchandise. On the contrary, the record indicates that purchasers were able to obtain increased discounts off published price lists or price declines from domestic producers, whether or not the purchasers negotiated with the subject importers or purchased the subject product. For example, the *** did not purchase any tin plate merchandise from subject producers at all during the period of investigation and received no bids from subject producers on that merchandise during the period.¹⁷⁴ Nonetheless, *** was able to obtain significant increases in the price discounts it received from its domestic suppliers for tin plate merchandise during each year of the period of investigation.¹⁷⁵ In fact, the discounts *** obtained throughout the period were similar to those obtained by purchasers who purchased tin mill products from subject producers.¹⁷⁶ Similarly, *** was able to obtain significant price declines for tin mill products purchased from the domestic producers between 1999 and interim 2000, despite not purchasing any subject Japanese product at all in 1999 and 2000.¹⁷⁷ Finally, *** was able to obtain significant price declines for its purchases of chromium single and double-rolled product for its *** location between 1998 and interim 2000, despite the fact that it received no final bids from Japanese producers for these products during this period.¹⁷⁸ In my view, the fact that these price declines occurred in the absence of subject price competition indicates that the presence of the subject imports in the bidding process was not a significant factor in the ability of purchasers to obtain price declines from the domestic producers during the period of investigation.

Third, the record further indicates that the consistent “underbidding” by the subject imports during the period simply reflects the price premium that the industry is able to command from purchasers because of its ability to deliver product to purchasers more quickly than importers. As I discussed above, reliability in meeting delivery schedules is the most important purchase factor for U.S. purchasers.¹⁷⁹ Domestic producers report that the lead times for their merchandise vary between 6 to 12 weeks while lead times for imports vary from 2.5 months to 7 months, with most importers reporting lead times of between 3 and 4.5 months.¹⁸⁰ The domestic industry has been able to use its lead time advantage to leverage price premiums from purchasers during the period of investigation, which is one reason that the subject imports appear to be underbidding the domestic merchandise.¹⁸¹

Fourth, there is a limited level of substitutability between the domestic and subject merchandise. As I previously discussed, the record indicates that the domestic merchandise is consistently considered to be superior to the subject merchandise with respect to the ability to deliver product with a short lead time,¹⁸² which is a critical factor in the purchase decision for most tin mill products. Accordingly, for those products for which purchasers need short delivery times, the subject imports are unlikely to be able to

¹⁷³ See generally Petitioners’ Posthearing Brief at Ex. 27; Japanese Respondents Posthearing Brief at Volume III and IV.

¹⁷⁴ CR and PR at Table V-6.

¹⁷⁵ CR and PR at Table V-6.

¹⁷⁶ See CR and PR at Tables V-1-V-13.

¹⁷⁷ CR and PR at Table V-7.

¹⁷⁸ CR and PR at Table V-16 (Hillman Request).

¹⁷⁹ CR at II-6, PR at II-4.

¹⁸⁰ CR at II-13, PR at II-4-5.

¹⁸¹ CR at II-6-9, PR at II-4.

¹⁸² CR and PR at Table II-5.

compete effectively with domestic products on price. Similarly, purchasers also consistently rate the subject imports as being superior to the domestic merchandise with respect to quality and product consistency.¹⁸³ Thus, for those products for which quality and consistency are a critical consideration for the purchaser, the domestic products are unlikely to be able to compete effectively with the subject imports on price. In fact, given that the record indicates that the majority of purchasers assert that Japanese and domestic merchandise are not used in the same applications and that the Japanese producers sell only a fraction of the number of specifications in the United States that the domestic producers do, I find that the record suggests that there was little actual price competition on a grade-specific basis between the Japanese and the domestic producers during the period of investigation.

Fifth, the record also indicates that purchasers rate delivery time, availability, product consistency, product quality and reliability of supply as being the most important factors in the purchase decision¹⁸⁴ In fact, purchasers rate price as only the seventh most important factor in the purchase decision, ranking it behind reliability of supply, delivery time, availability, consistency, quality and technical service and support.¹⁸⁵ Accordingly, I find that this indicates that price is not normally the decisive factor with respect to a purchaser's choice of a vendor, which further minimizes the possibility that the subject imports had significant adverse effects on domestic prices.

Sixth, I note that nearly half of the subject imports were imported into the Western region of the United States. Because the Western tin mill market is only approximately a third of the size of the Eastern U.S. market for tin mill products, the subject imports occupy a substantially higher percentage of the Western market than the Eastern market. Despite the more substantial subject import presence in the Western U.S. market, the two producers who ship substantial amounts of merchandise to the Western market, ***, have generally enjoyed operating income levels that are among the highest operating returns of all of integrated producers during the period of investigation.¹⁸⁶ This indicates that the more significant declines in domestic revenues and profitability suffered by other domestic producers during the period of investigation cannot be attributable in significant part to the subject imports.

Finally, I note that nonsubject imports held a somewhat larger share of the market than the subject imports from Japan throughout the three full years of the period of investigation and that their market share increased at similar rates to the Japanese imports. Throughout the period of investigation, the average unit values of the non-subject imports were significantly lower than the average unit values of the subject imports.¹⁸⁷ Given this, I find it difficult to conclude that the subject imports have been a significant cause of price declines in this market.

In fact, I believe that two other factors are most likely to be responsible for the domestic industry's price and revenues declines during the period of investigation. First, as I previously discussed, the U.S. can production industry has gone through extensive consolidation since 1993. In 1999, the six largest tin mill purchasers accounted for nearly three-quarters of apparent domestic consumption of tin- and chromium-coated steel sheet in 1999.¹⁸⁸ The record of this investigation indicates that the significant and increasing concentration of purchasers has allowed them to assert increasing amounts of market power and that they

¹⁸³ Six of eight purchaser rated the Japanese imports as being superior to the domestic merchandise with respect to product consistency, while seven of eight purchasers rated the Japanese imports as being superior to the domestic merchandise in terms of product quality. CR and PR at Table II-4.

¹⁸⁴ CR and PR at Table II-4.

¹⁸⁵ CR and PR at Table II-4.

¹⁸⁶ CR and PR at Table VI-3.

¹⁸⁷ CR and PR at Table C-3.

¹⁸⁸ CR at V-6, PR at V-4.

have been able to use this market power to obtain lower prices from their suppliers.¹⁸⁹ In fact, one of Weirton's own employees explicitly recognized the impact of consolidation on domestic prices in this market, stating that purchaser consolidation had greatly diminished the negotiating power of the suppliers and resulted in a significant decrease in domestic prices.¹⁹⁰ Accordingly, I find that the consolidation of the purchasing firms in this market has caused, to a great degree, domestic price declines during the period of investigation.

Second, the market was marked by the entry of a new domestic producer, Ohio Coatings, in January 1997, the first year of the period of investigation. Ohio Coatings was the first new tin plating facility constructed in the United States in nearly thirty years and was able to significantly increase its production and shipments levels during each year of the period of investigation.¹⁹¹ The record indicates that Ohio Coatings has a ***¹⁹² and that it has generally been the *** amongst the domestic producers throughout the period of investigation.¹⁹³ Given this, and given that the record indicates that domestic producers compete primarily with other domestic producers in tin mill negotiations, I believe that the entrance of Ohio Coatings into the tin mill market in 1997 was (together with purchaser consolidation) responsible for domestic price declines in this market during the period of investigation.

Accordingly, I find that the subject imports have not had significant adverse effects on domestic prices during the period of investigation.

E. **Domestic Industry**¹⁹⁴

Impact of the Cumulated Subject Imports on the

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁹⁵ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."¹⁹⁶

I find that the subject imports have not had a significant negative impact on the condition of the industry during the period of investigation. As I noted previously, the record indicates that the subject imports have not had significant adverse volume and price effects on the domestic industry during the period of investigation. Accordingly, I find that the record indicates that they have had little or no adverse

¹⁸⁹ CR at V-7, PR at V-4-5.

¹⁹⁰ Staff Report on Trip to Weirton, dated May 22, 2000, at 4.

¹⁹¹ See, e.g., CR and PR at Table VI-3.

¹⁹² CR and PR at Table VI-3 & VI-10, n. 3. (based on a comparison of cost of goods sold for the domestic producers.)

¹⁹³ CR and PR at Tables V-1-V-13. For the record, the staff informed me that the bids in these charts reported to be submitted by ***.

¹⁹⁴ I note that I considered the size of the dumping margins announced for the Japanese producers by Commerce when performing my analysis in this proceeding. I find that the large size of the margins do not offset the other considerations I discuss in my views.

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

¹⁹⁶ 19 U.S.C. § 1677(7)(C)(iii).

impact on the domestic industry's sales, production, shipments, profitability or investment levels. I recognize that the industry's profitability levels remained low throughout the period and that they declined significantly in the second half of 1998 and 1999, when a significant number of producers experienced supply and quality issues. I also recognize that the industry's production, shipment, sales and employment levels have declined somewhat during the period of investigation, and that the industry has lost some market share to imports, both subject and non-subject.¹⁹⁷

Nonetheless, the industry retains a dominant share of the market and its production, shipment, sales and capacity utilization levels remain relatively high and stable.¹⁹⁸ Moreover, the record indicates that the industry's operating income levels have improved considerably in interim 2000, even though the market share of the subject imports further increased in interim 2000. On the whole, I believe the record of this investigation clearly indicates that the domestic industry suffered a significant downturn in its operating and production results in late 1998 and 1999 primarily because of its inability to supply quality merchandise to its customers in a timely manner. Moreover, I find that an increasingly concentrated group of purchasers in the market has been able to achieve significant price concessions from a relatively dispersed group of domestic producers, especially with the entry of a new domestic supplier into the market in January 1997. Thus, I find little evidence in the record to indicate that the subject imports were a cause of material injury to the domestic industry.

Accordingly, I find that the cumulated subject imports have not had a significant adverse impact on the domestic industry producing tin mill products. I further determine that the domestic industry producing tin mill products is not materially injured by reason of the subject imports from Japan.

II. NO THREAT OF MATERIAL INJURY BY REASON OF THE SUBJECT JAPANESE IMPORTS OF TIN MILL PRODUCTS

In determining whether a domestic industry is threatened with material injury by reason of the subject imports, section 771(7)(F) of the Act requires an assessment of 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."¹⁹⁹ Such a determination may not be made "on the basis of mere conjecture or supposition," and the threat factors must be considered "as a whole in making a determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued."²⁰⁰ In making my determination, I have considered all statutory factors that are relevant to this investigation.²⁰¹

As an initial matter, I do not find the domestic industry to be particularly vulnerable to any possible future impact from the subject imports. As I stated above, the industry retains a dominant share of the tin mill products market and has seen a significant increase in its operating income levels in interim 2000. Despite a temporary decline in its revenues and operating income levels in late 1998 and 1999, the industry's production, shipment and sales levels all remain reasonably strong. Moreover, the industry is insulated from competition with the subject imports to a great degree because of the conditions of competition I previously discussed, such as the bifurcated nature of the domestic and import sales negotiation processes.

¹⁹⁷ CR and PR at Tables III-2 & VI-3.

¹⁹⁸ CR and PR at Tables III-2 & VI-3.

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

²⁰⁰ 19 U.S.C. § 1677(7)(F)(ii).

²⁰¹ 19 U.S.C. § 1677(7)(F)(I).

For the reasons discussed below, I find that further imports are not imminent and that the subject Japanese imports do not threaten to cause material injury to the industry upon revocation of the order. First, the record indicates that the subject Japanese producers have been operating at very high capacity utilization rates throughout the period of investigation and that their capacity utilization rates have increased even further in interim 2000. In this regard, the Japanese producers' aggregate capacity utilization remained at or near the ninety percent level throughout the period of investigation and even increased in interim 2000.²⁰² Moreover, the Japanese producers do not expect to increase their capacity levels in the imminent future.²⁰³ Accordingly, I find that the existing unused and likely capacity levels of the subject Japanese producers do not indicate that there is a likelihood of substantially increased imports of subject merchandise into the United States in the imminent future.

I also do not find that there has been a significant rate of increase in the volume and market share of the subject imports indicating the likelihood of substantially increased imports in the imminent future. As I discussed above, the subject Japanese imports increased their volume and market share somewhat during the period. However, these increases were not particularly large. Moreover, as I also discussed above, these modest increases were not the result of LTFV price competition by the subject imports. Accordingly, I do not find that these increases are indicative of a likelihood of substantially increased subject volumes in the imminent future, especially given the Japanese producers' current high capacity utilization levels.

I also found previously that the subject imports have not had significant price-suppressive or price-depressive effects on domestic prices during the period of investigation. I do not find that the record contains any information indicating that the conditions of competition in this market place will change so significantly in the imminent future that the subject imports will begin to have significant adverse effects on domestic prices.

I further note that the home market inventory levels of the Japanese respondents have fallen during the period of investigation while their U.S. inventories remain minimal compared to total domestic consumption in 1999.²⁰⁴ Accordingly, I do not find that the respondents' inventory levels suggest that there is likely to be an imminent threat of material injury by reason of the subject imports.

In addition, I find that there is little evidence in the record to indicate a likelihood of significant product shifting in the Japanese producers' tin mill facilities. Although the Japanese firms produce other flat-rolled steel products in the same facilities as their tin mill products, the record indicates that the subject producers' coating lines are operating at high capacity utilization levels currently. Therefore, the record indicates that the Japanese producers do not have the capacity to increase tin mill plate production, even if they had available flat-rolled steel.

I note that the record contains no evidence of a significant negative effect on the domestic industry's development and production efforts. Indeed, the domestic industry appears to have been able to make significant capital investments in its plants and facilities during the period of investigation.²⁰⁵

Finally, I taken into account the imposition of a dumping order on Japanese exports of tin mill products by Indonesia in April 1999.²⁰⁶ At that time, Indonesia applied a 68 percent antidumping duty on

²⁰² The subject producers capacity utilization rates were 89 percent in 1997, 85.4 percent in 1998 and 88.5 percent in 1999. Their capacity utilization rate was 91 percent in interim 2000 and is projected to stay at similar levels in 2000 and 2001. CR and PR at Table VII-2.

²⁰³ ***

²⁰⁴ CR and PR at Tables VII-2 & VII-3.

²⁰⁵ CR and PR at Table C-4.

²⁰⁶ CR at VII-1, PR at VII-1.

tin mill products from Japan.²⁰⁷ Nonetheless, Japanese exports to that country are minimal and appear not to have been affected significantly by the order.²⁰⁸ Accordingly, I do not find that the imposition of the order by Indonesia indicates that there is a threat of material injury to the industry.

I therefore find that the domestic industry producing tin mill products is not threatened with material injury by reason of the subject imports of tin mill products from Japan.

²⁰⁷ CR at VII-2, PR at VII-1.

²⁰⁸ Japanese Respondents' Posthearing Brief at Vol. II, p. 14.

**DISSENTING VIEWS OF CHAIRMAN STEPHEN KOPLAN IN
TIN- AND CHROMIUM-COATED STEEL SHEET FROM JAPAN,
INV. NO. 731-TA-860 (FINAL)**

On the basis of the record in this investigation, I determine that an industry in the United States producing tin- and chromium-coated steel sheet (“tin plate”) is not materially injured by reason of imports of tin plate from Japan that are being sold in the United States at less-than-fair-value (“LTFV”). I concur with my colleagues’ findings with respect to the domestic like product and the domestic industry. However, for the reasons discussed below, I dissent from the Commission’s determination that the tin plate industry in the United States is materially injured by reason of the subject imports.

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.²⁰⁹ In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.²¹⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²¹¹ In assessing whether the domestic industry is materially injured by reason of subject imports, I consider all relevant economic factors that bear on the state of the

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

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

²¹¹ 19 U.S.C. § 1677(7)(A).

industry in the United States.²¹² 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.”²¹³

I. The Conditions of Competition

The following conditions of competition unique to the U.S. tin plate industry, which were identified in the preliminary determination, are central to my analysis: (1) tin plate is almost always sold in the United States pursuant to annual contracts that establish fixed prices and target volumes; (2) reliable delivery is extremely important to the purchasers -- the domestic can makers - - because food must be canned as soon as possible after it reaches the canning facility; (3) the purchasers have consolidated and are now highly concentrated (the six largest purchasers account for more than three-quarters of apparent domestic consumption); (4) several of the major purchasers operate canning facilities on the grounds of Weirton’s mill and commit to buy a minimum volume of steel from Weirton; (5) non-subject imports entered the U.S. market in a larger volume than subject imports from Japan during the period of investigation (POI) and non-subject imports occupied a greater market share than did imports from Japan; (6) most domestic producers, including petitioner Weirton, are located either on the East Coast or in the Midwest and focus their sales in regions near their mills; and (7) demand in the canning industry is affected by the harvest of agricultural goods used for canned foods.

²¹² 19 U.S.C. § 1677(7)(C)(iii).

²¹³ 19 U.S.C. § 1677(7)(C)(iii).

II. The Volume of Subject Imports

Section 771(7)(C)(I) of the Tariff Act of 1930 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.”²¹⁴ Domestic apparent consumption declined by 5.1 percent from 1997 to 1998 and then increased by 3.2 percent from 1998 to 1999.²¹⁵ During the POI, total domestic apparent consumption declined by 2.1 percent. U.S. shipments of subject imports increased from 182,157 tons in 1997 to 329,645 tons in 1999 and subject import market share rose from *** percent of apparent consumption in 1997 to *** percent of apparent consumption in 1999. Thus, subject import volume increased 147,488 short tons over the POI, a 3.9 percentage point increase in market share from a relatively small base. From 1998 to 1999, subject import market share increased about two percentage points.

A portion of the increase in subject import volume must be attributed to the domestic industry’s own actions. Several customers testified that they imported from Japan in large part because of inadequate delivery by domestic mills. Some of the purchasers submitted internal documents which purport to show poor performance by some domestic producers -- frequently ***.²¹⁶ In response to a question I posed at the hearing, Weirton, the sole petitioner, supplied data

²¹⁴ 19 U.S.C. § 1677(7)(C)(i).

²¹⁵ CR & PR at IV-5, Table IV-4.

²¹⁶ See *** Memorandum to ITC dated November 22, 1999 *** (1998/1999 on-time performance). See also, Memorandum from *** to File dated January 6, 1998 ***; Memorandum from *** dated January 24, 2000 ***; Memorandum from *** dated October 3, 1998 ***.

reporting its delivery performance for 1997-2000.²¹⁷ Those data show that Weirton's delivery performance was ***, including delivery to those purchasers located on-site at Weirton's mill.²¹⁸

These delivery problems had their genesis in December, 1998, when Weirton shut down one of its two blast furnaces and began relying on imported slab. Weirton had difficulties sourcing the slab, which adversely affected its on-time delivery performance. Those problems were alleviated when Weirton re-started its second blast furnace in December, 1999. By February, 2000, Weirton's on-time performance ***.²¹⁹ Thus, the purchasers' allegations regarding Weirton's ***.²²⁰

Weirton argues that, despite these difficulties,

[t]he decline in U.S. shipments [in 1999] was clearly caused by increasing exports from Japan. As Mr. Riederer [Weirton's CEO] stated at the hearing, in 1999, Weirton had the highest level of non-attainment on supply contracts it had ever experienced.²²¹

Weirton set forth data showing the volume of non-attainment of contract purchase levels, which it claimed "increased along with the increase in Japanese shipments to the United States."²²²

²¹⁷ Pet. Post-hearing brief at Exhibit 5.

²¹⁸ *Id.* Those data show that, as a percent of items delivered, Weirton's on-time performance *** percent in *** and, as a percent of tons delivered, it ***. This performance reached ***, when Weirton delivered *** on time. *Id.* See also, Memorandum from *** to File dated June 14, 1999 ***.

²¹⁹ Pet. Post-hearing brief at Exhibit 5. See also, Tr. at 94 (Glyptis):

At the Commission conference last November [1999], I heard comments from some of our customers criticizing our delivery performance. These problems stem directly from the difficulties of running Weirton Steel with a one blast furnace operation being supplemented by slab purchases. After a very successful start up of the second blast furnace in December [1999], our on time delivery performance has been better than 90 percent throughout 2000, and we continue to aim for 100 percent on time delivery . . .

²²⁰ I also note that, in the event Weirton's on-time performance *** Letter from *** dated May 5, 1998; see also, Letter from *** dated May 12, 1999 ***.

²²¹ Pet. Post-hearing brief at 5 citing Tr. at 128.

²²² *Id.* Those data appear in Pet. Post-hearing brief at Exhibit 1.

However, those data demonstrate that, while there may have been a coincident rise in subject imports and non-attainment of Weirton's contractual volumes, only an insignificant amount of that volume might be attributable to subject imports. First, it is noteworthy that there was *** from Weirton under contract. Indeed, the total amount contracted for in 1999 was *** of Weirton's net sales that year. In 1997, the amount contracted for *** of Weirton's net sales that year. Thus, in 1999 the amount under contract was *** and, as a percent of Weirton's net sales, it was ***. Purchasers did not *** from Weirton.

More significantly, Weirton alleged that, because of subject imports, *** were not in fact purchased. However, of that ***, about one third *** were contracted for but not purchased by ***. *** did not import from Japan. An additional *** were contracted for but not purchased by ***. *** also did not import from Japan. Similarly, Weirton contends that *** failed to purchase *** of its contracted for volume in 1999.²²³ However, *** imported only *** from Japan in 1999 and *** advised the Commission that it imported tin plate in 1999 in part due to ***.²²⁴

According to petitioner, *** failed to purchase *** of the *** contracted for in 1999. However, *** that it did not purchase the full amount contracted for from Weirton that year because of Weirton's very poor on-time performance.²²⁵ As to *** Weirton's poor performance in 1999 cannot seriously be disputed.²²⁶ In addition, *** (and perhaps other purchasers) had a financial incentive to meet the contractual volume requirements, as failure to do so ***.²²⁷

²²³ Exhibit 1 ***.

²²⁴ *** questionnaire response at II-2. *** also cited ***. *Id.* *** advised that *** and that *** was disqualified at its West Coast facility due to *** *Id.* at III-26.

²²⁵ *** percent of Weirton's shipments to *** went to the on-site facility and that facility ***. CR at III-3.

²²⁶ *See* Pet. post-hearing brief at Exhibit 5. There is some question regarding *** motivation in increasing its imports from Japan. As indicated above, *** alleges that it imported due to Weirton's poor service and delivery performance in 1999. Petitioner takes the position that *** imported due to attractive subject import prices. However, under its contract with Weirton, *** Letter from *** dated May 5, 1998. Nevertheless, regardless of *** motivation in importing, at most, the total quantity that *** failed to purchase from Weirton was ***.

²²⁷ *See* Letter from *** dated May 21, 1998 ***. In addition, these agreements also ***

Thus, at most, only a small portion of the *** contracted for but not purchased from Weirton in 1999 could be attributed to subject imports.²²⁸ Indeed, it is noteworthy that, ***²²⁹ actually purchased *** from Weirton in 1999 than it contracted for – *** the amount contracted for.²³⁰ Finally, regardless of where the purchasers obtained the replacement material, the record evidence makes clear that the domestic industry would have benefitted from those sales had its performance not deteriorated.

Domestic producers focus their sales in regions near their mills. As a result, few domestic producers ship to the West.²³¹ The reported percentage of shipments to the West over the POI was: 2.9 percent for ***; 5.2 percent for ***; 2.3 percent for ***; 10.2 percent for ***; 48.5 percent for ***; and 100 percent for ***.²³² Thus, ***, are the only domestic suppliers with significant shipments to the West.²³³ However, the majority of imports from Japan are sold in the West. Competition with more than half of subject imports is attenuated for most of the domestic industry.²³⁴ In addition, *** increased their shipments to the West from 1998 to 1999, and total domestic shipments to the West increased from *** tons in 1998 to *** tons in 1999. Thus, the *** domestic mills competing most directly with subject imports actually sold more product in 1999 than in 1998, even as subject import volume increased slightly.

Given the foregoing, and in light of the limited effect of subject imports on domestic prices, discussed below, I do not find that the volume of subject imports is significant.

²²⁸ As to ***, Weirton alleges only that *** below its contractual volume. ***. CR at III-3.

²²⁹ Pet. post-hearing brief at A-6.

²³⁰ Pet. Post-hearing brief at Exhibit 1. Indeed, *** began purchasing subject imports in 1999, yet it *** in 1999 by ***. *** questionnaire response at II-1.

²³¹ See *** questionnaire at 15 ***; facsimile from *** dated June 16, 1998 ***; Memorandum from *** dated January 24, 2000 ***; *** questionnaire at II-3; *see also*, ***, November 3, 1997 ***.

²³² CR at III-2, fn. 2.

²³³ Office of Investigations Memorandum INV-X-144, Table 4-2-A.

²³⁴ Some portion of the subject imports also include product that cannot be produced domestically. *See, e.g.*, *** questionnaire at IV-5.

II. The Effect Of Subject Imports On Domestic Prices

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

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.²³⁵

Domestic prices declined during the period of investigation.²³⁶ Prices of subject imports also declined throughout most of the POI.²³⁷ Throughout the POI, subject imports undersold the domestic product. Indeed, the number of instances where the Japanese bid was below the U.S. bid increased over the POI.²³⁸ Thus, on its face, it would appear that the increasing volume of lower-priced subject imports significantly adversely affected domestic prices during the POI, particularly in 1999.

However, the record evidence in this investigation is unique in several critical respects and a careful examination of the dynamics of the tin plate market compels my conclusion that the

²³⁵ 19 U.S.C. § 1677(7)(C)(ii).

²³⁶ CR & PR at Tables V-1-V-13.

²³⁷ CR & PR at Tables V-1-V-13. The Department of Commerce's final antidumping duty margins for the specified producers/exporters are 95.29 percent for Kawasaki, 95.29 percent for Nippon, 95.29 percent for NKK, 95.29 percent for Toyo Kohan and 32.52 percent for all others. 65 FR 39364 (June 26, 2000).

²³⁸ CR at V-22; PR at V-8.

subject imports did not materially contribute to the decline in domestic prices. Domestic producers make the vast majority of their sales to end users under annual contracts.²³⁹ It is undisputed that every Fall ***, announces its price list for the upcoming year and that the *** list is quickly adopted as the industry-wide price list. Purchasers then attempt to negotiate discounts off of the industry's list price. The greater the discount, the lower the price paid.

Tin mill customers also reported reliability as the most important factor in choosing among suppliers.²⁴⁰ It is vital that the can manufacturers furnish product to the canneries precisely when the fruits and vegetables are ready to be packed. Consequently, on-time delivery is essential for the can manufacturers, the purchasers of tin plate. For this reason, the domestic producers' proximity to their customers better positions them to satisfy fluctuations in can makers' needs. Therefore, domestic producers are able to maintain a price premium over all imported merchandise. In addition, purchasers have no incentive to substitute away from reliable suppliers.²⁴¹ The stability of supplier-purchaser relationships is evidenced by the prevalence of long term relationships between purchasers, especially larger purchasers, and the domestic producers. Indeed, five major purchasers have facilities located at, or next to, Weirton's mill.

According to respondents, and some of the purchasers who testified at the hearing, purchasers first negotiate with the domestic producers to fulfill the majority of their needs and then negotiate with the foreign producers to supplement their needs.²⁴² Petitioners assert that regardless

²³⁹ CR at II-1, V-4; PR at II-1, V-3.

²⁴⁰ CR at II-6; PR at II-4.

²⁴¹ CR at II-10; PR at II-5.

²⁴² ***, for example, submitted a document and certain telephone notes indicating that it negotiates first with the domestic mills and then with importers. Those notes allegedly show contacts with the domestic mills from January to April, 1999. There is a single reference to subject imports. A February 8, 1999 *** phone note states that *** contacted *** because *** wanted *** That reference indicates that *** was gathering intelligence on the status of *** negotiations with the domestic mills. It does not evidence negotiations regarding price or volume for 1999. In the past, negotiations with the domestic mills had been concluded by February and *** may have thought as much when it inquired as to where those negotiations stood. In any event, this telephone note does not
(continued...)

of when domestic price negotiations occur, those negotiations are not conducted independent of external price information regarding subject imports. Nevertheless, regardless of the timing of the various negotiations, the lack of a nexus between subject import prices and domestic prices is reflected in the competitive dynamics of the domestic tin plate market.

First, it appears that the long term annual contracts, which cover the vast majority of product sold, require the U.S. mills to meet **only other domestic prices**. For example,

- *** December 29, 1998 contract with *** states: ***"
- *** August 31, 1999 agreement with *** states: ***²⁴³

*** evidently has routinely used such a clause in its supply contracts. Other documents demonstrate that other domestic producers utilize substantially similar contractual clauses.²⁴⁴ Thus, it appears that this language is customary in the industry. If so, for product sold under long term contracts, it would stand to reason that the import price does not play a direct role in the annual negotiations. If a domestic producer's contract expressly specifies that it must meet only the price of its domestic competition, then the domestic mill is free to limit its negotiation to the prices offered by other domestic competitors.

The question then is whether, despite such clauses, subject imports nevertheless play a role in price negotiations under such contracts. Remarkably, when asked in the questionnaires whether prices were reduced or whether price increases were rolled back because of subject imports, *** answered "no," and *** indicated it did not roll back price increases because of imports, but did

²⁴² (...continued)

alter my conclusion regarding the absence of a material effect by subject imports on domestic prices, given the overwhelming evidence demonstrating the lack of nexus between subject import prices and domestic prices.

²⁴³ See also, Pet. Post-hearing Brief at Exhibit 27, letter from *** dated March 8, 1998 ***

²⁴⁴ See, e.g., Letter from *** dated May 12, 1999.

not respond regarding price reductions. Thus, these major producers advised that subject imports did not affect their prices. *** did not answer those questions. Consequently, only three of the seven domestic producers, representing about 45 percent of domestic production, are even *alleging* that subject import prices affected their prices.

Indeed, as mentioned above, in the Fall of each year *** announces its price list for the upcoming year and that list is then adopted by the industry.²⁴⁵ In 1999, *** announced that its 1999 price list would be unchanged from 1998. Thus, ***, advised that subject imports did not cause reductions in price or roll backs in price increases at any time during the POI, including in 1999.

Petitioner also conceded that subject import prices are not cited in its annual negotiations.²⁴⁶ In addition, four major purchasers testified that import prices do not have a bearing on domestic prices.²⁴⁷ In light of this testimony, I requested that petitioner Weirton, the four purchasers who testified (Ball, Silgan, U.S. Can, and B-Way), and the Japanese respondents submit any and all documents relating to price and negotiations between the parties from 1997 to 1999. Voluminous documents were submitted in response to that request.

Weirton concedes that none of its documents reference subject imports generally, much less subject import prices.²⁴⁸ In addition, there was only a single document supplied by a purchaser

²⁴⁵ CR at V-4; PR at V-3.

²⁴⁶ Tr. at 150-151 (Reiderer) (“Do I get specific quotes from Japanese producers? No. Do I get specific quotes even from customers saying this is the Japanese price of the product? No. I only know that other competitors are quoting different kinds of prices. I don’t know specifically who’s doing it, so consequently, I could not identify that it was a specific Japanese product that was coming in and being competitive or pulling down prices. You only know after the fact.”)

²⁴⁷ *See, e.g.*, Tr. at 225 (Yurco) (“The domestic mills do not recognize foreign mill prices as competitive situations that they can -- they choose to meet or are being asked to meet. They flatly, absolutely do not recognize it.”). In this regard, it is critical that two of the four purchasers who testified did not buy significant quantities of Japanese product. In fact, *** had no purchases of subject product and *** only purchased a small volume of imports from Japan. *See also*, Memorandum from *** dated December 16, 1999 ***, *** Memorandum of ***; *** (November 21, 1997)***.

²⁴⁸ Pet. Post-hearing brief at Exhibit 27 ***.

that reflects that subject imports were referenced in a discussion with a domestic mill and that document does not indicate that specific import prices were discussed.²⁴⁹ By contrast, the domestic mills frequently are discussed.²⁵⁰

The remaining question for me then is whether the pricing data on the record reveals that subject imports significantly affected domestic prices, notwithstanding the contracts, the witness testimony, the voluminous documents, and the questionnaire responses of ***. As to the questionnaire pricing data, because the industry's list prices did not change from 1998 to 1999, it is appropriate to look at the changes in discount rates and reported per ton prices from 1998 to 1999. Customer-by-customer, those data show a lack of nexus between subject import prices and domestic prices.²⁵¹

- For ***, the domestic price generally *increases* at the *** facilities where *** purchases subject imports (even as the subject import price declines) and the domestic price generally *decreases* at ***, where *** does not purchase subject imports.²⁵²
- *** domestic discount increased from *** percent in 1998 to *** percent in 1999, an increase of *** percentage points. *** did not import subject product.

²⁴⁹ Memorandum from *** dated February 9, 1998 ***.

²⁵⁰ The following is typical of the documents submitted:

Memorandum from *** dated January 26, 1998. *See also*, *** (undated, but apparently 1998) ***; Memorandum from *** dated December 11, 1998 ***; Memorandum from *** to File dated January 26, 1998 ***; *** (undated, but from 1998)***

²⁵¹ CR at Table V-16 (Margin of Underselling for Tin- and Chromium-Coated Steel Sheet from Japan, 1997-2000).

²⁵² *See generally*, *** questionnaire (***) Declaration).

- *** domestic discount increased from *** percent in 1998 to *** percent in 1999, a *** percentage point increase in the discount. Thus, *** domestic discount increased by less than did *** domestic discount even though *** imported subject merchandise.²⁵³
- *** domestic price *** from 1998 and 1999. Thus, *** domestic price ***, even though *** began importing subject product in 1999.
- *** domestic discount rate *** from 1998 to 1999, ***. Thus, even though it imported some subject product, *** than did *** price.
- There is no comparable data for *** for 1998. However, the underselling margin for *** in 1997 to *** in 1999. As discussed below, *** price in 1999 reflects discounts it received due to *** that year.²⁵⁴ Regardless of the amount of the ***, however, the margins of underselling to *** are of a magnitude commensurate with that received for all offshore material as a result of the longer lead times associated with imports.²⁵⁵
- The remaining customers did not purchase significant quantities of tin plate, though it appears that subject imports actually oversold domestic product to one of the two customers for which comparisons could be made.²⁵⁶

²⁵³ From 1997 to 1999, *** discount *** percentage points and *** percentage points.

²⁵⁴ See Letter from *** dated March 24, 1999.

²⁵⁵ See CR at II-9; PR at II-4; Hearing Transcript at 233-235. The purchase of imported product was also found to present greater risk of loss through damage than domestic product, thereby justifying a price discount.

²⁵⁶ See CR at Table V-16 ***.

In addition, as referenced above, *** competes most directly with the majority of subject imports. A comparison of *** average prices to total U.S. average prices over the POI reveals that *** average price was the same as the total U.S. average price until 1999 when *** the total U.S. average price by ***.²⁵⁷ Thus, in 1999, *** Indeed, *** average price for calendar year 1999 is actually *** This trend means that ***.²⁵⁸

Usually the Commission is faced with a market in which purchasers reference subject import prices in an attempt to leverage down, or stem increases in, domestic prices. However, as discussed above, the record in this investigation demonstrates that entirely different market dynamics are at work. Based on the foregoing, I conclude that the evidence is overwhelming and compelling that subject imports did not materially contribute to domestic price declines during the POI.

The statute requires that I determine whether the subject imports materially contributed to the price decline in the U.S. market. The statute does not require a separate assessment of each of the causes that collectively resulted in the price declines. Nevertheless, I considered the factors other than subject imports that appear to have driven prices down in 1999. First, negotiations for the 1999 contracts commenced in the Fall of 1998 and continued into the Spring of 1999. After increasing slightly from 1996 to 1997, domestic apparent consumption declined in each quarter of 1998, reaching a period low in the fourth quarter of 1998.

Moreover, the competition among the domestic mills was intense for sales to the concentrated downstream market. Since 1992 nearly half of the canning companies then in

²⁵⁷ See Pet. Post-hearing Brief at Table E2. I note that the total U.S. average price includes *** average price and therefore is skewed upwards. Thus, the gap between *** price and the Eastern mills' price was likely greater than *** per ton.

²⁵⁸ Finally, with limited exceptions, the lost sales and lost revenue allegations were not confirmed. CR at V-24-25.

existence left the market. Only 26 canners remained by 1999.²⁵⁹ Both petitioner and respondents agree that six of the remaining canning companies comprise 78 percent of the total market.²⁶⁰ I took into account the fact that the bulk of the consolidation of the purchaser base occurred before the POI.²⁶¹ However, regardless of the timing of the consolidation, the clear result is that today the purchasers are highly concentrated and have very significant bargaining power.²⁶² Indeed, petitioner conceded as much.²⁶³ By way of example, in June, 1998 ***.²⁶⁴ In an environment of reduced demand, and with purchasers exerting significant market power, price leader *** announced that its 1999 price list would be unchanged from 1998.²⁶⁵

In addition, if *** on-time performance fell below certain required levels, ***.²⁶⁶ This *** for poor performance is not limited to ***. *** and *** apparently both had similar problems.²⁶⁷

²⁵⁹ Res. Prehearing Br. at 8.

²⁶⁰ Pet. Prehearing Br. at 16-18 and Res. Prehearing Br. at 10-11.

²⁶¹ Pet. Prehearing Br. at 19. Respondents, for their part, claim that even small changes in purchaser market power as a result of consolidation will affect prices exponentially when the market is so concentrated. Hearing Transcript at 269-270 (Prusa).

²⁶² See, e.g., Memorandum from *** dated October 11, 1999 *** Memorandum from *** to File dated December 11, 1998 ***.

²⁶³ See Memorandum from Christopher Cassise and Sandra Rivera to File dated May 22, 2000 at 5 ***. See also, *** questionnaire at 16 ***.

²⁶⁴ Thus, the industry's decline in net sales value in 1999 reflects to some extent the results of *** acquisition of ***. *** documents report that at least *** thought the price reduction to *** would amount to a *** percent industry-wide price reduction. See Memorandum of *** While that acquisition occurred ***, the full annual industry-wide effect of that event first appeared in the 1999 net sales value.

²⁶⁵ I recognize that in a market in which purchasers have significant negotiating power the effects of subject imports -- representing an additional source of supply -- might be amplified. However, there is no evidence that the purchasers in fact used the subject imports -- or any imports for that matter -- as leverage in price negotiations with the domestic mills.

²⁶⁶ See Letter from *** dated March 24, 1999.

²⁶⁷ See Letter from *** dated August 26, 1998:

See also, Memorandum from *** to File dated February 9, 1998 ***; Memorandum of ***. I note that these types of arrangements generally appear to have commenced in 1998. See, e.g., Memorandum from *** to File dated May 14, 1998 ***.

Thus, some of the 1999 price decline was the direct result of the domestic industry's poor performance.²⁶⁸

In addition, Bethlehem had a planned outage and another unplanned outage in 1999. In late 1998, U.S. Steel rationalized production between its mills in Fairless Hills, Pennsylvania and Gary, Indiana.²⁶⁹ At this same time, Posco engaged in de-bottlenecking to improve its quality. Those operational changes must have affected the industry's net sales and net sales value in 1999.

Finally, non-subject import volume and market share exceeded subject import volume and market share over the POI. 93 percent of non-subject imports entered the East Coast and prices for most non-subject imports were below both subject import prices and domestic prices.²⁷⁰

III. The Impact of Subject Imports on the Domestic Industry

The domestic industry performed poorly during the POI and its performance worsened in 1999. The domestic industry's poor financial performance in 1999 resulted from declining net sales and declining net sales value combined with stable costs.²⁷¹ I took into account the fact that this poor performance coincides with an increase in subject imports and that subject imports undersold the domestic product during the POI.

Nevertheless, because I find that the volume of subject imports was not significant and that subject imports did not materially contribute to price declines during the POI, I determine that

²⁶⁸ Although it appears to have involved a relatively small volume of product, there also was some additional concern about Weirton's quality, including its ability to ***. For example, *** requested a ***. Weirton responded that it *** Letter from *** dated April 13, 1998. In response, Weirton *** Memorandum from *** dated April 13, 1998. According to Weirton, this would ***. *Id.* Thus, a portion of the decline in price and net sales value was due to Weirton's inability to meet quality requirements.

²⁶⁹ ***. *See* *** questionnaire at 3.

²⁷⁰ Office of Investigations Memorandum INV-X-144, Table 2A; CR & PR at V-1-V-13.

²⁷¹ CR & PR at Table VI-2.

subject imports did not materially injure the domestic industry producing tin- and chromium-coated steel sheet.

IV. Threat of Material Injury to The Domestic Industry

Section 771(7)(F) of the Tariff Act of 1930, as amended, 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.”²⁷² The Commission may not make such a determination “on the basis of mere conjecture or supposition,”²⁷³ and considers the threat factors “as a whole.” In making my determination, I have considered all factors that are relevant to these investigations.²⁷⁴ Based on an evaluation of the relevant statutory factors, for the reasons described below, I do not find that the domestic industry is threatened with material injury by reason of subject imports from Japan.

There is no record evidence that would lead me to conclude that, while subject imports have not materially contributed to the domestic industry’s current condition, they will do so in the imminent future. Indeed, if anything, subject imports should have less of an impact in the imminent future. Japanese capacity utilization is high and Weirton, having re-started its second blast furnace, is positioned to improve its performance and recapture any sales lost due to poor on-time performance. Imports from Japan into the West have held relatively constant as a percent of

²⁷² 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

²⁷³ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” *Metallwerken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing *American Spring Wire Corp. v. United States*, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). See also, *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

²⁷⁴ 19 U.S.C. § 1677(7)(F)(i). Factors I and VII are inapplicable since these investigations do not involve a countervailable subsidy or the importation of agricultural products. See 19 U.S.C. § 1677(7)(F)(iii)(I).

their total imports for roughly ten years. I do not anticipate that ratio changing.²⁷⁵ Thus, I would not expect subject import volume to increase imminently or to shift to a greater emphasis away from the West. Nor do I anticipate any changes in the nature of competition such that subject imports will imminently have a significant effect on domestic prices. Consequently, I conclude that subject imports do not threaten to materially harm the domestic industry producing tin- and chromium-coated steel sheet.

²⁷⁵ Res. Post-hearing brief at Volume II, Exhibit 1.