

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom

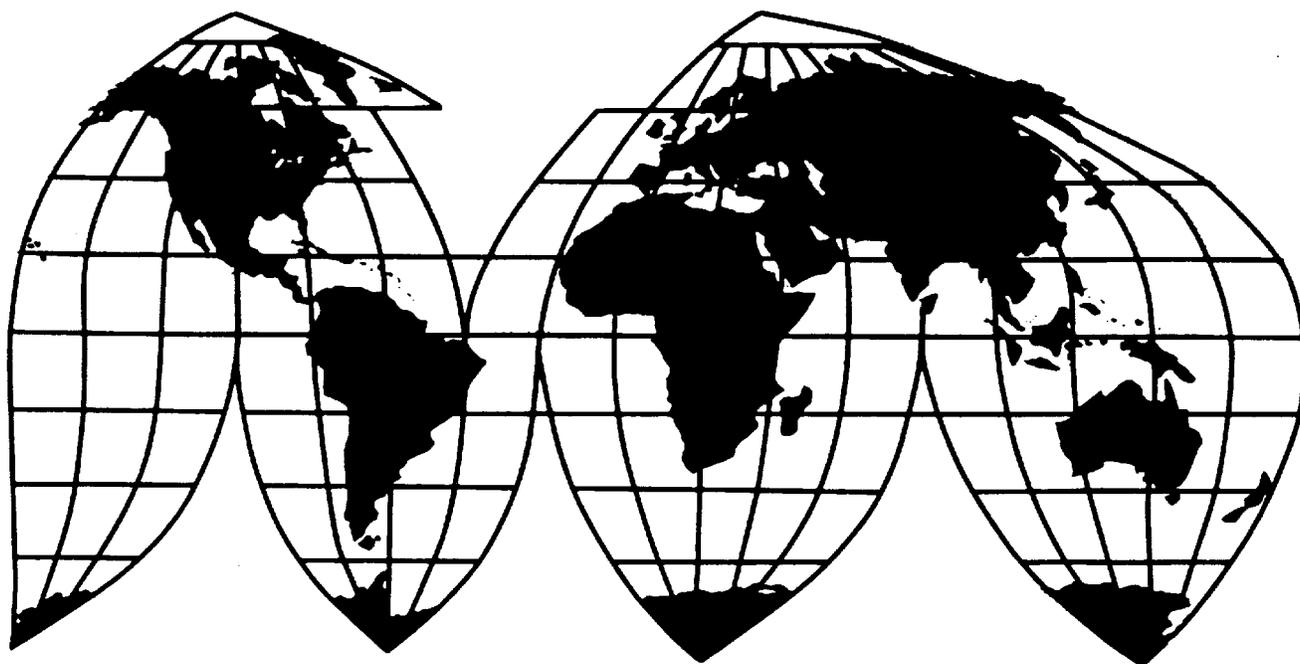
Investigation Nos. AA1921-197 (Second Review); 701-TA-319, 320, 325-327, 348,
and 350 (Second Review); and 731-TA-573, 574, 576, 578, 582-587, 612,
and 614-618 (Second Review)

VOLUME I: Determination and Views of the Commission

Publication 3899

January 2007

U.S. International Trade Commission



U.S. International Trade Commission

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Heather Sykes, *Industry Analyst*
Mary Klir, *Accountant*
June Brown, *Attorney*
David Fishberg, *Attorney*
Mary Jane Alves, *Attorney*
Gabriel Ellenberger, *Research Assistant*
Steven Hudgens, *Statistician*

Douglas E. Corkran, *Supervisory Investigator*

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436

www.usitc.gov

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VOLUME I: Determination and Views of the Commission



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CONTENTS

	<i>Page</i>
Determination	1
Views of the Commission	3
Separate and Dissenting Views of Commissioner Stephen Koplan and Commissioner Charlotte R. Lane with Respect to Certain Carbon Corrosion-Resistant Steel	147

Introduction and Overview

Introduction and overview	OVERVIEW-1
Background	OVERVIEW-1
The original investigations	OVERVIEW-2
The Commission's investigations	OVERVIEW-2
Subsequent proceedings	OVERVIEW-4
The first reviews	OVERVIEW-4
The Commission's reviews	OVERVIEW-4
Subsequent proceedings	OVERVIEW-5
Previous and related title VII investigations	OVERVIEW-5
Previous and related safeguard investigations	OVERVIEW-10
Statutory criteria and organization of the report	OVERVIEW-12
Statutory criteria	OVERVIEW-12
Organization of the report	OVERVIEW-14

Cut-To-Length (CTL) Plate

Part I: Introduction and Overview

General information	CTL-I-1
Commerce's reviews	CTL-I-6
Administrative reviews	CTL-I-6
Results of expedited and full five-year reviews	CTL-I-12
Distribution of Continued Dumping and Subsidy Offset Act funds	CTL-I-16
The subject merchandise	CTL-I-17
Commerce's scope	CTL-I-17
Tariff treatment	CTL-I-18
The domestic like product	CTL-I-19
Description and applications	CTL-I-19
Manufacturing processes	CTL-I-19
Marketing	CTL-I-21
Domestic like product issues concerning wide flat bar	CTL-I-22
Physical characteristics and uses	CTL-I-22
Interchangeability	CTL-I-23
Channels of distribution	CTL-I-23
Common manufacturing facilities, employees, and processes	CTL-I-23
Producer and consumer perceptions	CTL-I-24
Price	CTL-I-24

CONTENTS – *Continued*

	<u>Page</u>
Part I: Introduction and overview – <i>Continued</i>	
Domestic like product issues concerning micro-alloy CTL plate	CTL-I-25
Physical characteristics and uses	CTL-I-25
Interchangeability	CTL-I-26
Channels of distribution	CTL-I-27
Common manufacturing facilities, employees, and processes	CTL-I-27
Producer and consumer perceptions	CTL-I-27
Price	CTL-I-28
U.S. market participants	CTL-I-28
U.S. producers	CTL-I-28
U.S. importers	CTL-I-30
U.S. purchasers	CTL-I-32
Apparent U.S. consumption and market shares	CTL-I-34
Part II: Conditions of competition in the U.S. market	
U.S. market characteristics	CTL-II-1
U.S. channels of distribution	CTL-II-1
Supply and demand considerations	CTL-II-3
U.S. supply	CTL-II-3
U.S. demand	CTL-II-9
Substitutability issues	CTL-II-13
Factors affecting purchasing decisions	CTL-II-15
Comparisons of domestic products, subject imports, and nonsubject imports ...	CTL-II-21
Elasticity estimates	CTL-II-28
U.S. supply elasticity	CTL-II-28
U.S. demand elasticity	CTL-II-28
Substitution elasticity	CTL-II-28
Part III: Condition of the U.S. industry	
U.S. producers' capacity, production, and capacity utilization	CTL-III-3
Anticipated changes in existing operations	CTL-III-5
Alternative products	CTL-III-6
U.S. producers' domestic shipments, company transfers, and export shipments ...	CTL-III-7
U.S. producers' inventories	CTL-III-9
U.S. producers' imports and purchases	CTL-III-10
U.S. producers' employment, wages, and productivity	CTL-III-11
Financial experience of the\ U.S. producers	CTL-III-12
Background	CTL-III-12
Operations on CTL plate	CTL-III-12
Capital expenditures and research and development expenses	CTL-III-15
Assets and return on investment	CTL-III-16

CONTENTS – *Continued*

	<u>Page</u>
Part IV: U.S. imports and the foreign industries	
U.S. imports	CTL-IV-1
Cumulation considerations	CTL-IV-7
Fungibility	CTL-IV-7
Geographic markets	CTL-IV-8
Presence in the market	CTL-IV-10
U.S. importers' inventories	CTL-IV-11
The industry in Belgium	CTL-IV-11
Overview	CTL-IV-11
CTL plate operations	CTL-IV-12
Alternative products	CTL-IV-13
The industry in Brazil	CTL-IV-13
Overview	CTL-IV-13
CTL plate operations	CTL-IV-14
Alternative products	CTL-IV-15
The industry in Finland	CTL-IV-15
Overview	CTL-IV-15
CTL plate operations	CTL-IV-16
Alternative products	CTL-IV-17
The industry in Germany	CTL-IV-17
Overview	CTL-IV-17
CTL plate operations	CTL-IV-18
Alternative products	CTL-IV-23
The industry in Mexico	CTL-IV-24
Overview	CTL-IV-24
CTL plate operations	CTL-IV-25
Alternative products	CTL-IV-26
The industry in Poland	CTL-IV-26
Overview	CTL-IV-26
CTL plate operations	CTL-IV-27
Alternative products	CTL-IV-29
The industry in Romania	CTL-IV-29
Overview	CTL-IV-29
CTL plate operations	CTL-IV-30
Alternative products	CTL-IV-31
The industry in Spain	CTL-IV-31
Overview	CTL-IV-31
The industry in Sweden	CTL-IV-32
Overview	CTL-IV-32
The industry in Taiwan	CTL-IV-34
Overview	CTL-IV-34
CTL plate operations	CTL-IV-35
Alternative products	CTL-IV-36
The industry in the United Kingdom	CTL-IV-36
Overview	CTL-IV-36
CTL plate operations	CTL-IV-37
Alternative products	CTL-IV-39

CONTENTS – Continued

	<u>Page</u>
Part IV: U.S. imports and the foreign industries – Continued	
Global market	CTL-IV-39
Production	CTL-IV-39
Consumption	CTL-IV-40
Prices	CTL-IV-40
Additional global supply and demand factors	CTL-IV-42
Consolidation among global producers	CTL-IV-45
Global raw material availability and prices	CTL-IV-45
Regional developments	CTL-IV-46
 Part V: Pricing and related information	
Factors affecting prices	CTL-V-1
Raw materials	CTL-V-1
Transportation costs to the United States	CTL-V-2
U.S. inland transportation costs	CTL-V-3
Exchange rates	CTL-V-3
Pricing practices	CTL-V-9
Pricing methods	CTL-V-9
Sales terms and discounts	CTL-V-10
Price data	CTL-V-11
Price trends	CTL-V-15
Price comparisons	CTL-V-16

CONTENTS – *Continued*

Page

Corrosion-Resistant (CORE) Steel

Part I: Introduction and overview

General information	CORE-I-1
Commerce’s reviews	CORE-I-5
Administrative reviews	CORE-I-5
Results of expedited and full five-year reviews	CORE-I-10
Distribution of Continued Dumping and Subsidy Offset Act funds	CORE-I-12
The subject merchandise	CORE-I-14
Commerce’s scope	CORE-I-14
Tariff treatment	CORE-I-15
The domestic like product	CORE-I-15
Description and applications	CORE-I-15
Manufacturing processes	CORE-I-16
Marketing	CORE-I-16
Domestic like product issues concerning micro-alloy corrosion-resistant steel	CORE-I-17
Physical characteristics and uses	CORE-I-17
Interchangeability	CORE-I-18
Channels of distribution	CORE-I-18
Common manufacturing facilities, employees, and processes	CORE-I-18
Producer and consumer perceptions	CORE-I-19
Price	CORE-I-19
U.S. market participants	CORE-I-19
U.S. producers	CORE-I-19
U.S. importers	CORE-I-21
U.S. purchasers	CORE-I-23
Apparent U.S. consumption and market shares	CORE-I-25

Part II: Conditions of competition in the U.S. market

U.S. market characteristics	CORE-II-1
U.S. channels of distribution	CORE-II-1
Supply and demand considerations	CORE-II-3
U.S. supply	CORE-II-3
U.S. demand	CORE-II-9
Substitutability issues	CORE-II-13
Factors affecting purchasing decisions	CORE-II-15
Comparisons of domestic products, subject imports, and nonsubject imports	CORE-II-21
Elasticity estimates	CORE-II-25
U.S. supply elasticity	CORE-II-25
U.S. demand elasticity	CORE-II-25
Substitution elasticity	CORE-II-25

CONTENTS – *Continued*

Page

Part III: Condition of the U.S. industry

U.S. producers' capacity, production, and capacity utilization	CORE-III-2
Anticipated changes in existing operations	CORE-III-4
Alternative products	CORE-III-5
U.S. producers' domestic shipments, company transfers, and export shipments . . .	CORE-III-6
U.S. producers' inventories	CORE-III-9
U.S. producers' imports and purchases	CORE-III-10
U.S. producers' employment, wages, and productivity	CORE-III-10
Financial experience of the U.S. producers	CORE-III-11
Background	CORE-III-11
Operations on corrosion-resistant steel	CORE-III-12
Capital expenditures and research and development expenses	CORE-III-15
Assets and return on investment	CORE-III-16

Part IV: U.S. imports and the foreign industries

U.S. imports	CORE-IV-1
Cumulation considerations	CORE-IV-4
Fungibility	CORE-IV-5
Geographic markets	CORE-IV-6
Presence in the market	CORE-IV-7
U.S. importers' inventories	CORE-IV-8
The industry in Australia	CORE-IV-9
Overview	CORE-IV-9
Corrosion-resistant steel operations	CORE-IV-9
Alternative products	CORE-IV-11
The industry in Canada	CORE-IV-11
Overview	CORE-IV-11
Corrosion-resistant steel operations	CORE-IV-12
Alternative products	CORE-IV-14
The industry in France	CORE-IV-15
Overview	CORE-IV-15
Corrosion-resistant steel operations	CORE-IV-16
Alternative products	CORE-IV-17
The industry in Germany	CORE-IV-18
Overview	CORE-IV-18
Corrosion-resistant steel operations	CORE-IV-19
Alternative products	CORE-IV-21
The industry in Japan	CORE-IV-21
Overview	CORE-IV-21
Corrosion-resistant steel operations	CORE-IV-23
Alternative products	CORE-IV-25
The industry in Korea	CORE-IV-25
Overview	CORE-IV-25
Corrosion-resistant steel operations	CORE-IV-26
Alternative products	CORE-IV-30

CONTENTS – Continued

	<u>Page</u>
Part IV: U.S. imports and the foreign industries – Continued	
Global market	CORE-IV-32
Production	CORE-IV-32
Consumption	CORE-IV-31
Prices	CORE-IV-33
Additional global supply and demand factors	CORE-IV-35
Consolidation among global producers	CORE-IV-38
Global raw material availability and prices	CORE-IV-38
Regional developments	CORE-IV-39
 Part V: Pricing and related information	
Factors affecting prices	CORE-V-1
Raw materials	CORE-V-1
Transportation costs to the United States	CORE-V-3
U.S. inland transportation costs	CORE-V-4
Exchange rates	CORE-V-4
Pricing practices	CORE-V-8
Pricing methods	CORE-V-8
Sales terms and discounts	CORE-V-8
Price data	CORE-V-9
Price trends	CORE-V-16
Price comparisons	CORE-V-17

Appendixes

Appendixes

A. <i>Federal Register</i> notices and statement on adequacy	A-1
B. Hearing witnesses	B-1
C. Summary data	C-1
D. Treatment of CTL plate and corrosion-resistant steel in the HTSUS	D-1
E. Excluded forms of carbon steel products	E-1
F. Comments by U.S. producers, importers, purchasers, and foreign producers regarding flat bar and other forms of CTL plate	F-1
G. Comments by U.S. producers, importers, and purchasers regarding carbon and micro-alloy steel CTL plate	G-1
H. Comments by U.S. producers, importers, and purchasers regarding carbon and micro-alloy corrosion-resistant steel	H-1
I. Comments by U.S. producers, importers, purchasers, and foreign producers regarding the effects of the orders on CTL plate and the likely effects of revocation	I-1
J. Comments by U.S. producers, importers, purchasers, and foreign producers regarding the effects of the orders on corrosion-resistant steel and the likely effects of revocation ...	J-1
K. Additional purchasing factor comparisons	K-1

Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. AA1921-197 (Second Review); 701-TA-319, 320, 325-327, 348 and 350 (Second Review); and 731-TA-573, 574, 576, 578, 582-587, 612, and 614-618 (Second Review)

Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom

DETERMINATION

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on cut-to-length carbon steel plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom, and the antidumping finding on cut-to-length carbon steel plate from Taiwan, as well as revocation of countervailing duty orders on cut-to-length carbon steel plate from Belgium, Brazil, Mexico, Spain, and Sweden, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

The Commission further determines that revocation of the antidumping duty orders on corrosion-resistant steel from Germany and Korea and the countervailing duty order on corrosion-resistant steel from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Finally, the Commission determines that revocation of the antidumping duty orders on corrosion-resistant steel from Australia, Canada, France, and Japan, as well as the countervailing duty order on corrosion-resistant steel from France, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted these reviews on November 1, 2005 (70 F.R. 62324, October 31, 2005), and determined on February 6, 2006, that it would conduct full reviews (70 F.R. 8874, February 21, 2006). Notice of the scheduling of the Commission's reviews and of public hearings 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* on March 30, 2006 (71 F.R. 16178). The hearings were held in Washington, DC, on October 17 and 19, 2006, 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 Commissioners Charlotte R. Lane and Stephen Koplán dissenting with respect to corrosion-resistant steel from Australia, Canada, France, and Japan.

VIEWS OF THE COMMISSION

Based on the record in these second five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the countervailing duty orders on certain imports of flat-rolled carbon steel cut-to-length steel plate (“CTL plate”) from Belgium, Brazil, Mexico, Spain, and Sweden, of the antidumping duty orders on CTL plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom, as well as of the antidumping finding on CTL plate from Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

With respect to certain corrosion-resistant steel, we determine under section 751(c) of the Act that revocation of the countervailing duty order on certain corrosion-resistant steel from Korea and of the antidumping duty orders on certain corrosion-resistant steel from Germany and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We also determine that revocation of the countervailing duty order on certain corrosion-resistant steel from France and of the antidumping duty orders on certain corrosion-resistant steel from Australia, Canada, France, and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

I. SUMMARY

A. Cut-To-Length Plate

1. Background and Market Conditions

These five-year reviews concern an antidumping finding issued in 1979 as well as antidumping and countervailing duty orders issued in 1993. In its 1979 finding, the Commission concluded that subject CTL plate imports from Taiwan increased sharply in volume, substantially undersold and suppressed prices for the domestic like product, and resulted in lost sales and lower profitability for the domestic industry.² The more numerous determinations made in 1993 occurred in the context of a national economic recession, a shrinking U.S. market for CTL plate, and falling CTL plate prices.³ The focus of those determinations was that the domestic industry had lost market share to subject imports, subject imports depressed and suppressed prices for domestic CTL plate, and domestic industry profits turned to losses as unit production costs climbed and prices for CTL plate fell.⁴

In 2000, the Commission conducted five-year reviews of the finding and orders, and determined that revocation would be likely to lead to the continuation or recurrence of material injury. At the time of

¹ Commissioners Koplan and Lane dissenting with respect to certain corrosion-resistant steel from Australia, Canada, France and Japan. See Separate and Dissenting Views of Commissioner Stephen Koplan and Commissioner Charlotte R. Lane with respect to Certain Carbon Corrosion-Resistant Steel. They join the Commission’s views in Sections I, II, III, IV, and V, and, with respect to corrosion-resistant steel, Sections VI.A and VI.B on domestic like product and domestic industry, respectively.

² See Carbon Steel Plate from Taiwan, Inv. No. AA1921-197, USITC Pub. 970 at 5-7 (May 1979). The Commission defined the domestic industry as a regional one encompassing the states of California, Oregon, and Washington. See USITC Pub. 970 at 4-5.

³ See Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final), and Invs. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 217, 237, and 242 (Aug. 1993).

⁴ See USITC Pub. 2664 at 237-38, 241-44.

the reviews, successive waves of unfairly traded CTL plate had left the domestic industry in a weakened condition and prices for CTL plate were deteriorating or, at best, had stabilized at low levels.⁵ Under these adverse conditions of competition, the Commission found that even relatively modest volumes of subject imports would be likely to have a significant adverse effect on prices for domestic CTL plate as well as on the domestic industry.⁶

The adverse conditions that figured in both the original determinations and first five-year reviews are no longer in evidence. The domestic industry is now stronger and fundamentally changed after a difficult period marked by bankruptcies, mergers, and asset acquisitions. New and efficient capacity was brought into production, less efficient capacity was shuttered, labor productivity increased, and existing capacity was reorganized to enhance producers' ability to manage production volumes in response to changes in demand. Some integrated mills shed legacy costs through bankruptcy, and producers generally will accrue fewer such costs in the future as a result of new labor agreements. Moreover, prices for CTL plate in the U.S. market have doubled or nearly doubled since 2000 as demand has expanded both in the United States and worldwide. The strong demand that drove the price increases is projected to increase during the reasonably foreseeable future.

2. Cumulation⁷

In the current reviews, the Commission has exercised its discretion to consider the likely effects of subject imports on a cumulated basis, except for subject imports from Mexico and Romania. Subject imports from Mexico are ineligible for cumulation because revocation of the antidumping and countervailing duty orders on those imports would be likely to have no discernible adverse impact on the domestic industry. The CTL plate industry in Mexico is smaller than any other subject industry, it exports only very small volumes, and even operating at very high rates of capacity utilization, it is unable to meet home market demand. In addition, Mexico is a net importer of CTL plate, and prices for CTL plate in Mexico are comparable to those in the United States.

As to subject imports from Romania, the Commission declines to exercise its discretion to cumulate those imports because they would likely compete under different conditions of competition than would those from the remaining nine subject countries. The sole CTL plate producer in Romania is related to a major U.S. producer, Romania has more excess capacity than any other subject country, and it is the only subject country that is subject to tariff barriers in third-country markets.

⁵ See Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-20, 322, 325-28, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review), USITC Pub. 3364 at 29, 32 (Nov. 2000).

⁶ See USITC Pub. 3364 at 28.

⁷ Commissioner Koplan and Commissioner Lane exercise their discretion to cumulate subject imports from all eleven subject countries. In doing so, they determine that (1) subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, assessed individually, are not likely to have no discernible adverse impact on the domestic industry in the event of revocation; (2) subject imports from these countries are likely to compete with each other and with the domestic like product in the event of revocation; and (3) many of the likely conditions of competition faced by subject imports from each of these subject countries are similar. See their separate views with respect to cumulation below in Section V. Separate Views of Commissioners Stephen Koplan and Commissioner Charlotte R. Lane on Cumulation with Respect to Cut-To-Length Plate Products.

3. Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom: Likely Volume, Likely Price Effects, and Likely Impact⁸

In evaluating the likely effects of revocation of the finding and orders on subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom, we do not find it likely that the cumulated volume of subject imports will be significant. We note first that the combined production capacity for the nine subject countries has declined substantially since 1993. In addition, the CTL plate industry in each subject country is currently operating at a higher rate of capacity utilization than in 1993, except for a small decline in the still high capacity utilization rate for the industry in Brazil. Demand for CTL plate is projected to grow in the markets served by the subject producers, and, in turn, these subject producers which project no substantial increases in production capacity within the reasonably foreseeable future. For these reasons, the nine subject countries would have considerably less ability to increase shipments to the United States upon revocation than they did prior to the orders.

For some of the same reasons, these foreign producers would lack a volume-based incentive to increase shipments to the United States upon revocation. The subject CTL plate producers were generally operating at high levels of capacity utilization in 2005, over 90 percent in most cases. Demand in the markets served by those producers is projected to remain strong and grow during the reasonably foreseeable future. Accordingly, the foreign producers already have non-U.S. markets into which they sell a large percentage of their production.

Nor is there a strong price motivation to increase shipments to the United States. In general, prices for CTL plate in the markets served by the subject foreign producers are high and comparable to U.S. prices, even prior to allowing for higher shipping costs to the United States. Although there may be such a price incentive vis-a-vis sales currently made into some Asian markets, most of the subject producers export mainly to countries within the European Union, where prices are high and comparable to U.S. prices. Although the European Union is not the primary export market for the CTL plate industries in Taiwan and Brazil, Taiwan ships over *** percent of its production to the home market, and Brazil similarly ships over *** percent of production to the home market, with most of the rest of Brazilian production exported to neighboring markets in Latin America. Moreover, supply shortages continue in the U.S. market for certain types of CTL plate, U.S. demand is projected to grow, and there are no projected additions to production capacity in the United States for the reasonably foreseeable future. For the reasons summarized here, we do not find it likely that the volume of the cumulated subject imports will be significant in the event of revocation.

Moreover, we do not find that the cumulated subject imports would likely significantly undersell the domestic like product or would likely have significant price depressing or price suppressing effects on prices for domestically produced CTL plate upon revocation. Most of the very large price increases for CTL plate in the U.S. market occurred during 2004, despite a concurrent increase in the volume of total imports. While prices for raw materials also increased, the spread between the price of CTL plate and raw materials enlarged. Growing demand for CTL plate caused the price increases, and that demand is projected to remain strong and grow in the reasonably foreseeable future.

Finally, in considering the likely impact of the cumulated subject imports, we find the domestic industry is no longer in a vulnerable state. As noted, the industry has emerged stronger and transformed after passing through a difficult period. Two of what are now the three leading domestic producers invested in new, efficient facilities, while the third rationalized and consolidated much of the integrated

⁸ Commissioner Koplan and Commissioner Lane have exercised their discretion to cumulate subject imports from all eleven subject countries. Thus, they examine the likely cumulated volume of CTL imports from eleven subject countries (Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom) in the event of revocation and because they concur with Vice Chairman Aranoff's definition of the domestic like product, they also refer to data for the non-alloy CTL plate industry such as that summarized in Table C-1.

segment of the industry. Most industry performance indicators improved dramatically during the period of review, including production, U.S. shipments, net sales, capacity, and capacity utilization. Operating losses experienced until 2003 turned to very strong profits in 2004 and thereafter. Consistent with these very favorable financial indicators, there was no evidence that the domestic industry was experiencing a cost/price squeeze. Moreover, the conditions that have enabled these strong improvements in industry performance are not likely to change in the reasonably foreseeable future, as efficiency gains are not likely to be lost and demand is projected to remain strong and grow. In this environment, and considering that the cumulated subject imports are not likely to be significant in volume or to have significant adverse price effects, we find that revocation of the finding and orders on CTL plate from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom is not likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

4. Mexico: Likely Volume, Likely Price Effects, and Likely Impact⁹

In evaluating the likely effects of revocation of the orders on subject imports from Mexico, we do not find it likely that the volume of subject imports from Mexico will be significant. Prior to the orders, the volume of subject imports from Mexico never exceeded 1.2 percent of apparent U.S. consumption and such imports were non-existent or very small during the period of review. Despite producing at very high rates of capacity utilization, the Mexican CTL plate industry is unable to meet home market demand, with the result that Mexico has become a significant net importer of CTL plate. Exports by the Mexican CTL plate industry to all markets have been small or non-existent over the period of review. For the reasons summarized here, we do not find it likely that the volume of CTL plate imports from Mexico would be significant in the event of revocation.

With *** available excess capacity, the CTL plate industry in Mexico has no incentive to price aggressively in order to ship large volumes of subject product into the U.S. market. Given the likely small volume of subject imports from Mexico in the event of revocation, and the sustained rise in CTL plate prices in the U.S. market, we do not find it likely that subject imports from Mexico will have significant price depressing or price suppressing effects on the price of domestic CTL plate within a reasonably foreseeable time.

In evaluating the likely impact of subject imports from Mexico, we consider that the domestic industry is not vulnerable and has reported large profits since 2004. Accordingly, and given that it is not likely that subject imports from Mexico will be significant in volume or have significant adverse price effects, we find that revocation of the orders on CTL plate from Mexico would not be likely to have a significant adverse impact on the domestic industry.

5. Romania: Likely Volume, Likely Price Effects, and Likely Impact¹⁰

In evaluating the likely effects of revocation of the antidumping duty order on subject imports from Romania, we do not find it likely that the volume of subject imports will be significant. Although the CTL plate industry in Romania likely has the ability to increase shipments to the United States substantially, we find that it lacks the incentive to do so because (1) the sole CTL plate producer in Romania recently became affiliated with a major U.S. producer and (2) Romanian CTL plate exports are increasingly directed to the European Union, a market likely to become more attractive after Romania's likely accession to the European Union in early 2007.

⁹ Commissioner Koplán and Commissioner Lane have exercised their discretion to cumulate subject imports from all eleven countries and do not join in the discussion in this section.

¹⁰ Commissioner Koplán and Commissioner Lane have exercised their discretion to cumulate subject imports from all eleven countries and do not join in the discussion in this section.

Previously a state-owned enterprise, the sole Romanian producer became affiliated with the multinational Mittal Steel companies in 2001. The Mittal companies gained their first presence in the United States upon acquiring the assets of domestic producer ISG in April 2005, naming the new enterprise Mittal Steel U.S.A. Consistent with these events, exports of CTL plate to the United States increased irregularly from 2001 through 2004, but fell in 2005 by more than half compared to 2004, and there were only *** short tons exported during interim 2006 compared to *** short tons during interim 2005. The corporate affiliation between Mittal Steel Galati and Mittal Steel U.S.A. makes it unlikely that the Romanian producer would move aggressively to capture U.S. market share or sell CTL plate in such a manner that would have a negative effect on prices received by the domestic industry.

The European Union is a more likely destination than the United States for any additional CTL plate exports from Romania. CTL plate exports from Romania to the European Union have grown irregularly since 2000, and were sharply higher during the first half of 2006, when they accounted for nearly *** of total shipments by the Romanian CTL plate industry. Moreover, as of the closing of our record, Romania's membership to the European Union was scheduled to be ratified by early 2007. Accession to the European Union will facilitate Mittal Steel Galati's access to that very large market, making it an even more attractive export destination. Recent EU market prices for CTL plate have been comparable to U.S. prices, even before factoring in additional transportation costs, providing another reason that any shift in exports by Mittal Steel Galati will more likely be to the European Union than more distant markets such as the United States. For the reasons summarized here, we do not find it likely that the volume of subject CTL plate from Romania will be significant in the reasonably foreseeable future in the event of revocation.

As to likely price effects, the record evidence shows that CTL plate prices rose sharply during 2004, and have remained at or near historic highs through late 2006. In particular, all five pricing products examined by the Commission registered their greatest price increases in 2004, the same year that subject imports from Romania reached their highest levels during the period of review. As noted, demand for CTL plate in the U.S. market is projected to remain strong and grow in the reasonably foreseeable future. For these reasons, and given that CTL plate imports from Romania are not likely to be significant in volume, we conclude that subject imports from Romania are not likely to have significant adverse price effects.

As to the likely impact of subject imports from Romania, we also note that the domestic industry is not vulnerable, that the industry has reported very large operating margins beginning in 2004, and that demand for CTL plate in U.S. is projected to grow during the reasonably foreseeable future. Given that subject imports from Romania are not likely to be significant in volume or have significant adverse price effects, and considering the very strong financial results of the domestic industry, we do not find it likely that the subject imports would have a significant adverse impact on the domestic industry in the event of revocation.

B. Corrosion-Resistant Steel

1. Majority Views

a. Background and Market Conditions

The Commission's determination in the original investigations in 1993 found the domestic industry had been materially injured by reason of the significant and increasing volume of corrosion-resistant steel from Australia, Canada, France, Germany, Japan, and Korea, the high import penetration throughout the period of investigation, the significant loss of market share for the domestic industry

during a time of increasing apparent domestic consumption, the inability of the domestic industry to capture market share even with price discounting, and the lower profitability of the domestic industry.¹¹

Substantial changes in the U.S. market and industry have taken place since the issuance of the antidumping and countervailing duty orders in August 1993, particularly since 2000. The domestic industry producing corrosion-resistant steel experienced several bankruptcies, and shed billions of dollars of pension obligations to the Pension Benefit Guaranty Corporation. Following these actions, significant parts of the industry underwent consolidation and rationalization, a process that was facilitated in part by the United States placing global safeguards on a variety of steel products, including corrosion-resistant steel, from March 2002 through December 2003. Domestic producers renegotiated labor contracts, reduced their fixed costs, and increased their productivity. As a result of these consolidations, the top four domestic mills, AK Steel, Mittal Steel USA, Nucor and U.S. Steel, now account for *** percent of U.S. corrosion-resistant steel production in 2005, as compared to *** percent in 1999. Furthermore, several producers have expanded their facilities, invested in greenfield facilities, or announced expansion plans (e.g., CSN, Winner Steel, SeverCorr, Steelscape, Mittal, and Nucor). While corrosion-resistant steel production remains capital intensive, these changes have lowered the industry's fixed costs. As a result, it now is better able to control output and maintain price levels in response to changing business cycles than it was during the original investigations and first reviews.

Consolidations and mergers among corrosion-resistant steel producers worldwide as well as in the United States since the original investigations have supported a regionalization of production strategies by multinational companies. For example, Mittal Steel N.V. acquired the assets of several U.S. producers, including LTV, Bethlehem Steel, and Weirton Steel. In June 2006, Mittal announced a merger with Arcelor. Once this merger closes in the first half of 2007, it will form the world's largest steel producer with steelmaking facilities located in regions throughout the world. The stated strategy of both Arcelor and Mittal, even before their merger, was to acquire or build plants to serve clients within a region, rather than having to export product from one region to another region.

Apparent U.S. consumption has grown substantially since the original investigations, when it was 13.6 million short tons in 1992, to 22.7 million short tons in 2005.¹² In 2004 and 2005, the U.S. market experienced tight supplies, which affected contract terms between domestic producers and purchasers in the U.S. auto industry. U.S. demand has been robust through the first half of 2006, and demand growth is expected to continue for the reasonably foreseeable future, but at a slower rate. While North American auto production appears to be declining somewhat in 2006, it is expected to recover in 2007 and grow at a slow rate through 2008. Demand in the non-residential construction sector, however, is expected to remain strong into 2007. Demand for corrosion-resistant steel outside the United States increased during the review period, particularly in China and other industrializing countries in Asia, Latin America, and Eastern Europe. Global vehicle production is expected to increase in the foreseeable future, driven by developing countries such as China, India, and Brazil.

b. Cumulation

In the current reviews, we consider the likely effects of subject imports based on three groupings of subject countries. As to subject imports from Canada, we decline to exercise our discretion to cumulate those imports because they likely would compete under different conditions than would imports from the remaining subject countries. The Canadian industry is unique in that auto producers and auto parts suppliers treat the United States and Canada as a unified market for production and sourcing decisions. These producers require just-in-time delivery of supplies; thus, North American corrosion-resistant steel producers possess an economic advantage over other mills.

¹¹ USITC Pub. 2664 at 188-192.

¹² CR/PR at Table CORE-I-1.

As to subject imports from Germany and Korea, we exercise our discretion to cumulate those imports because they likely would compete under different conditions than would those from Australia, France, and Japan. Unlike subject producers in Australia, France, and Japan, producers in Germany and Korea have evidenced a strong interest in exporting to the North American market generally, confirming the attractiveness of the North American region to these producers; yet they have limited production facilities in North America from which to service their interests.

Finally, we exercise our discretion to cumulate subject imports from Australia, France, and Japan because subject producers in those countries have demonstrated a lack of interest in supplying the U.S. market to any significant degree. Instead, the industries in all three countries are focused to a significant extent on markets in their respective regions (namely, Asia for Australia and Japan, and the European Union for France), including their home markets. To the extent that Japan and France have any interest in sales in the U.S. market, they are likely to sell corrosion-resistant steel from their U.S.-based affiliates or subsidiaries.

c. Australia, France, and Japan: Likely Volume, Likely Price Effects, and Likely Impact

In the absence of the orders, we do not find it likely that the volume of subject imports from Australia, France, and Japan would be significant. Producers in the three cumulated countries currently supply the least amount of corrosion-resistant steel to the U.S. market out of the subject countries. They have operated at relatively high capacity utilization rates during the review period. Their focus has been predominantly on their home and regional markets. In 2005, only *** percent of Australia's exports were to destinations outside Asia; less than *** percent of French shipments were exported outside the European Union; and less than *** percent of Japan's total shipments were exported outside the Asian region.

Producers in the three cumulated countries have not shown a strong interest in the United States or the broader North American market, and the record evidence does not indicate that there are volume-based incentives for this to change in the reasonably foreseeable future.

In Australia, the sole producer is focused on its home and nearby Asian markets. Its production is for non-automotive applications as it manufactures primarily pre-fabricated construction components. It has set up local corrosion-resistant production facilities in multiple Asian countries to serve regional construction markets. The corrosion-resistant steel it sells in China and other Asian markets is of higher quality than what these Asian producers currently produce or likely will be able to produce in the reasonably foreseeable future. Thus, growing Asian production of other types of corrosion-resistant steel is unlikely to displace Australia's exports to that region.

In France, the Arcelor-Mittal merger, which is scheduled to close in the first half of 2007, will establish an affiliation between two large multinational producers, Mittal Steel and Arcelor, which have large production operations in both the United States and France. The French industry, which has essentially been absent from the U.S. market at least since the first review period, will have even less incentive to resume shipments to the United States, given the merger.

After the orders were imposed, Japanese producers began to supply transplant Japanese automakers in the United States with corrosion-resistant steel made by the Japanese producers' U.S. affiliates. Most Japanese producers now are related to U.S. producers of corrosion-resistant steel accounting for more than *** percent of U.S. production. Some of these relationships have led to technology transfers to the U.S. joint ventures or *** in the United States. Furthermore, demand in Japan and Asia generally grew throughout the period of review and is expected to continue to grow in the reasonably foreseeable future. Japanese exports to China are concentrated in electro-galvanized corrosion-resistant steel, which is not made in China and would thus not be displaced by any increase in Chinese capacity to produce other corrosion-resistant steel.

For the reasons summarized here, we do not find it likely that the volume of these cumulated subject imports would be significant in the event of revocation of the orders.

Nor do we find that the cumulated subject imports from Australia, France, and Japan would likely have significant price depressing or price suppressing effects on U.S. prices. U.S. prices have been strong and rose during the period of review for the following reasons: (1) rapidly growing demand, both in the United States and globally; (2) substantial increases in raw material and energy costs; and (3) the restructuring of the domestic industry during the review period, which lowered the domestic industry's fixed costs somewhat and gave it more flexibility than in the past to manage output in order to maintain prices in the face of rising costs. While prices for some products had fallen from their period highs by mid-2006, a number of U.S. producers announced additional price increases in the middle of 2006 and the record shows that a number of contracts recently negotiated for shipments in the second half of 2006 and 2007 are at higher prices for domestic producers than in previous periods.

We recognize that auto producers testified that, although they prefer to buy corrosion-resistant steel from North American suppliers in order to satisfy their just-in-time inventory requirements, the availability of subject imports in the event of revocation of the orders would give them leverage to negotiate more favorable prices. The record does not support the likelihood that subject imports from Australia, France, and Japan will result in significant price depressing or price suppressing effects on prices for domestically produced corrosion-resistant steel. Producers in these cumulated subject countries have neither the capacity nor the incentive to ship significant quantities of the subject product to the United States in the event of revocation. Thus, producers in these subject countries are unlikely to price aggressively for such limited sales or to ship significant enough volumes to create leverage for auto producers to negotiate significantly lower prices.

Finally, in considering the likely impact of the cumulated subject imports from Australia, France, and Japan, we find the domestic industry is no longer in a vulnerable state. The consolidations and restructuring that occurred during the review period have resulted in an industry that is stronger and healthier than in previous periods considered. Domestic producers have renegotiated labor contracts, shed more than \$7.5 billion in legacy costs, reduced their fixed costs, and increased their productivity. Following these significant structural changes, the industry returned to operating profitability and both current producers and new entrants have invested in new facilities or plan to add 1.9 million net tons of corrosion-resistant capacity by 2008.

Moreover, the conditions that have enabled these strong improvements in industry performance are not likely to change in the reasonably foreseeable future, as efficiency gains are not likely to be lost and demand is projected to remain strong and grow, albeit at a slower rate. In this environment, and considering that these cumulated subject imports are not likely to be significant in volume or to have significant adverse price effects, we find that revocation of the orders on corrosion-resistant steel from Australia, France, and Japan is not likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

d. Canada: Likely Volume, Likely Price Effects, and Likely Impact

In the absence of the order, we do not find it likely that the volume of subject imports from Canada would be significant because Canadian producers lack a volume-based incentive to increase shipments to the United States. During the review period, the Canadian industry shipped the majority of its total shipments of corrosion-resistant steel to its home market. Canada is a net importer of corrosion-resistant steel, not only from the United States, but globally. Moreover, production and demand in the Canadian automotive and non-residential construction sectors are forecast to remain strong through 2008.

Most of Canada's exports to the United States are directed toward the automotive sector, which dominates the U.S. corrosion-resistant steel market. While imports from Canada have remained in the U.S. market despite the order, their volume has been relatively consistent and they primarily supplied the North American auto market pursuant to long-term contracts. Any increases in imports from Canada

during the period for the most part did not displace U.S. production, or represent sales lost to Canadian product on the basis of price, but rather reflected increased U.S. demand or ***.

Nor do Canadian producers have a strong price motivation to increase shipments to the United States. Canadian prices have been comparable to U.S. prices, as would be expected in these markets showing significant connections in the automotive sector.

These conditions are likely to remain for the reasonably foreseeable future. Thus, for the reasons summarized here, we do not find it likely that the volume of subject imports from Canada would be significant in the event of revocation of the order.

As to likely price effects, the record evidence shows that U.S. prices have been strong and rose during the period of review because of growing demand, rising raw material and energy costs, and the increased flexibility of the domestic industry to manage output in order to maintain prices in the face of rising costs. U.S. producers recently negotiated contracts for shipments in the second half of 2006 and 2007 to auto producers that contain higher prices for domestic producers than in previous periods. Finally, the record also does not support the likelihood that subject imports from Canada will result in significant price depressing or price suppressing effects on prices for domestically produced corrosion-resistant steel.

As to the likely impact of subject imports from Canada, we note that the domestic industry is not vulnerable, that the consolidations and restructuring that occurred during the review period have created a stronger and healthier industry, that the industry continues to invest and expand, and that demand for corrosion-resistant steel in the United States is projected to remain strong and grow in the reasonably foreseeable future. Given that subject imports from Canada are not likely to be significant in volume or have significant adverse price effects, and considering the healthy condition of the domestic industry, we do not find it likely that the subject imports would have a significant adverse impact on the domestic industry in the event of revocation.

e. Germany and Korea: Likely Volume, Likely Price Effects, and Likely Impact

In contrast, we determine that the likely volume of cumulated subject imports from Germany and Korea would be significant if those antidumping and countervailing duty orders are revoked. German and Korean producers have substantially increased both their combined production capacity and their production of corrosion-resistant steel since the original investigations. They have a combined excess capacity of *** short tons in 2005, equivalent to *** percent of apparent U.S. consumption in 2005.

German and Korean producers have a volume-based incentive to increase shipments to the United States upon revocation. Subject producers have exhibited a strong interest in exporting to the United States and the rest of North America during the period of review and generally lack a significant North American production base from which to supply their customers. Several subject producers have strong relationships with U.S. distributors and/or customers that would facilitate their increased exports to the United States from their production operations in their home countries. Another indication of their strong interest in the North American market is the possibility that German producer ThyssenKrupp will establish a production facility in North America by purchasing the assets of Dofasco in Canada, or constructing or acquiring a production facility in the United States. The record, however, does not indicate that it is more likely than not that this will happen in the reasonably foreseeable future as all of these options are tied up in regulatory uncertainty or will take years to bring to fruition. Similarly, while POSCO has indicated plans to construct a production facility in Mexico, such a facility would not be completed in the reasonably foreseeable future. Thus, both producers will have to supply the U.S. market with exports.

Subject producers from Korea also have a price motivation to increase shipments to the U.S. market. The majority of imports from Korea have gone into the non-automotive sector during the review period. A significant portion of Korea's exports to its Asian markets is to the construction sector, which

is typically project-based and not supplied under long-term contracts. U.S. prices for corrosion-resistant steel have typically been higher than prices in several Asian markets.

As to likely price effects, we find that the cumulated subject imports from Germany and Korea would likely have significant price depressing or price suppressing effects on U.S. prices. While U.S. prices increased over the period of review and the U.S. industry has lowered its fixed costs, subject imports from Germany and Korea likely would have a significant effect on U.S. prices in the event of revocation of the orders. The substantially increased volume of subject imports from Korea likely would be priced aggressively to compete in non-automotive sectors. These imports would put pressure on spot prices, which would, in turn, negatively affect contract prices. In contrast to our finding that subject producers from Australia, Canada, France, and Japan either lack incentive or the ability to export significant volumes to the United States, the substantially increased volume of subject imports from both Germany and Korea likely would be used by U.S. automakers to leverage down U.S. prices, likely leading to significant price depression or suppression. To the extent that producers from both countries plan to establish North American production platforms, they will have to increase their volumes to this sector. Therefore, they are likely to build their automotive customer base with discounted prices.

Finally, in considering the likely impact of the cumulated subject imports from Germany and Korea, we find that subject imports would have a significant adverse impact on the U.S. industry. While we do not find the domestic industry to be vulnerable, we do find that if the orders were revoked, the likely significant increase in the volume of subject imports from Germany and Korea, coupled with their likely adverse price effects, likely would have a significant negative impact on the domestic industry's ability to cover its high raw material and energy costs. Even though the domestic industry is stronger and better able to weather changes in the corrosion-resistant steel market, aggressive pricing in the construction sector and the spot market, by subject imports from Korea, and the ability of the automakers to use the increased volumes of Korean and German product to leverage down prices in long-term contracts likely would injure the U.S. industry.

2. Separate and Dissenting Views of Commissioner Stephen Koplan and Commissioner Charlotte R. Lane with respect to Corrosion-Resistant Steel

Based on the record in these five-year reviews, we determine that revocation of the antidumping and countervailing duty orders on certain carbon corrosion-resistant ("CORE") steel from Australia, Canada, France, Germany, Japan, and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Since we dissent from the Commission's determination with respect to CORE steel imports from Australia, Canada, France, and Japan, we write separately to explain our findings.¹³

Cumulation. We have exercised our discretion to cumulatively assess the likely volume and effect of subject imports of CORE steel from Australia, Canada, France, Germany, Japan, and Korea. Based on the record regarding, *inter alia*, the capacity, excess capacity, and exports of the industries in Australia, Canada, France, Germany, Japan, and Korea, as well as their trade and pricing patterns during the original investigations and the first and second reviews, we find that subject imports from all six countries would be likely to have a discernible adverse impact on the domestic industry if the orders were revoked. We also find that a reasonable overlap of competition between the subject imports and the domestic like product would be likely to exist if the orders were revoked. While there are some variations in the volume and price trends for subject imports from all six countries during the current review period, we find that none of them are distinct from all others or that there are any significant differences in the conditions of competition among the subject countries.

¹³ Except, as noted in the Commission's opinion, we join its determination regarding legal standards, cut-to-length plate, and CORE steel with respect to background, domestic like product, and domestic industry.

Conditions of Competition. While many of the conditions of competition in the first reviews are the same in the current reviews,¹⁴ there are some differences which we also find relevant to our determinations: 1) apparent U.S. consumption for CORE steel increased substantially during the first reviews, but it only increased by 3.4 percent from 2000 to 2005 and is expected to remain flat or increase at a slower rate in the reasonably foreseeable future than over the current review period; 2) in spite of the consolidation and restructuring of the domestic CORE steel industry since the first reviews, the number of domestic CORE steel producers has remained about the same, the industry's production capacity remained relatively steady, and its capacity utilization hovered around 80 percent during the current review period, down from 87.3 percent in 1999; 3) while plans for a number of investments were announced in 2005 and 2006, which will add 1.9 million short tons of CORE steel capacity by 2008, these investments will provide for substantially less additional capacity than the 6.7 million short tons that the industry's positive performance warranted undertaking in the first review period; and 4) the U.S. CORE steel industry's raw material costs and energy costs increased substantially over the second review period, which had a dramatic effect on CORE steel prices.

Likely Continuation or Recurrence of Material Injury. Given the subject producers' reliance on export markets, their substantial and increasing excess capacity, taken together with the incentive to maximize production, and their continued and increasing presence in the U.S. market, we find that they likely will export significant and increasing volumes of CORE steel to the U.S. market upon revocation of the antidumping and countervailing duty orders. Thus, we find that the volume of cumulated subject imports likely would be significant if the orders were revoked.

Because price is important to purchasing decisions, the presence of significant quantities of CORE steel imports that are likely to enter the U.S. market after revocation will force domestic CORE steel producers to either lower prices or lose sales. Thus, we also find that the likely volume of subject imports is likely to significantly both undersell and result in price depressing or suppressing effects on the prices of the domestic product, if the orders are revoked.

The domestic CORE steel industry's performance has been mixed during the current reviews. At the beginning of the current period, the domestic industry's financial performance was lower than that in the first reviews and similar to its performance during the original investigations. While the domestic industry's performance improved substantially in 2004, as apparent U.S. consumption and domestic production increased and capacity utilization reached a period high of 85 percent, this level of performance was not sustained as evidenced by the fact that the domestic industry's operating income declined in 2005. Based on the record evidence in these reviews, we find that the domestic industry is currently vulnerable to material injury if the orders are revoked.

We find that there are a number of important factors underlying the financial performance of the CORE steel industry. First, the swings in the domestic industry's financial performance correlate to the increases in cost of goods sold, particularly rising raw material and energy costs. The evidence indicates that the automotive producers, which account for 47.6 percent of CORE steel shipments, have generally not agreed to contracts with adjustments for increases in raw material and energy costs. Thus, the domestic industry has been caught in a cost/price squeeze. Moreover, the automotive producers explicitly indicated that if the orders were revoked they would use the threat of competition from subject imports to ensure that the domestic CORE steel producers priced "competitively" and thus that this cost/price squeeze would continue. Second, the CORE steel producers with substantial shares of their shipments

¹⁴ Many of the conditions of competition are similar to those in the first reviews, including – demand for CORE steel is dependent on demand in the automotive and construction industries; demand for hot-dipped galvanized CORE steel grew while demand for electrogalvanized CORE steel declined; the CORE steel industry still is technologically complex, involves high fixed costs, is capital intensive in nature, and requires high capacity utilization rates to remain profitable; price continues to be an important factor in purchasing decisions, given the broad interchangeability of CORE steel; and domestic CORE steel is sold both by contract and on the spot market with little protection from contracts since price concessions are requested by purchasers if spot prices decline.

devoted to the automotive sector generally are experiencing worse financial performance than those not serving the automotive sector.

We consequently find that revocation of the orders under review will likely have a significant adverse impact on the domestic industry. We therefore determine that revocation of the antidumping and countervailing duty orders on CORE steel from Australia, Canada, France, Germany, Japan, and Korea will likely lead to continuation or recurrence of material injury to the domestic CORE steel industry within a reasonably foreseeable time.

II. BACKGROUND

A. Original Investigations and Related Litigation

There were two sets of original investigations that gave rise to the countervailing duty orders, antidumping duty orders, and antidumping finding at issue in these grouped reviews. First, in conjunction with its administration of the Trigger Price Mechanism, a program established to monitor prices at which certain steel mill products entered the United States, the U.S. Department of the Treasury (“Treasury”) self-initiated on October 25, 1978, an antidumping duty investigation on CTL plate from Taiwan and published a corresponding dumping finding on February 14, 1979. In turn, the U.S. International Trade Commission (“Commission”) instituted an investigation and on May 12, 1979, made its affirmative final determination that a U.S. regional industry consisting of domestic producers in California, Washington, and Oregon was injured or likely to be injured by subject imports from Taiwan.¹⁵

Second, on June 30, 1992, after expiration of the voluntary export agreements on steel that were concluded in 1984, domestic producers Armco, Bethlehem, Geneva, Gulf States, Ispat/Inland, Laclede Steel, LTV, Lukens, National, Sharon, USX, and WCI alleged in petitions filed simultaneously with the U.S. Department of Commerce (“Commerce”) and the Commission, *inter alia*, that an industry in the United States was materially injured or threatened with material injury by reason of subsidized imports of CTL plate from ten countries and dumped imports of CTL plate from fifteen countries and that an industry in the United States was materially injured or threatened with material injury by reason of subsidized corrosion-resistant products from eight countries and dumped corrosion-resistant products from nine countries.¹⁶ In its final determinations, the Commission concluded that the CTL plate industry in the United States was materially injured by reason of subsidized CTL plate imports from Belgium, Brazil, Germany, Mexico, Spain, Sweden, and the United Kingdom as well as imports sold at less than fair value of CTL plate from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom.¹⁷ Based on pre-URAA negligibility criteria, at least four

¹⁵ See, e.g., Carbon Steel Plate from Taiwan, Inv. No. AA1921-197, USITC Pub. 970 (May 1979). The antidumping finding issued by Treasury on imports from Taiwan has been in place since June 13, 1979. See, e.g., Confidential Staff Report, Mem. INV-DD-159 (Nov. 22, 2006), as amended by Mem. INV-DD-162 (Dec. 5, 2006) and Mem. INV-DD-164 (Dec. 13, 2006) (“CR”) at OVERVIEW-2; Public Staff Report (“PR”) at OVERVIEW-2.

¹⁶ See, e.g., CR at OVERVIEW-3; PR at OVERVIEW-2. They also alleged that an industry in the United States was materially injured or threatened with material injury by reason of subsidized hot-rolled products from seven countries and dumped imports of hot-rolled products from nine countries, and that an industry in the United States was materially injured or threatened with material injury by reason of subsidized cold-rolled products from eleven countries and dumped cold-rolled products from fifteen countries. See, e.g., *id.*

¹⁷ In a joint opinion, four Commissioners cumulated subject CTL plate imports from at least eight countries, namely Belgium, Brazil, Canada, Finland, Mexico, Spain, and Sweden, as well as South Africa (which was the subject of a separate preliminary investigation by Commerce at the time). Commissioners Rohr and Watson cumulated subject imports from these eight countries with subject imports from Germany, Poland, Romania, and the United Kingdom. Commissioner Crawford cumulated subject imports only from these eight countries.

(continued...)

Commissioners found subject CTL plate imports from France, Italy, and Korea to be negligible and, as a result of their negative final determinations, orders were not issued on subject CTL plate imports from these countries.¹⁸ The Commission further found that the domestic corrosion-resistant steel industry in the United States was materially injured by reason of subsidized imports of corrosion-resistant carbon steel flat products from France, Germany, and Korea as well as imports sold at less than fair value of corrosion-resistant steel products from Australia, Canada, France, Germany, Japan, and Korea.¹⁹ The Commission reached negative determinations with respect to corrosion-resistant steel from Brazil, Mexico, New Zealand, and Sweden.²⁰ Commerce published the countervailing duty orders on August 17, 1993 and the antidumping duty orders on August 19, 1993.²¹

Several issues related to the Commission's 1993 final determinations were appealed to the U.S. Court of International Trade ("CIT"). With respect to CTL plate, the Court rejected all of the challenges and affirmed the Commission's final determinations;²² this decision was not further appealed. With respect to corrosion-resistant-steel, the Court affirmed the Commission's affirmative material injury determinations with respect to Australia, Canada, France, Germany, Japan, and Korea, and its negative determinations with respect to Brazil, Mexico, New Zealand, and Sweden.²³ The Court remanded one Commissioner's separate determination with respect to the application of the negligibility exception to

¹⁷ (...continued)

Commissioner Nuzum cumulated subject imports from these eight countries along with subject imports from France, Germany, Poland, Romania, and the United Kingdom. In his separate opinion, Commissioner Newquist cumulated subject imports from Belgium, Brazil, Canada, Finland, Mexico, South Africa, Spain, and Sweden. In her separate opinion, Commissioner Brunsdale cumulated subject imports from Belgium, Brazil, Canada, Finland, Mexico, Spain, and Sweden. See, e.g., USITC Pub. 2664 at 237 n.40, 276-77, and 330.

¹⁸ See, e.g., USITC Pub. 2664 at 219-36, 244-49, and 317.

¹⁹ See, e.g., USITC Pub. 2664 at 161-210.

²⁰ See, e.g., USITC Pub. 2664.

²¹ See, e.g., 58 Fed. Reg. 43749 (Aug. 17, 1993) (Belgium CVD CTL plate); 58 Fed. Reg. 43751 (Aug. 17, 1993) (Brazil CVD CTL plate); 58 Fed. Reg. 43755 (Aug. 17, 1993) (Mexico CVD CTL plate); 58 Fed. Reg. 43761 (Aug. 17, 1993) (Spain CVD CTL plate); 58 Fed. Reg. 43758 (Aug. 17, 1993) (Sweden CTL plate); 58 Fed. Reg. 44164 (Aug. 19, 1993) (Belgium AD CTL plate); 58 Fed. Reg. 44164 (Aug. 19, 1993) (Brazil AD CTL plate); 58 Fed. Reg. 44165 (Aug. 19, 1993) (Finland AD CTL plate); 58 Fed. Reg. 44170 (Aug. 19, 1993) (Germany AD CTL plate); 58 Fed. Reg. 44165 (Aug. 19, 1993) (Mexico AD CTL plate); 58 Fed. Reg. 44166 (Aug. 19, 1993) (Poland AD CTL plate); 58 Fed. Reg. 44167 (Aug. 19, 1993) (Romania AD CTL plate); 58 Fed. Reg. 44167 (Aug. 19, 1993) (Spain AD CTL plate); 58 Fed. Reg. 44168 (Aug. 19, 1993) (Sweden AD CTL plate); 58 Fed. Reg. 44168 (Aug. 19, 1993) (United Kingdom AD CTL plate); 58 Fed. Reg. 43759 (Aug. 17, 1993) (France CVD corrosion-resistant steel); 58 Fed. Reg. 43752 (Aug. 17, 1993) (Korea CVD corrosion-resistant steel); 58 Fed. Reg. 44161 (Aug. 19, 1993) (Australia AD corrosion-resistant steel); 58 Fed. Reg. 44162 (Aug. 19, 1993) (Canada AD corrosion-resistant steel); 58 Fed. Reg. 44169 (Aug. 19, 1993) (France AD corrosion-resistant steel); 58 Fed. Reg. 44170 (Aug. 19, 1993) (Germany AD corrosion-resistant steel); 58 Fed. Reg. 44163 (Aug. 19, 1993) (Japan AD corrosion-resistant steel); and 58 Fed. Reg. 44159 (Aug. 19, 1993) (Korea AD corrosion-resistant steel).

²² See Czestochowa v. United States, 890 F. Supp. 1053 (Ct. Int'l Trade 1995). The CIT affirmed the Commission's decision to include imports from South Africa in its cumulation analysis even though South Africa was not entitled to an injury determination because imports from that country were subject to a separate preliminary investigation by Commerce at the time of the Commission's vote in these investigations. The CIT affirmed the Commission's decision not to apply the negligible imports exception to cumulation to subject imports from Poland, Finland, and Romania. Finally, the CIT also affirmed the Commission's decision to apply the negligible imports exception to cumulation to subject imports from France and Korea.

²³ See Nippon Steel Corp. v. United States, 19 CIT 450 (1995).

cumulation to Mexican imports. Upon remand, the Court sustained the Commissioner's clarified views.²⁴ These decisions were not further appealed.

B. First Reviews and Related Litigation

After conducting full five-year reviews of the grouped transition orders, on November 20, 2000, the Commission determined that revocation of the finding and orders on CTL plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.²⁵ It determined that revocation of the antidumping and countervailing duty orders on CTL plate from Canada would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.²⁶ The Commission also reached an affirmative determination with respect to the orders on corrosion-resistant steel from Australia, Canada, France, Germany, Japan, and Korea.²⁷ On December 15, 2000, Commerce published notices of the continuation of the countervailing and antidumping duty orders and finding as to which the Commission made affirmative determinations and of the revocation of the antidumping and countervailing duty orders on CTL plate from Canada.²⁸

With respect to CTL plate, only the Commission's review determinations concerning subject imports from Belgium and Germany were appealed to the CIT. Initially, the Court remanded the case for the Commission to apply the meaning of "likely" as "probable" in conducting both its cumulation analysis under 19 U.S.C. § 1675a(a)(7) and its likelihood of material injury analysis.²⁹ On remand, the Commission provided further explanation for its views,³⁰ and the CIT found that the Commission had adequately explained all the issues for which the determinations were remanded.³¹ But, because the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") had ruled in a separate proceeding that floor plate was not within the scope of the 1993 antidumping and countervailing duty orders that formed the basis for those reviews, the CIT again remanded the determinations so that the Commission could review the pertinent data without consideration of floor plate.³² On the second remand, the Commission once again determined that revocation of the antidumping and countervailing duty orders on CTL plate from Belgium and Germany would be likely to lead to continuation or recurrence of material injury to the

²⁴ See Nippon Steel Corp. v. United States, 19 CIT 827 (1995).

²⁵ See Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-20, 322, 325-28, 340, 342, and 348-50 (Review), and 731-TA-573-76, 578, 582-87, 604, 607-08, 612, and 614-18 (Review), USITC Pub. 3364 at 19-34 (Nov. 2000). Commissioners Koplán and Askey determined, however, that revocation of the order on CTL plate from the United Kingdom would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a foreseeable time. See id. at 59-61.

²⁶ See USITC Pub. 3364 at 19-34.

²⁷ See USITC Pub. 3364 at 47-58.

²⁸ See, e.g., 65 Fed. Reg. 78469 (Dec. 15, 2000); 65 Fed. Reg. 78467 (Dec. 15, 2000).

²⁹ See Usinor Industeel, S.A. v. United States, 26 CIT 467 (2002).

³⁰ See, e.g., Certain Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Invs. Nos. AA1921-197 (Review) (Remand), 701-TA-231, 319-20, 322, 325-28, 340, 342, and 348-50 (Review) (Remand), and 731-TA-573-76, 578, 582-87, 604, 607-08, 612, and 614-18 (Review) (Remand), USITC Pub. 3526 (Jul. 2002).

³¹ See Usinor Industeel, S.A. v. United States, 26 CIT 1402 (2002).

³² See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1095 (Fed. Cir. 2002).

domestic industry within a reasonably foreseeable time.³³ The CIT and, ultimately, the Federal Circuit, affirmed.³⁴

With respect to corrosion-resistant steel, the Commission's first five-year review determinations regarding subject imports from France and Germany and subject imports from Canada were appealed to the CIT and a Chapter 19 North American Free Trade Agreement ("NAFTA") binational panel, respectively, and ultimately upheld after remand.³⁵ The CIT held, in affirming the Commission on remand, that the statutory negligibility standard for original investigations does not apply to the Commission's determination of "no discernible adverse impact" in five-year reviews.³⁶ The NAFTA Panel likewise affirmed the Commission's affirmative determination with respect to corrosion-resistant steel from Canada.³⁷

C. Second Reviews

The Commission instituted these second five-year reviews of the remaining finding and orders on CTL plate and corrosion-resistant steel on November 1, 2005,³⁸ and effective February 6, 2006, determined to conduct full reviews pursuant to section 751(c)(5) of the Act.³⁹ With respect to CTL plate, the Commission found the domestic interested party group response to the notice of institution to be adequate. It also found the respondent interested party group responses with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, and the United Kingdom to be adequate, but the respondent interested party group responses with respect to Romania, Spain, Sweden, and Taiwan to be inadequate. The Commission decided, however, to conduct full reviews concerning CTL plate from all subject countries to promote administrative efficiency. With respect to corrosion-resistant steel, the Commission found the domestic interested party group response to the notice of institution for each set of reviews to be adequate, and the respondent interested party group responses to be adequate with respect to each of

³³ See, e.g., Certain Carbon Steel Products (Cut-to-Length Plate) from Belgium and Germany, Invs. Nos. 701-TA-319 and 322 (Review) (Second Remand), and 731-TA-573 and 578 (Review) (Second Remand), USITC Pub. 3587 (Mar. 2003).

³⁴ See Usinor Industeel, S.A. v. United States, Slip Op. 03-118, 2003 WL 22080731 (Ct. Int'l Trade Sept. 8, 2003), aff'd, 112 Fed. Appx. 59 (Fed. Cir. Nov. 8, 2004).

³⁵ The CIT remanded to the Commission to explain why the "no discernible adverse impact" standard did not preclude cumulation of imports from France and Germany, particularly in view of each country's relatively high capacity utilization rates and their contention that their home markets and the European Union were and would remain the major focus of their exports. The NAFTA Panel likewise remanded the Commission's decision to cumulate imports from Canada given, inter alia, its high capacity utilization rate. The NAFTA Panel also asked the Commission to address its finding that the domestic industry was vulnerable. In both remand opinions, the Commission provided a thorough analysis of the facts supporting its findings against no discernible adverse impact and explained that the threshold for a finding of a likely discernible adverse impact is lower than the threshold for finding likely volume and likely material injury, although some of the same facts may support both findings. See Corrosion-Resistant Carbon Steel Flat Products From France and Germany, Invs. Nos. 701-TA-348-349, 731-TA-615 (Review) (Remand), USITC Pub. 3539 (Sept. 2002); Corrosion-Resistant Carbon Steel Flat Products From Canada, Inv. No. 731-TA-614 (Review) (Remand), USITC Pub. 3753 (Dec. 2004).

³⁶ See Usinor v. United States, 342 F. Supp. 2d 1267 (Ct. Int'l Trade 2004).

³⁷ See Corrosion-Resistant Carbon Steel Flat Products from Canada, USA-CDA-2000-1904-11.

³⁸ See 70 Fed. Reg. 62324 (Oct. 31, 2005) (notice of institution).

³⁹ Commerce revoked the countervailing duty orders on CTL plate and corrosion-resistant steel from Germany prior to the commencement of these second reviews. See 69 Fed. Reg. 17131 (Apr. 1, 2004).

the subject countries. It, therefore, determined to conduct full reviews with respect to corrosion-resistant steel.⁴⁰

Commerce expedited its second reviews of the antidumping duty orders on CTL plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom and the antidumping finding on CTL plate from Taiwan and published final affirmative review determinations on March 8, 2006.⁴¹ Commerce also expedited its second reviews of the countervailing duty orders on CTL plate from Mexico, Brazil, and Spain and published final affirmative review determinations on June 6, 2006.⁴² Commerce conducted full second reviews of the other CTL plate countervailing duty orders and published affirmative determinations regarding subject imports from Belgium and Sweden on October 4, 2006.⁴³ Commerce determined, however, that revocation of the countervailing duty order on CTL plate from the United Kingdom would not be likely to lead to continuation or recurrence of a countervailable subsidy and terminated the order; the Commission terminated its related review accordingly.⁴⁴ Commerce also expedited its second reviews of the antidumping duty orders on corrosion-resistant steel from Australia, Canada, France, Germany, Japan, and South Korea and published final affirmative review determinations on June 6, 2006.⁴⁵ Commerce expedited its second review of the countervailing duty order on corrosion-resistant steel from Korea and published a final affirmative review determination on June 6, 2006.⁴⁶ Commerce conducted a full second review of the countervailing duty order on corrosion-resistant steel from France and published an affirmative determination on October 4, 2006.⁴⁷

III. LEGAL STANDARDS

The legal standards discussed below apply to all of our findings including our determinations related to subject imports of CTL plate that are found in section IV and our determinations related to corrosion-resistant steel that are found in section VI as well as the separate and dissenting opinions that follow.

A. Domestic Like Product

In making its determinations under section 751(c), the Commission defines the “domestic like product” and the “industry.”⁴⁸ The Act defines “domestic like product” as “a product which is like, or in

⁴⁰ See, e.g., 71 Fed. Reg. 8874 (Feb. 21, 2006) (notice of decision to conduct full reviews).

⁴¹ See 71 Fed. Reg. 11577 (Mar. 8, 2006) (Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom).

⁴² See 71 Fed. Reg. 32521 (June 6, 2006) (Mexico); 71 Fed. Reg. 32522 (June 6, 2006) (Brazil); 71 Fed. Reg. 32523 (June 6, 2006) (Spain).

⁴³ See 71 Fed. Reg. 58587 (Oct. 4, 2006) (Sweden); 71 Fed. Reg. 58585 (Oct. 4, 2006) (Belgium).

⁴⁴ See 71 Fed. Reg. 58585 (Oct. 4, 2006) (United Kingdom); 71 Fed. Reg. 62121 (Oct. 23, 2006) (terminating review); 71 Fed. Reg. 62121 (Oct. 23, 2006) (revoking countervailing duty order).

⁴⁵ See 71 Fed. Reg. 32508 (Jun. 6, 2006) (Australia, Canada, France, Germany, Japan, and South Korea).

⁴⁶ See 71 Fed. Reg. 32519 (Jun. 6, 2006) (Korea).

⁴⁷ See 71 Fed. Reg. 58584 (Oct. 4, 2006) (France).

⁴⁸ 19 U.S.C. § 1677(4)(A).

the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”⁴⁹

B. Domestic Industry

1. In General

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole 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.”⁵⁰

2. Sufficient Production-Related Activities

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.⁵¹ In assessing the nature and extent of production-related activities in the United States associated with a particular operation, the Commission generally considers six factors:

- (1) source and extent of the firm’s capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation or review.⁵²

3. Related Parties

The Commission must also determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁵³ Exclusion of such a producer is within the Commission’s discretion based upon the facts

⁴⁹ 19 U.S.C. § 1677(10). See Nippon, 19 CIT at 455; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); 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); see also S. Rep. No. 96-249 at 90-91 (1979).

⁵⁰ 19 U.S.C. § 1677(4)(A).

⁵¹ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁵² See, e.g., Internal Combustion Industrial Forklift Trucks from Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 10-14 (Dec. 2005).

⁵³ 19 U.S.C. § 1677(4)(B).

presented in each case.⁵⁴ The purpose of the provision is to exclude domestic producers that substantially benefit from importation of subject merchandise or their relationships with foreign exporters.⁵⁵

C. Cumulation

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.⁵⁶

Thus, cumulation is discretionary in five-year reviews. The Commission may exercise its discretion to cumulate, however, only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.⁵⁷ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.⁵⁸ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.⁵⁹

⁵⁴ See, e.g., Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.* whether the firm benefits from the less than fair value sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.* whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), aff’d mem., 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

⁵⁵ See, e.g., USEC, Inc. v. United States, 132 F. Supp.2d 1, 12 (Ct. Int’l Trade 2001).

⁵⁶ 19 U.S.C. § 1675a(a)(7).

⁵⁷ 19 U.S.C. § 1675a(a)(7).

⁵⁸ SAA, H.R. Rep. No. 103-316, vol. I (1994).

⁵⁹ For a discussion of the analytical framework of Commissioner Koplan regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278 to 280 (Review) and 731-TA-347 to 348 (Review), USITC Pub. 3274 (Feb. 2000); Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 303-TA-13 (Review), 701-TA-249 (Review), and 731-TA-262, 263, and 265 (Review), USITC Pub. 3247 (Oct. 1999) (Views of Commissioner Stephen Koplan Regarding

(continued...)

The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.⁶⁰ Only a “reasonable overlap” of competition is required.⁶¹ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are terminated.⁶²

D. Likelihood of Continuation or Recurrence of Material Injury If the Antidumping Duty Orders, Antidumping Finding, and Countervailing Duty Orders Are Revoked: Legal Standards

1. In General

In five-year reviews conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order or finding or a countervailing duty order unless: (1) it makes a determination that dumping or a countervailable subsidy, as the case may be, is likely to continue or recur, and (2) the Commission makes a determination that revocation of the order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁶³ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the *status quo* – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of

⁵⁹ (...continued)
Cumulation).

⁶⁰ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographic markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988); Mukand Ltd. v. United States, 937 F. Supp. 910, 915 (Ct. Int’l Trade 1996).

⁶¹ See Mukand, 937 F. Supp. at 916; Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int’l Trade 1989) (“Completely overlapping markets are not required.”); United States Steel Group, 873 F. Supp. at 685. We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 (Prelim.) and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 15 (Feb. 1999), aff’d, Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353 (Ct. Int’l Trade 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Invs. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

⁶² See, e.g., Allegheny Ludlum Corp. v. United States, Slip Op. 05-00488 at 17 (Ct. Int’l Trade Dec. 22, 2006) (recognizing the wide latitude the Commission has in selecting the type of factors it considers relevant in undertaking its cumulation analysis).

⁶³ 19 U.S.C. §§ 1675(c)(1), 1675a(a).

imports.”⁶⁴ Thus, the likelihood standard is prospective in nature.⁶⁵ The CIT has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.^{66 67 68}

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”⁶⁹ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”^{70 71}

⁶⁴ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

⁶⁵ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁶⁶ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d mem., Slip Op. 05-1019 (Fed. Cir. Aug. 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

⁶⁷ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

⁶⁸ For a complete statement of Commissioner Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review) (Remand), USITC Pub. 3754 (Feb. 2005).

⁶⁹ 19 U.S.C. § 1675a(a)(5).

⁷⁰ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

⁷¹ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

Although the standard in a five-year review is not the same as the standard applied in an original antidumping or countervailing duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”⁷² It also directs the Commission to take into account its prior injury determinations, whether any improvement in the state of the industry is related to the orders, whether the industry is vulnerable to material injury if the orders are revoked, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).⁷³

Notwithstanding the large number of subject countries involved in these reviews, in only a very limited number of instances did specific subject producers or importers of subject merchandise not submit a questionnaire response. We have relied on information available when appropriate, which consists primarily of information from the original investigations and first five-year reviews, information submitted in these second reviews, and information collected in these second reviews.^{74 75}

2. Conditions of Competition and Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁶

3. Likely Volume

In evaluating the likely volume of imports of subject merchandise if the antidumping finding, antidumping duty orders, and countervailing duty orders were to be revoked, the Commission is directed

⁷² 19 U.S.C. § 1675a(a)(1).

⁷³ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. See SAA at 886.

⁷⁴ 19 U.S.C. § 1677e(a) authorizes the Commission to use the “facts otherwise available” in reaching a determination when: (1) necessary information is not on the record or (2) an interested party or other person withholds information requested by the agency, fails to provide such information in the time, form, or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 781(i) of the Act. 19 U.S.C. § 1677e(a). The verification requirements in section 781(i) are applicable only to Commerce. 19 U.S.C. § 1677m(i). See Titanium Metals Corp. v. United States, 155 F. Supp.2d 750, 765 (Ct. Int’l Trade 2002) (“the ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of Commission investigations.”)

⁷⁵ Commissioner Okun notes that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. See 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” SAA at 869.

⁷⁶ 19 U.S.C. § 1675a(a)(4).

to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁷⁷ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁷⁸

4. Likely Price Effects

In evaluating the likely price effects of subject imports if the finding and orders were to be revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.⁷⁹

5. Likely Impact

In evaluating the likely impact of imports of subject merchandise if the finding and orders were to be revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁸⁰ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁸¹

⁷⁷ 19 U.S.C. § 1675a(a)(2).

⁷⁸ 19 U.S.C. §§ 1675a(a)(2)(A) to 1675a(a)(2)(D).

⁷⁹ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁸⁰ 19 U.S.C. § 1675a(a)(4).

⁸¹ 19 U.S.C. § 1675a(a)(4).

IV. CTL PLATE

A. Domestic Like Product

1. In General⁸²

a. Scope of These Reviews

In the 1979 investigation, Treasury identified the subject plate from Taiwan as:

Hot-rolled carbon steel plate, 0.1875 inch or more in thickness, over eight inches in width, not in coils, not pickled, not coated, or plated with metal, not clad, other than black plate, and not pressed or stamped to non-rectangular shape. Such merchandise is classifiable under Tariff Schedules of the United States Annotated item number 607.6615.⁸³

In the 1993 investigations, Commerce identified CTL plate as a separate “class or kind” of merchandise subject to investigation and defined the scope as follows:

These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, painted nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling”) – for example, products which have been bevelled or rounded at the edges. Excluded from these investigations is grade X-70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.⁸⁴

As of 2000, the time of the first reviews of these orders, Commerce had made a few rulings that clarified the scope with respect to specific products or countries.⁸⁵ During litigation of the Commission’s

⁸² We applied the domestic like product legal standards discussed in section III above.

⁸³ USITC Pub. 970 at A-1.

⁸⁴ 58 Fed. Reg. 37062 (Jul. 9, 1993).

⁸⁵ Commerce issued a scope ruling confirming that profile slabs from Brazil were within the scope of the order; and, as a result of a changed circumstances review, Commerce revoked the order with respect to shipments of plate from the United Kingdom, Finland, and Germany with a maximum thickness of 80 mm in steel grades BS 7191, 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 001, types 1 and 2. See 64 Fed.

(continued...)

first review determinations, as a result of separate litigation, Commerce also excluded from the scope floor plate from Belgium imported by Duferco Steel, Inc. “with patterns in relief derived directly from the rolling process.”⁸⁶ As noted above, the CIT remanded the Commission’s first review determinations for consideration of this fact. The scope of these second reviews parallels the scope applicable at the time of the Commission’s second remand determinations in the first reviews.

b. Domestic Like Product Findings in the Original Investigations and in the First Reviews

In the 1979 original investigation regarding subject imports from Taiwan, the Commission did not make a domestic like product determination insofar as none was required under the Antidumping Act of 1921 in effect at the time, although the Commission noted that injury was to the carbon steel plate industry.⁸⁷ In the 1993 original investigations, the Commission found a single domestic like product consisting of CTL plate, and it further determined that neither universal mill plate nor beveled plate (*i.e.*, plate with nonrectangular cross-section) were separate domestic like products.⁸⁸ In the first reviews and related remand determinations, the Commission defined a single domestic like product consisting of CTL plate (including floor plate), consistent with its 1993 original determinations and declined to expand the domestic like product to include micro-alloy products.⁸⁹ Two domestic like product issues are presented in these second reviews: (1) whether to expand the domestic like product to include micro-alloy products and (2) whether wide flat bars rolled on a bar mill are a separate domestic like product.

2. Whether to Expand the Domestic Like Product to Include Micro-alloys

a. Background and Prior Treatment of This Issue

The HTSUS differentiates among three categories of steel: stainless steel, “other alloy steel” and “non-alloy steel.” Steel that is not stainless steel but that contains one or more alloying elements in an amount that exceeds a specified level is defined as “other alloy steel.” Steel that is not stainless steel or other alloy steel is referred to as “non-alloy steel.”⁹⁰ The commonly used industry term “carbon steel” arguably includes some steel that must be classified under the HTSUS as alloy steel.⁹¹ In particular, the use of small amounts of such alloying elements as columbium, vanadium, and titanium to produce a class of steels known as high-strength, low-alloy steels is common, and these steel compositions (“micro-alloy steel”) are often considered within the industry to be carbon steel, regardless of whether the amounts of the alloying elements are sufficient to require that the steel be classified as alloy steel under the HTSUS

⁸⁵ (...continued)
Reg. 46343 (Aug. 25, 1999).

⁸⁶ See, e.g., CR at CTL-I-20; PR at CTL-I-18.

⁸⁷ See, e.g., USITC Pub. 970 at 3.

⁸⁸ See, e.g., USITC Pub. 2664 at 214-16.

⁸⁹ The Commission also noted that “[g]rade X-70 plate was specifically excluded from the scope of the 1993 plate investigations of all countries, and it does not appear that it was included in the 1979 investigation on Taiwan.” Therefore, the Commission did not include grade X-70 plate in the domestic like product in the first determinations.

⁹⁰ See, e.g., HTSUS, Chapter 72 Note 1(f).

⁹¹ See, e.g., CR at CTL-I-29; PR at CTL-I-25.

definitions.⁹² Micro-alloy steel is, therefore, a subset of alloy steel under the HTSUS but also commonly considered within the industry as a carbon steel product along with non-alloy steel products.⁹³

The scope of these second reviews, like the scope of the original investigations and first reviews, includes only steel that is classified as “non-alloy” under the HTSUS, and does not include alloy or micro-alloy products.⁹⁴ In the first reviews of these orders, the Commission rejected a request by domestic producer U.S. Steel to expand the definition of the domestic like product to include micro-alloy products.⁹⁵ In these second reviews, no party asked the Commission to expand the domestic like product to include micro-alloy products.

b. Analysis of Relevant Facts and Conclusion

In the first reviews of these orders, U.S. Steel advocated for the expansion of the domestic like product to include micro-alloy products. The Commission declined to expand the domestic like product to include such steel. It explained that this issue had not been considered and thus micro-alloy products were not specifically included in the domestic like product in the original investigations. It found that there was insufficient record evidence to indicate that changes in the marketplace had been sufficient to support modification of the domestic like product determinations made in the original investigations or to warrant a like product that was broader than the scope of the imported products subject to the reviews. The Commission also noted the absence of a standard definition of micro-alloy steel products, the fact that the issue was not raised until the prehearing briefs,⁹⁶ and the related time constraints on the Commission’s ability to collect additional data or comments.⁹⁷

A few years later, however, in the 2003 CTL plate reviews involving a different set of orders, Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Invs. Nos. 731-TA-753-756 (Review), USITC Pub. 3626 at 7-9 (Sept. 2003) (Commissioner Koplán dissenting),⁹⁸ again at U.S. Steel’s request, the Commission decided to expand the domestic like product to include micro-alloy products even though micro-alloy products were not within the scope of those orders. The Commission acknowledged that there had been no major technology changes since the original investigations but found there was increased usage of micro-alloy CTL plate in applications traditionally filled by non-alloy

⁹² See, e.g., CR at CTL-I-30; PR at CTL-I-25 to CTL-I-26.

⁹³ See, e.g., CR at CTL-I-29 to CTL-I-30; PR at CTL-I-25.

⁹⁴ See, e.g., CR at CTL-I-29 n.47; PR at I-25 n.47.

⁹⁵ See, e.g., USITC Pub. 3364 at 5-7.

⁹⁶ The Commission recognized that some domestic producers had not been able to segregate micro-alloy products out of their reported information in the first reviews. See, e.g., USITC Pub. 3364 at 23 n.126. In these second reviews, data including and not including micro-alloy products were collected, and the questionnaires defined micro-alloy based on the definition used in the 2005 CTL plate reviews using the term “micro-alloy” in a narrow sense to refer to steel that contains one or more alloying elements in an amount that falls within a specified range, but none of the elements in a quantity greater than indicated. See, e.g., CR at CTL-I-30; PR at CTL-I-26.

⁹⁷ See, e.g., USITC Pub. 3364 at 5-7.

⁹⁸ In those reviews, Commissioner Koplán declined to expand the domestic like product to include micro-alloy plate because Commerce had not been asked to and had not amended the scope to include those products, there was no evidence of significant technological changes in the production of plate since the original investigations (just an apparent increase in the amount of micro-alloy products being produced with that equipment), and because there was no evidence on the record of circumvention of the orders, which could furnish a potential motivation for the domestic producer’s request to expand the domestic like product. In his judgment, the evidence on the record regarding changes in the product fell short of establishing support for a modification of the original domestic like product determinations or for warranting a like product broader than the scope of the imported products subject to those reviews.

CTL plate, and it found that the differences between the two products were not so pronounced as to constitute clear dividing lines. In the absence of any contrary arguments, it expanded the domestic like product to include micro-alloy products.⁹⁹

In these reviews, domestic producer Nucor states that there is a clear delineation in the marketplace between non-alloy CTL plate and other products such as micro-alloy plate and Grade X-70 plate.¹⁰⁰ Mittal, the owner of the former U.S. Steel CTL plate mill, also advocates defining the domestic like product consistent with the original determinations (*i.e.*, without expanding the domestic like product to include micro-alloys).¹⁰¹ Other domestic producers also advocate for the same definition of the domestic like product as in the original investigations and reviews.¹⁰² Respondent interested parties have taken no position on this issue and state that the result is the same regardless of how the Commission defines the domestic like product.¹⁰³ The record indicates that there is a sizeable amount of micro-alloy CTL plate production in the United States.¹⁰⁴

We review the facts using the Commission's traditional domestic like product factors:

Physical characteristics and uses: Micro-alloy steel generally refers to steel designed to provide better mechanical properties or greater resistance to atmospheric corrosion than conventional non-alloy carbon steel. Although technically classified under the HTSUS as an alloy steel, micro-alloy steel is more

⁹⁹ See, e.g., USITC Pub. 3626 at 8-9. The Commission also noted that it had considered micro-alloy steel to be part of the domestic like product in several original investigations and reviews involving CTL plate, hot-rolled steel, and cold-rolled steel. See, e.g., Certain Cold-Rolled Steel Products from Australia, India, Japan, Sweden, and Thailand, Invs. Nos. 731-TA-965, 971-72, 979, and 981 (Final), USITC Pub. 3536 (Sept. 2002); Hot-Rolled Steel Products from Argentina and South Africa, Invs. Nos. 701-TA-404 (Final) and 731-TA-898 and 905 (Final), USITC Pub. 3446 (Aug. 2001); Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829 to 830, 833 to 834, 836, and 838 (Final), USITC Pub. 3283 (Mar. 2000); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387 to 391 (Final) and 701-TA-816 to 821 (Final), USITC Pub. 3273 at 5 (Jan. 2000); Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (June 1999); Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Invs. Nos. 701-TA-384 (Prelim.) and 731-TA-806 to 808 (Prelim.), USITC Pub. 3142 at 6 (Nov. 1998); see also, e.g., Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387 to 391 (Final) and 701-TA-816 to 821 (Final), USITC Pub. 3816 at 4-6 (Nov. 2005).

¹⁰⁰ Nucor argues that micro-alloy plate and Grade X-70 plate cost more to produce and are purchased by customers that require additional product characteristics. As Nucor explains, if non-alloy plate, micro-alloy plate, and Grade X-70 were part of a continuum, Nucor would undoubtedly produce much more micro-alloy and Grade X-70 plate than it does. See, e.g., Nucor's Posthearing CTL Plate Br. at Exh. 9 at 2.

¹⁰¹ Mittal asserts, however, that inclusion of the micro-alloy products in the definition of the domestic like product would not substantially alter the Commission's analysis. See, e.g., Mittal's Prehearing CTL Plate Br. at 7; Mittal's Posthearing CTL Plate Br. at Answers to Commissioner Lane's Questions at 8.

¹⁰² Domestic producers IPSCO and Oregon do not advocate any change in the definition of the like product previously determined by the Commission, and they insist that their arguments apply with equal force regardless of the treatment of micro-alloy plate. See, e.g., IPSCO/Oregon Prehearing CTL Plate Br. at 4; IPSCO/Oregon Posthearing CTL Plate Br. at A-20.

¹⁰³ See, e.g., Brazilian Respondents' Posthearing CTL Plate Br. at 1 n.1; AHMSA's Prehearing CTL Plate Br. at 7 n.23; Caterpillar's Prehearing CTL Plate Br. at 4. In their joint prehearing brief, several respondent interested parties argue that whether the Commission defines the domestic like product to include micro-alloy CTL plate or not, the record demonstrates that these orders should be terminated. See, e.g., Joint Respondents' Prehearing CTL Plate Br. at 2 n.1.

¹⁰⁴ Compare, e.g., CR/PR at Table C-1 with, e.g., CR/PR at Table C-2 (indicating that in 2005, 1.3 million short tons of micro-alloy CTL plate were produced compared to 7.2 million short tons of non-alloy CTL plate).

similar in physical characteristics and uses to non-alloy steel than to alloy steel.¹⁰⁵ Only when plate is metallurgically tested are the differences between non-alloy and micro-alloy steel apparent.¹⁰⁶ Most questionnaire respondents agree that there are only moderate differences in physical uses between non-alloy and micro-alloy plate. When compared to non-alloy grade plate, micro-alloy steel plates generally have higher strength and toughness characteristics; thus, micro-alloy plate is typically used for applications such as construction and earth-moving/mining equipment, rail cars, line pipes, poles and towers, armored vehicles, and machine parts and bridges.¹⁰⁷ Non-alloy CTL plate is used in welded load-bearing and structural applications, such as agricultural and construction equipment (*e.g.*, cranes, bulldozers, scrapers, and other tracked or self-propelled machinery); machine parts (*e.g.*, the body of the machine or its frame); transmission towers and light poles; buildings; and heavy transportation equipment, such as railroad cars (especially tank cars) and ships.¹⁰⁸ Non-alloy CTL plate is also used in the production of tanks, sills, floors, offshore drilling rigs, pipes, petrochemical plants and machinery, and various other fabricated products.¹⁰⁹ Non-alloy CTL plate can also be used in utility applications, such as wind towers and pressure vehicles.¹¹⁰

Interchangeability: The two types of plate are interchangeable in a variety of applications, although the generally higher cost of micro-alloy plate would discourage its use in the most common applications. Micro-alloy steels are good substitutes where increased strength is required along with less weight. The increased strength levels achieved by the alloy additions enable the thickness of the plate to be reduced, creating a lighter product. The higher strength of micro-alloy plate, however, may exceed design requirements, and certain alloys may be restricted by customers. Also, the higher cost of micro-alloy plate may exceed the budgets of some customers.¹¹¹

Customer and producer perceptions: Micro-alloy steel is considered by the industry to be carbon, rather than alloy, steel because it is designed to satisfy specific mechanical properties rather than chemical composition requirements. Some questionnaire respondents report that micro-alloy plate is perceived to be a higher-quality product than non-alloy plate, due to its greater longevity, wear resistance, and strength. Many producers and customers, however, reportedly perceive little or no difference in comparable grades of non-alloy and micro-alloy plate.¹¹²

Common manufacturing facilities, production processes, and production employees: Of the fourteen mills and the ten processors producing plate in the United States, six mills and one processor also produce micro-alloy plate. The manufacturing process for micro-alloy plate is essentially the same as the process for non-alloy plate, but larger amounts of alloying elements are used in the production of micro-alloy steel. Control-temperature rolling and heat-treating are often used for micro-alloy plate, while these techniques may not be used in the production of non-alloy plate. The same equipment and employees are used to produce both non-alloy and micro-alloy plate. Since the original investigations, there have been no major changes in plate production technology and methods in the United States,

¹⁰⁵ *See, e.g.*, CR at CTL-I-30 to CTL-I-31, Appendix G-3 to G-4, G-8, G-11; PR at CTL-I-25 to CTL-I-26; USITC Pub. 3626 at 8-9.

¹⁰⁶ *See, e.g.*, USITC Pub. 3626 at 8-9.

¹⁰⁷ *See, e.g.*, CR at CTL-I-30 to CTL-I-31, Appendix G-3 to G-4, G-8, G-11; PR at CTL-I-25 to CTL-I-26; USITC Pub. 3626 at 8-9.

¹⁰⁸ *See, e.g.*, CR at CTL-I-21; PR at CTL-I-19.

¹⁰⁹ *See, e.g.*, CR at CTL-I-21 to CTL-I-22; PR at CTL-I-19.

¹¹⁰ *See, e.g.*, CR at CTL-I-22; PR at CTL-I-19.

¹¹¹ *See, e.g.*, CR at CTL-I-31, Appendix G-4 to G-5, G-8 to G-9, G-11 to G-12; PR at CTL-I-26; USITC Pub. 3626 at 7-9.

¹¹² *See, e.g.*, CR at CTL-I-32, Appendix G-6 to G-7, G-10, G-12; PR at CTL-I-27; USITC Pub. 3626 at 7-9.

although the plate market has seen an increased use of micro-alloy steel plate in applications traditionally filled by non-alloy plate.¹¹³

Channels of distribution: Both non-alloy and micro-alloy plate are sold through service centers and directly to end users, primarily original equipment manufacturers. On the other hand, non-alloy plate is typically purchased in standard grades for inventory, while micro-alloy plate tends to be purchased for specific jobs or by OEMs, a tendency that is reflected in the greater share of sales to end users.¹¹⁴

Price: Micro-alloy steel generally is priced from the base price for non-alloy steel rather than for alloy steel. Micro-alloy plate is usually priced higher than non-alloy plate due to the costs for the additional alloying elements. Questionnaire respondents do not agree about the exact premium, although reported data for the period of review¹¹⁵ indicate that average unit values for micro-alloy plate were consistently higher than for non-alloy plate.¹¹⁶

Although there are some similarities in physical characteristics, micro-alloy steel has higher levels of certain alloying elements that provide it better mechanical properties or greater resistance to atmospheric corrosion than conventional non-alloy steel. These differences are apparent after metallurgical testing and are important to specific end-users and for specific end-uses. These differences limit interchangeability because the generally higher manufacturing cost and price of micro-alloy products would discourage their use for the more common applications for which non-alloy CTL plate is suitable. Although both are commonly considered carbon steel products, for certain customers and domestic producers, there are important differences between the two products. The same equipment and employees are used to produce both, although micro-alloy products require the addition of alloying elements during the production process. Whereas non-alloy CTL plate is typically purchased in standard grades for inventory, micro-alloy CTL plate tends to be purchased by end users for specific jobs or by OEMs.

In conclusion, the factual record with respect to the traditional six-factor test is mixed, and consistent with this reality, three Commissioners decided to expand the domestic like product to include

¹¹³ See, e.g., CR at CTL-I-32, Appendix G-5; PR at CTL-I-27; USITC Pub. 3626 at 7-9.

¹¹⁴ See, e.g., CR at CTL-I-31; PR at CTL-I-27; CR/PR at Tables CTL-I-18, CTL-I-20; CR at Appendix G-5 to G-6, G-9 to G-10, G-12; USITC Pub. 3626 at 8-9.

¹¹⁵ The period of review for these second reviews was from January 2000 through June 2006.

¹¹⁶ See, e.g., CR at CTL-I-33, Appendix G-7 to G-8, G-10 to G-11, G-12; PR at CTL-I-28; USITC Pub. 3626 at 8-9.

micro-alloy products,¹¹⁷ and three Commissioners declined to expand the domestic like product to include micro-alloy products.¹¹⁸

3. Whether Certain Wide Flat Bars Rolled in a Bar Mill Are a Separate Domestic Like Product

a. Background and Prior Treatment of This Issue

The scope of these second reviews, as in the previous reviews and original investigations, includes certain universal mill plate that is typically produced at a bar mill. The scope, which borrows its

¹¹⁷ While the original like product definition is the starting point for the like product definition in five-year reviews, the Commission has stated that it may revisit its original like product determination in appropriate circumstances, including when there have been significant changes in the product at issue since the original investigation. See Notice of Final Rulemaking, 63 Fed. Reg. 30599, 30602 (June 5, 1998); Carbon Steel Wire Rod From Argentina, Invs. Nos. 701-TA-A (Review) and 731-TA-157 (Review), USITC Pub. 3270 at 4-9 (Jan. 2000). The CIT has endorsed this approach. See, e.g., Cheflene Corp. v. United States, 170 F. Supp.2d 1320, 1326-27 (Ct. Int'l Trade 2001).

Based on the record in these reviews, Chairman Pearson, Commissioner Hillman, and Commissioner Okun find it appropriate to include micro-alloy steel CTL plate in the definition of the domestic like product. First, the CTL plate market has seen an increased use of micro-alloy steel CTL plate in applications traditionally filled by carbon steel CTL plate. The CTL plate market has demanded higher strength steels that have the weight and other benefits of micro-alloy technology. Second, micro-alloy steel is not considered to be an alloy steel. Rather, micro-alloy steel is more similar in physical characteristics and uses to carbon than to alloy steel. Only when CTL plate is metallurgically tested are the differences between carbon and micro-alloy steel apparent. Third, the end uses for the two types of plate may be the same. The two types of plate are interchangeable in a variety of applications, although the generally higher cost of micro-alloy steel would discourage its use in the most common carbon steel applications. Fourth, micro-alloy steel generally is priced from the base price for carbon steel rather than for alloy steel plate. Fifth, manufacturing equipment and employees are similar for the two products. Sixth, the channels of distribution are also similar. Seventh, micro-alloy steel is considered by many producers and users to be carbon, rather than alloy, steel because it is designed to satisfy specific mechanical property rather than chemical composition requirements. Finally, such an approach takes into consideration the realities of today's CTL plate industry and is consistent with the Commission's treatment of the domestic like product in recent original antidumping and countervailing duty investigations involving CTL plate and other forms of flat-rolled steel and in the recent reviews involving CTL plate. They emphasize, however, that even had they declined to expand the domestic like product to include micro-alloy products, they would have reached negative determinations with respect to subject imports from each of the eleven subject countries.

¹¹⁸ Commissioner Koplan and Commissioner Lane note that: (1) the scope of these reviews does not include micro-alloy products; (2) unlike in the 2003 CTL plate reviews, when domestic producer U.S. Steel asked the Commission to expand the domestic like product to include micro-alloy products, no party requested that action here; (3) all domestic producers, including Mittal Steel (the current owner of U.S. Steel's CTL plate mill), disagree with such an expansion in these reviews; (4) the Commission rejected a similar request in the first reviews of these orders and did not include micro-alloy products in the domestic like product in the original investigations; and (5) even though there is more production now than previously, production of micro-alloy CTL plate is not a new phenomenon. For these reasons and to give the benefit of doubt to the domestic industry, they do not expand the domestic like product to include micro-alloy products in these reviews. In determining not to expand the domestic like product to include micro-alloy CTL plate, Vice Chairman Aranoff relied primarily on the fact that no party advocated such an expansion during these reviews. Depending on the facts found and the arguments presented in any future investigation or review, she could reach a contrary conclusion on whether to include micro-alloy CTL plate in the domestic like product.

language directly from the HTSUS, specifically mentions “universal mill plate”¹¹⁹ and refers to the “closed box pass” manufacturing process used to make it. Most products produced on a bar mill are made to smaller width dimensions than plate products, but some of the larger width flat bar products fall within the scope of these reviews.¹²⁰

In the preliminary phase of the 1993 original investigations, Caterpillar, Inc., an importer of universal mill plate, argued that universal mill plate was a separate domestic like product. Manitoba Rolling Mills (“MRM”), a Canadian producer, argued that certain wide flat bars should be considered a separate domestic like product.¹²¹ Wide flat bar is a subset of universal mill plate.¹²² The Commission rejected Caterpillar’s request, finding that “[b]ecause in many, if not all, applications universal mill plate is like sheared-mill plate, we find that the product like universal mill plate is cut-to-length plate.”¹²³ Separately, the Commission also rejected MRM’s request.¹²⁴

In the final phase of the 1993 original investigations, at the outset of its domestic like product discussion, before reaching any specific party arguments, the Commission emphasized in its final determinations that its domestic like product findings were made in the context of investigations involving a continuum of goods within each of the four major like product groupings (hot-rolled, cold-rolled, corrosion-resistant, and CTL plate flat-rolled products). It explained that:

Respondents argued that certain of these products are differentiated, to a greater or lesser extent, from other steel products if viewed solely on the basis of the six like product factors we typically consider. However, our consideration of the six like product factors is made on the continuum on which those steel products exist. The Commission traditionally has been reluctant to fragment its like product definitions where a continuum of products exists. ... [I]n making our findings, we have carefully considered the asserted

¹¹⁹ Universal mill plate is rolled on four faces and is up to 1,250 mm wide and may be as little as 4 mm thick. See, e.g., CR at CTL-I-24 n.29; PR at CTL-I-21 n.29.

¹²⁰ The relevant portions of the scope language provide: “These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, painted nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances” See, e.g., CR at CTL-I-19 to CTL-I-20; PR at CTL-I-17 to CTL-I-18.

¹²¹ MRM defined these wide flat bars as “carbon steel bars between 150 mm (5.9 inches) and 250 mm (approximately 10 inches) wide and 38.1 mm (1½ inches) thick.”

¹²² See, e.g., CR at CTL-I-22 n.27; PR at CTL-I-19 n.27.

¹²³ USITC Pub. 2549 at 25.

¹²⁴ The Commission observed that flat bars are sold in strapped bundles of 5,000 or 10,000 pounds and not as individual plates like most but not all other CTL plate products. It noted that flat bars are not usually made on a plate or strip mill but on a bar mill that rolls blooms and billets as opposed to slabs. Although it found that flat bars are generally not interchangeable with the wider, thicker plate rolled on plate or strip mills, it found there was sufficient overlap of competition to include them in the category of CTL plate. The fact that flat bars were used for less demanding applications in the construction and equipment industries was not enough to distinguish them from the narrower strip mill plate because as the Commission noted, “[e]ven if flat bars and other cut-to-length plate are not interchangeable in exact applications, MRM has failed to show that these products are not used for the same general purposes.” The Commission also expressed uncertainty about whether there was any domestic production of flat bars, in which case it concluded that the domestic product most similar in characteristics and uses would be other CTL plate. See, e.g., USITC Pub. 2549 at 26-27.

grounds for distinguishing various products in the context of the “continuum” nature of the steel products involved in these investigations.¹²⁵

The Commission then went on to reject a request to find universal mill plate a separate domestic like product.¹²⁶

No party raised a domestic like product issue regarding wide flat bars or universal mill plate in the first reviews, so the Commission did not address the issue then.

b. Analysis of the Relevant Facts and Conclusion

In these second reviews, U.K. producers Niagara and Celsa request that the Commission find that certain wide flat bar products are a separate domestic like product.¹²⁷ Domestic producer Nucor appears to advocate finding wide flat bars to be a separate domestic like product.¹²⁸ Domestic producers Mittal, IPSCO, and Oregon Steel disagree that wide flat bars are a separate domestic like product.¹²⁹ Other

¹²⁵ USITC Pub. 2664 at 11-12.

¹²⁶ It explained that all plate-mill plate produced in the United States was produced on sheared plate mills and trimmed by shearing or flame-cutting on all four edges whereas universal mill plate was produced by hot-rolling plate between horizontal and vertical finishing rolls to give universal mill plate two mill edges and two trimmed ends. Both products have the same basic physical characteristics including chemistry and metallurgical composition, strength, flatness, gauge and width tolerances, and ability to be welded or formed. The Commission observed that universal mill plate had been replaced by sheared-mill plate for most applications for which it was previously used, indicating interchangeability between the two types of plate. Both sheared-mill plate and universal mill plate were used for the same end products, were distributed through the same channels of distribution, and were perceived to be interchangeable by most end users. While sheared-mill plate and universal mill plate were produced on different mills and prices for universal mill plate were somewhat higher, the Commission concluded that the physical characteristics of these types of plate and their similar end uses warranted finding that they were part of the same domestic like product. See, e.g., USITC Pub. 2664 at 214.

¹²⁷ See, e.g., U.K. Steel’s Prehearing CTL Plate Br. at 3-4; Niagara’s Prehearing CTL Plate Br. at 12-15. U.K. producer Corus, in contrast, does not argue that wide flat bar is a separate domestic like product, but rather that the production of wide flat bar products by other U.K. producers reinforces Corus’ argument that subject imports from the United Kingdom should not be cumulated with other subject imports. See, e.g., Corus’ Posthearing CTL Plate Br. at Exh. A at 4.

¹²⁸ See, e.g., Nucor’s Posthearing CTL Plate Br. at Exh. 9 at 1. Nucor cautions, however, that the Commission lacks capacity and production information for this product from most of the subject foreign producers, and so it insists that the Commission would need to rely on adverse facts available. See, e.g., Nucor’s Posthearing CTL Plate Br. at Exh. 9 at 1. In fact, however, the Commission collected data on flat bar production operations in subject countries (as well as U.S. operations), and, although a number of subject producers reported no such production, several reported data concerning their production of wide flat bars, including producers in Mexico and the United Kingdom. See, e.g., CR/PR at Tables CTL-IV-35 and CTL-IV-62.

¹²⁹ See, e.g., Mittal’s Prehearing CTL Plate Br. at 7; Mittal’s Posthearing CTL Plate Br. at Answers to Commissioner Hillman’s Questions at 18-19 & n.79; IPSCO/Oregon Prehearing CTL Plate Br. at 4; IPSCO/Oregon Posthearing CTL Plate Br. at A-20. Mittal emphasizes that both wide flat bars and CTL plate have similar characteristics and uses, share similar channels of distribution, are perceived to be similar and interchangeable, and that customers, with some exceptions, generally opt for the product that has the best price. Mittal also argues that the differences in production facilities used to produce the two products is only one of the factors that the Commission usually examines in a domestic like product analysis. See, e.g., Mittal’s Prehearing CTL Plate Br. at 7; Mittal’s Posthearing CTL Plate Br. at Answers to Commissioner Hillman’s Questions at 18-19 & n.79.

parties, many of whom reported that they do not produce such wide flat bar products, have taken no position on this question.¹³⁰

For purposes of these reviews, wide flat bar products are “hot-rolled non-alloy steel of rectangular cross section, more than 150 mm wide, but less than 600 mm wide, rolled on all four sides, not less than 4.75 mm thick, produced on a bar mill.”¹³¹ Although the dimensions of the products at issue here are not identical to the dimensions of the products at issue in the 1993 original investigations,¹³² the thrust of the arguments is the same.¹³³ At the hearing, the Commission specifically asked the parties to address the findings in the 1993 preliminary and final determinations and their relevance to the current arguments.¹³⁴ Neither of the two U.K. parties advocating finding that wide flat bars are a separate domestic like product responded to this request at the hearing and neither submitted a posthearing brief.

Based on an examination of our traditional domestic like product factors, we determine the following:

Physical characteristics and uses: CTL plate is a flat-rolled steel product that is generally 4.75 millimeters or more in thickness, and it can be made in a variety of widths, thicknesses, and shapes for incorporation into other products or for further processing.¹³⁵ The term “cut-to-length” indicates that the product is produced as a flat plate with a defined length.¹³⁶ CTL plate is used in welded load-bearing and structural applications, such as agricultural and construction equipment (e.g., cranes, bulldozers, scrapers, and other tracked or self-propelled machinery); machine parts (e.g., the body of the machine or its frame); transmission towers and light poles; buildings; and heavy transportation equipment, such as railroad cars (especially tank cars) and ships.¹³⁷ CTL plate is also used in the production of tanks, sills, floors, offshore

¹³⁰ Belgian producer Duferco Clabecq does not produce wide flat bar and takes no position on this issue; ***. See, e.g., Duferco’s Posthearing CTL Plate Br. at Response to Question 8. Brazilian producers defer to the arguments of other respondents with an interest in this product. See, e.g., Brazilian Respondent Interested Parties’ Posthearing CTL Plate Br. at 1 n.1. According to the German respondents, none of them produce wide flat bar, and they therefore take no position on this issue. See, e.g., German Respondents’ Posthearing CTL Plate Br. at App. 1 at 4-5. Mexican producer AHMSA insists that *** although it did report its wide flat bar production in response to the Commission’s request. See, e.g., AHMSA’s Prehearing CTL Plate Br. at 7 n.23. Purchaser Caterpillar takes no position with respect to the Commission’s definition of the domestic like product. See, e.g., Caterpillar’s Prehearing CTL Plate Br. at 4.

¹³¹ Questionnaire Definitions. In several places in its prehearing brief, Niagara makes assertions about the products that it makes in the United Kingdom, which it refers to as “wide flat SBQ bar.” For example, it contrasts its own wide flat SBQ bar with “merchant bar” and CTL plate made in the United States and insists that its own product commands a price premium. See, e.g., Niagara’s Prehearing CTL Plate Br. at 9 n.9, 14 n.16. Arguments about products and practices in the United Kingdom, however, are entirely irrelevant to the domestic like product analysis, which is focused on products made in the United States.

¹³² In the preliminary phase of the 1993 investigations, Manitoba defined wide flat bars as “carbon steel bars between 150 mm (5.9 inches) and 250 mm (approximately 10 inches) wide and 38.1 mm (1½ inches) thick.” USITC Pub. 2549 at 25.

¹³³ One factual difference is that, although it was not known if there was any domestic production of wide flat bar products in the 1993 original investigations, today, there is such production. See, e.g., CR/PR at Table C-5. This was only one of the facts that informed the Commission’s decision, and it is not a fact that was even discussed in the Commission’s opinion in the 1993 final determinations (only in its opinion in the 1993 preliminary determinations).

¹³⁴ See, e.g., Transcript of October 19, 2006, on CTL Plate Issues (revised and corrected copy) (“CTL Plate Hearing Tr.”) at 367-68 (Vice Chairman Aranoff).

¹³⁵ See, e.g., CR at CTL-I-21; PR at CTL-I-19.

¹³⁶ See, e.g., CR at CTL-I-21; PR at CTL-I-19.

¹³⁷ See, e.g., CR at CTL-I-21; PR at CTL-I-19.

drilling rigs, pipes, petrochemical plants and machinery, and various other fabricated products.¹³⁸ CTL plate can also be used in utility applications, such as wind towers and pressure vehicles.¹³⁹

Flat bar is a hot-rolled carbon steel product made in various lengths and widths, usually starting at 1/8 inch in thickness.¹⁴⁰ It is often used in structural applications, such as bridges and trailers.¹⁴¹ U.K. producer Celsa argues that wide flat bars are used in applications where it is necessary to use a narrower form of steel than can be produced on a plate mill, such as in the production of truck trailers. Although it acknowledges that CTL plate made on a plate mill could in theory be used as a substitute for wide flat bars, Celsa insists that the cost of further cutting the plate to the correct width would make it uncompetitive for such applications.¹⁴² Likewise, U.K. producer Niagara asserts that wide flat bar is typically used for precision cold-finishing and subsequently various highly demanding engineering applications for which CTL plate is entirely unsuited. Niagara argues that wide flat bar is made to stringent requirements (e.g., tight dimensional tolerances, accurate cross-sectional shape with sharp corners, and high surface finish) that are irrelevant to CTL plate producers.¹⁴³ Domestic producer Nucor argues that while wide flat bar may be used for some of the same purposes as other CTL plate and has similar physical characteristics, it normally is sold as bar rather than plate. Nucor produces both to serve the full range of its customers' needs.¹⁴⁴

According to questionnaire responses, flat bars and CTL plate have similar characteristics and uses, although flat bars are much narrower than CTL plate, enabling them to be more easily used in applications where narrow widths are needed, such as machine parts.¹⁴⁵ Wide flat bars have a superior surface finish, dimensional precision, and precise edges, as they are rolled on a bar mill rather than being cut to length.¹⁴⁶ Wide flat bars are rolled along both the width and thickness dimensions whereas CTL plates are only rolled along the thickness.¹⁴⁷ The cutting operation used for CTL plate makes the edges unsuitable for cold-drawing whereas flat bars can be cold-drawn and can also be produced with rounded or beveled edges for specific applications such as off-highway wheels and earthmover wear parts.¹⁴⁸

Interchangeability: U.K. producer Niagara asserts that certain questionnaire responses are contradictory on their face; even though some make conclusory assertions that wide flat bar and CTL plate products are interchangeable, elsewhere they recognize that CTL plate is not suitable for the specialty uses for which wide flat bar is designed, and CTL plate has inferior edge quality and surface finish and cannot be cold-finished.¹⁴⁹ Domestic producer Mittal points out that wide flat bar, like CTL plate, can be sold as both a commodity product and as a specialty product. Flat bar of merchant quality is used in structural applications, like the fabrication of bridges and buildings, but specialty bar is needed for applications that require special tolerances. Mittal insists that, whether sold as commodity grade or

¹³⁸ See, e.g., CR at CTL-I-21 to CTL-I-22; PR at CTL-I-19.

¹³⁹ See, e.g., CR at CTL-I-22; PR at CTL-I-19.

¹⁴⁰ See, e.g., CR at CTL-I-26; PR at CTL-I-22.

¹⁴¹ See, e.g., CR at CTL-I-26; PR at CTL-I-22.

¹⁴² See, e.g., U.K. Steel's Prehearing CTL Plate Br. at 3-4.

¹⁴³ See, e.g., Niagara's Prehearing CTL Plate Br. at 1-2 n.1, 7, 13.

¹⁴⁴ See, e.g., Nucor's Posthearing CTL Plate Br. at Exh. 9 at 1.

¹⁴⁵ See, e.g., CR at CTL-I-26; PR at CTL-I-22; CR/PR at App. F.

¹⁴⁶ See, e.g., CR at CTL-I-26; PR at CTL-I-22.

¹⁴⁷ See, e.g., CR at CTL-I-26 to CTL-I-27; PR at CTL-I-22.

¹⁴⁸ See, e.g., CR at CTL-I-27; PR at CTL-I-23.

¹⁴⁹ See, e.g., Niagara's Prehearing CTL Plate Br. at 14.

specialty grade, wide flat bar and CTL plate are generally interchangeable.¹⁵⁰ According to questionnaire responses, interchangeability between wide flat bar products and CTL plate depends on the specific customer end use. For example, if the edge quality is critical, customers may prefer flat bar. The size and thickness of the material needed for the final application is also an important consideration.¹⁵¹

Customer and producer perceptions: Responding U.S. producers generally perceived wide flat bar to be interchangeable with CTL plate produced on plate mills or cut from coil. Similarly, responding producers generally reported that their customers perceived little or no substantial difference between wide flat bar and CTL plate produced on plate mills or cut from coil, despite the superior edge quality, cold-drawing capability, and tighter tolerances characteristic of wide flat bar.¹⁵² Customers' responses were a bit more varied. While several U.S. purchasers reported general interchangeability or only limited differences, several other responding purchasers view CTL plate and wide flat bar as "not interchangeable" or "not compatible," citing dimensional differences and the ability to cold-draw wide flat bar.¹⁵³ U.K. producer Niagara asserts that several questionnaire respondents who perceived the two products to be interchangeable nevertheless identified important differences between them.¹⁵⁴

Common manufacturing facilities, production processes, and production employees: The production process for both flat bars and CTL plate begins at the melting or refining stage where steel is produced. In the next production phase, the steel is cast into semi-finished forms (blooms and billets, on the one hand, or slabs, on the other). In a bar mill, wide flat bar is produced when blooms and billets are rolled on all faces at the same time into a long bar shape. Most CTL plate is hot-rolled on a reversing plate mill (also known as a sheared plate mill) or in a special form of a reversing mill called a Steckel mill. Plate may also be rolled on a continuous hot-strip mill; these mills primarily produce hot-rolled sheet but may also be used to produce plate up to 72 inches wide and between three-sixteenth and one-half inch in thickness. Reversing plate mills, Steckel mills, and hot-strip mills all use slabs as the semi-finished input to make plate. Finally, some CTL plate is made from hot-rolled coiled plate cut by steel service centers.¹⁵⁵

Of the six U.S. mills that produce wide flat bar, only Nucor and Mittal produce other forms of CTL plate.¹⁵⁶ Although the melting processes are the same and both products are hot-rolled, flat bars are produced either with vertical and horizontal rolls to produce the desired width and thickness dimensions or in a closed box pass. CTL plate is rolled with horizontal rolls only. Neither the employees nor the equipment are generally interchangeable.¹⁵⁷

Channels of distribution: Wide flat bars and CTL plate share similar channels of distribution. They both can be sold either to service centers or directly to end users, although a greater percentage of wide flat bars is sold to end users.¹⁵⁸

¹⁵⁰ See, e.g., Mittal's Posthearing CTL Plate Br. at Answers to Commissioner Hillman's Questions at 19, Answers to Commissioner Lane's Questions at 8.

¹⁵¹ See, e.g., CR at CTL-I-27; PR at CTL-I-22; CR/PR at App. F.

¹⁵² See, e.g., CR at CTL-I-28; PR at CTL-I-24; CR/PR at App. F.

¹⁵³ See, e.g., CR at CTL-I-28; PR at CTL-I-24; CR/PR at App. F.

¹⁵⁴ See, e.g., Niagara's Prehearing CTL Plate Br. at 14.

¹⁵⁵ See, e.g., CR at CTL-I-22 to CTL-I-28; PR at CTL-I-19 to CTL-I-21; CR/PR at App. F.

¹⁵⁶ Domestic producer Nucor reports producing wide flat bar and other CTL plate at different facilities on different equipment and using different workers. See, e.g., Nucor's Posthearing CTL Plate Br. at Exh. 9 at 1.

¹⁵⁷ See, e.g., CR at CTL-I-28; PR at CTL-I-23; Niagara's Prehearing CTL Plate Br. at 7-8 & n.7.

¹⁵⁸ See, e.g., CR at CTL-I-27; PR at CTL-I-23; CR/PR at Tables CTL-I-18, CTL-I-19, App. F.

Price: According to questionnaire responses, prices of both CTL plate and wide flat bar follow similar trends, but the data are mixed about which is priced higher.¹⁵⁹ Niagara asserts that the ambiguity in the data arises from the existence in the U.S. market of low-value wide “merchant bar,” which is not the product that Niagara sells. It insists that wide flat bar is sold at a price premium over CTL plate.¹⁶⁰

Although there is some contrary evidence, on balance we find that there is no clear dividing line between wide flat bar products and other CTL plate products. Both products have similar physical characteristics related to their overlapping production processes at the melting stage, although wide flat bar products are made to more stringent requirements and are rolled along both the width and thickness dimensions instead of just the thickness dimensions like other CTL plate products. Although wide flat bars are narrower than other CTL plate products, that characteristic does not readily distinguish the two, because CTL plate comes in a variety of widths and thicknesses. The products can be used in overlapping applications, although wide flat bar products do not need to be further cut for narrower applications, are suitable for cold-drawing, and can be produced with rounded or beveled edges for specific applications. Their interchangeability thus depends on specific customer end uses, and most domestic producers perceived them to be interchangeable although some customers perceived them differently. Both are sold through the same channels of distribution, and there is no clear indication that one is priced differently than the other. The fact that the wide flat bars are produced at bar mills from blooms or billets is also not a distinguishing feature because other CTL plate products are rolled from slabs and then produced to specified lengths in a variety of manufacturing lines in a variety of different facilities (reversing mills, more specialized Steckel mills, hot-strip mills, or service centers’ processing lines), with resultant differences in their eventual characteristics. In conclusion, we do not find that wide flat bars rolled on a bar mill are a separate domestic like product.

4. Conclusion

Based on our analysis of these two issues, we determine that the domestic like product is CTL plate including wide flat bars. Chairman Pearson, Commissioner Hillman, and Commissioner Okun, however, further define the like product to include micro-alloy products, but Vice Chairman Aranoff, Commissioner Koplán, and Commissioner Lane do not.¹⁶¹

¹⁵⁹ Both U.S. producer and U.S. purchaser responses were divided between reporting no price (or price trend) differential (two producers and two purchasers); lower prices for wide flat bar (one producer and four purchasers); and higher prices for wide flat bar (one producer and one purchaser). The average unit value of shipments of wide flat bar was \$398.89 in 2000; it increased to \$567.11 in 2004, and has remained above that unit value through 2005-June 2006. In general, the average unit values of wide flat bar were lower than the average unit values of plate. See, e.g., CR at CTL-I-28 to CTL-I-29; PR at CTL-I-24.

¹⁶⁰ See, e.g., Niagara’s Prehearing CTL Plate Br. at 9, n. 2, 14. As noted previously, arguments as to products made outside the United States are irrelevant to our evaluation of domestic like product issues.

¹⁶¹ Except where noted, the data referenced in section IV of this opinion reflect the carbon CTL plate market (i.e., the data associated with a domestic like product defined as CTL plate, including micro-alloy and wide flat bar products). The data considered by Vice Chairman Aranoff, Commissioner Koplán, and Commissioner Lane differ to the extent that these Commissioners defined the domestic like product differently than their colleagues. Thus, for example, whereas Chairman Pearson, Commissioner Hillman, and Commissioner Okun refer to the data summaries for carbon CTL plate such as those provided in Table C-2 of the staff report, Vice Chairman Aranoff, Commissioner Koplán, and Commissioner Lane refer to the data summaries for non-alloy CTL plate such as those provided in Table C-1 of the staff report. Each Commissioner finds that the minor differences in the two data sets do not lead to differing results.

B. Domestic Industry

1. In General¹⁶²

As noted above, CTL plate is produced in the United States using one of several production processes. Whether produced by the integrated or non-integrated process, molten steel is poured or “tapped” from the furnace into a ladle then cast into a suitable form and rolled.¹⁶³ Most CTL plate is hot-rolled on a reversing plate mill (also known as a sheared plate mill) or in a special form of a reversing mill called a Steckel mill.¹⁶⁴ Plate may also be rolled on a continuous hot-strip mill or wide flat bar products may be made in a bar mill.¹⁶⁵ Finally, some service centers, which traditionally have served as distributors of CTL plate, also perform a wide range of value-added processing of steel products, such as uncoiling, flattening, and cutting plate products to length or flame/plasma cutting plate into non-rectangular shapes.¹⁶⁶ Service centers that process hot-rolled coiled plate into cut lengths or non-rectangular shapes purchase the coiled plate from U.S. or foreign mills.¹⁶⁷ The process of producing cut plate from coiled plate is the same whether performed at the steel mill or by a service center.¹⁶⁸

2. Sufficient Production-Related Activities¹⁶⁹

In the original determinations, the Commission defined the domestic industry as the steel mills producing CTL plate.¹⁷⁰ In the original determinations, the Commission did not address the issue of service centers that uncoil coiled hot-rolled plate and cut it to length into plate, and did not include such processors in the domestic industry. In the first reviews, however, at the request of respondent interested parties from Germany and the United Kingdom, the Commission did consider this issue, and, applying the reasoning from the 1997 CTL plate original investigations, it determined that service center processors engage in sufficient production-related activities to be included in the domestic industry.¹⁷¹ The facts relied upon by the Commission, in particular the fundamental fact that processors turn hot-rolled coiled plate into a separate domestic like product, CTL plate, have not changed since then.¹⁷²

¹⁶² We applied the domestic industry legal standards discussed in section III above.

¹⁶³ See, e.g., CR at CTL-I-22 to I-23; PR at CTL-I-19 to CTL-I-20.

¹⁶⁴ See, e.g., CR at CTL-I-23; PR at CTL-I-20.

¹⁶⁵ See, e.g., CR at CTL-I-24; PR at CTL-I-21.

¹⁶⁶ See, e.g., CR at CTL-I-25; PR at CTL-I-21.

¹⁶⁷ See, e.g., CR at CTL-I-25; PR at CTL-I-21.

¹⁶⁸ See, e.g., CR at CTL-I-25; PR at CTL-I-21.

¹⁶⁹ We applied the legal standards discussed in section III above.

¹⁷⁰ In the 1993 original determinations, the Commission defined the domestic industry as all domestic producers of CTL plate. See, e.g., USITC Pub. 2664 at 216. In the 1979 original determination, the Commission found a regional industry consisting of the facilities of domestic carbon steel plate producers located in the west coast states of California, Washington, and Oregon. See, e.g., USITC Pub. 970 at 4. No party argued that the Commission should define a regional industry in the first reviews of these orders, and the Commission applied a national rather than a regional analysis of the domestic industry in the first reviews. See, e.g., USITC Pub. 3364 at 9-11. In the absence of any contrary arguments in these reviews, we again apply a national rather than a regional analysis of the domestic industry.

¹⁷¹ See, e.g., USITC Pub. 3364 at 8-9.

¹⁷² The Commission also found it significant that the manufacturing equipment and processes used by service centers to decoil and cut to length coiled plate are the same as those used by the domestic mills. It also found that
(continued...)

In these reviews, Mittal urges the Commission to include processors in the definition of the domestic industry,¹⁷³ and other parties either have not commented on this issue or have taken no position.¹⁷⁴ In the absence of contrary arguments or any apparent change in the factual or legal basis for the Commission’s findings from the first reviews of these orders, we include service center processors in the domestic industry in these reviews.¹⁷⁵

3. Related Parties¹⁷⁶

In the original 1993 investigations, the Commission did not find appropriate circumstances to exclude any producers from the domestic industry as related parties, although it noted that several domestic producers had a “financial relationship” with a subject producer through equity ownership, joint ventures, or to a lesser extent through importation of subject merchandise. It did not want to skew the data since related parties comprised a large portion of the industry and because most of the related parties were actively seeking relief from the very entities to which they were related.¹⁷⁷ In the first reviews, the Commission found two related parties, California Steel Industries and Tuscaloosa Steel Corporation, each of which was then owned by a subject foreign producer. It did not, however, find appropriate circumstances to exclude either related party from the domestic industry, absent an indication that either had been or was likely to be significantly insulated from import competition if the orders were revoked such that its inclusion in the domestic industry would present a distorted picture.¹⁷⁸ In these second reviews, no party has argued that any domestic producer is a related party or that appropriate circumstances exist to exclude any producers from the domestic industry on that basis.

In these reviews, there are two domestic producers who may be considered related parties: domestic mill Mittal Steel USA and ***. As explained below, even if Mittal Steel USA did not directly import subject merchandise, there is some indication that a third party (Mittal Steel Co., NV) directly or indirectly controls Mittal Steel USA and exporters or importers of subject merchandise. *** imported *** short tons of subject CTL plate from *** in ***, representing less than *** percent of its CTL plate

¹⁷² (...continued)

processors account for a significant percentage of overall employment and invest a significant amount of capital in relatively sophisticated processing operations. See, e.g., USITC Pub. 3364 at 8-9. In 2005, U.S. processors reported 874 PRWs and capital expenditures of \$6.8 million. See, e.g., CR at CTL-III-1 at n.1; PR at III-1 at n.1. The Commission did not put much weight on the fact that the value added by service centers is small. See, e.g., USITC Pub. 3364 at 8-9.

¹⁷³ See, e.g., Mittal’s Prehearing CTL Plate Br. at 7-8; Mittal’s Posthearing CTL Plate Br. at Answers to Vice-Chairman Aranoff’s Questions at 19.

¹⁷⁴ For example, purchaser Caterpillar takes no position with respect to the Commission’s definition of the domestic industry. See, e.g., Caterpillar’s Prehearing CTL Plate Br. at 4.

¹⁷⁵ As the report points out, domestic industry data for the period 1990 to 1992 do not include the operations of U.S. service centers engaged in processing hot-rolled steel coils in plate thicknesses into individual plates, but data from the first reviews (1997 to 1999) and the current reviews (Jan. 2000 to June 2006) do include service center operations. See, e.g., CR at CTL-I-1; PR at CTL-I-1.

¹⁷⁶ We applied the related party legal standards discussed in section III above.

¹⁷⁷ See, e.g., USITC Pub. 2664 at 95-99, 216.

¹⁷⁸ See, e.g., USITC Pub. 3364 at 12. The Commission focused on the small percentage of CTL plate shipped by California Steel Industries and the fact that it supported continuation of the orders. The Commission found Tuscaloosa Steel Corporation did not benefit from or receive any shielding effect from its relationship with U.K. producer Corus and it concluded that Corus’ extensive investment in the Tuscaloosa facilities exhibited a commitment to U.S. production. See, e.g., USITC Pub. 3364 at 12.

production that year.¹⁷⁹ *** subject imports were small and isolated, and there is no indication that *** benefitted more than minimally from these imports, nor have any parties argued in favor of excluding *** from the domestic industry.

With regard to Mittal Steel USA, Mittal Steel Co. NV was formed in 2005, as the result of a merger between Ispat International and LNM Holdings. As the largest global steelmaker, Mittal Steel Co. owns a number of plants located throughout the world, including domestic CTL plate producer Mittal Steel USA. How Mittal Steel USA acquired its various U.S. assets is discussed in more depth in the conditions of competition section below. In brief, Mittal Steel USA's assets were acquired from the purchase of the bankrupt assets of Acme Steel, LTV, and Bethlehem Steel, as well as most of U.S. Steel's CTL plate assets.¹⁸⁰

Mittal Steel Co. owns Mittal Steel Galati, a Romanian producer of subject merchandise,¹⁸¹ and has a *** percent share in Huta Batory, a Polish producer of subject merchandise. Huta Batory did not respond to the Commission's questionnaires in these reviews.¹⁸² Domestic producer Mittal Steel USA is also affiliated with importer Mittal Steel North America,¹⁸³ ***.¹⁸⁴

In early 2006, Mittal Steel Co. announced its intent to merge with the second largest steelmaker in the world, Arcelor, S.A., a merger still in the process of being approved and finalized.¹⁸⁵ As a result of this transaction, Mittal Steel USA will also have links to CTL plate producers in Belgium, Spain, and Germany as well as to two additional U.S. importers of CTL plate.¹⁸⁶

During the period of review, Mittal Steel Galati shipped ***. The majority of its shipments to the United States were of a thickness ***.¹⁸⁷ However, although ***.¹⁸⁸ Joint respondent interested parties assert that Mittal Steel Galati's products not only complement the product line offered by Mittal USA but also provide Mittal with additional capacity for its U.S. marketing plan.¹⁸⁹

Mittal Steel USA, which has CTL plate production operations in Burns Harbor, Indiana, Coatesville, Pennsylvania, and Conshohocken, Pennsylvania, accounted for *** percent of domestic production of carbon steel CTL plate in 2005 and produces *** of micro-alloy steel CTL plate in the

¹⁷⁹ See, e.g., CR at CTL-III-13; PR at III-10. Inexplicably, official import statistics show no imports from Finland in 2002. See, e.g., CR at CTL-V-13 n.12; PR at CTL-V-11 n.12.

¹⁸⁰ See, e.g., CR at CTL-III-4 to III-7; PR at CTL-III-3 to CTL-III-5; CR/PR at Table CTL-III-1.

¹⁸¹ See, e.g., CR at CTL-I-33 to CTL-I-34; PR at CTL-I-28; CR/PR at Table CTL-I-21.

¹⁸² See, e.g., CR at CTL-I-34; PR at CTL-I-28.

¹⁸³ Both are under the common control of Mittal Steel Company NV. See, e.g., Joint Respondents' Prehearing CTL Plate Br. at 43 n.128; CR/PR at Tables CTL-I-21, CTL-I-22.

¹⁸⁴ Mittal Steel USA explains that ***. See, e.g., Mittal's Posthearing CTL Plate Br. at Answers to Vice Chairman Aranoff's Questions at 3-4.

¹⁸⁵ See, e.g., CR at CTL-I-33 to I-34; PR at CTL-I-28. Mittal Steel USA anticipates that ***. See, e.g., Mittal's Posthearing CTL Plate Br. at Answers to Vice Chairman Aranoff's Questions at 2-3.

¹⁸⁶ Industeel, a Belgian producer of subject merchandise, and Arceralia, a Spanish producer of subject merchandise, are both subsidiaries of Arcelor; neither firm provided the Commission with a completed questionnaire. See, e.g., CR at CTL-I-34; PR at CTL-I-28. German CTL plate producer Dillinger, which responded to the Commission's questionnaires, is also a subsidiary of Arcelor. See, e.g., CR at CTL-I-37; PR at CTL-I-31. U.S. importers of subject merchandise, Arcelor and Industeel, are also Arcelor affiliates. See, e.g., CR at CTL-I-36 to CTL-I-37; PR at CTL-I-31; CR/PR at Table CTL-I-22. During the period of review, Arcelor imported from *** whereas Industeel imported from ***. See, e.g., CR/PR at Table CTL-I-22.

¹⁸⁷ See, e.g., Joint Respondents' Prehearing CTL Plate Br. at 44-45; CR/PR at Tables CTL-IV-44 and CTL-IV-45.

¹⁸⁸ See, e.g., Nucor's Posthearing CTL Plate Br. at App. 8 (citing questionnaire responses).

¹⁸⁹ See, e.g., Joint Respondents' Prehearing CTL Plate Br. at 44-45.

United States.¹⁹⁰ The company ***.¹⁹¹ Mittal Steel USA does not believe that it should be excluded as a related party in these reviews.¹⁹² ***, and as it explains, it ***,¹⁹³ In its importer's questionnaire response, ***.¹⁹⁴

Although Mittal Steel USA has a number of ties to subject producers and importers of subject merchandise and it appears that the company will have additional ties once the Mittal/Arcelor merger has been approved, we do not find appropriate circumstances to exclude Mittal Steel USA from the domestic industry. The company accounts for a large amount of domestic production and through its various acquisitions during the period of review, discussed above and in more detail below, it has strengthened its U.S. presence and made clear its commitment to the U.S. market. It supports the continuation of these orders, ***, and there is ***.¹⁹⁵

Based on the available facts, we find that appropriate circumstances do not exist to warrant the exclusion of any producers from the domestic industry as a related party under the Act.

4. Conclusion

Accordingly, we determine that the domestic CTL plate industry includes the fourteen active mills (Arkansas Steel, Claymont, CMC Steel Alabama, CSI, Gerdau Ameristeel, IPSCO, Jindal, Kentucky Electric, LeTourneau, Mittal, Nucor, Oregon, U.S. Steel, and WCI) and one closed mill (Geneva) for which there were data as well as ten service centers from which the Commission received questionnaire responses (American Steel, Cargill, Feralloy, Friedman, IPSCO, Olympic, PDM, Primary, Robinson, and Steel Warehouse).¹⁹⁶

¹⁹⁰ During the period of review, *** See, e.g., CR at CTL-III-3 n.4; PR at CTL-I-CTL-III-3 n.4; CR/PR at Table CTL-I-21.

¹⁹¹ See, e.g., CR at CTL-I-33 to I-34; PR at CTL-I-28; CR/PR at Table CTL-I-21; Mittal's Prehearing CTL Plate Br. at 1-2 n.2.

¹⁹² See, e.g., Mittal's Prehearing CTL Plate Br. at 7-8.

¹⁹³ See, e.g., Mittal's Posthearing CTL Plate Br. at Answers to Vice-Chairman Aranoff's Questions at 2-3.

¹⁹⁴ See, e.g., CR at CTL-III-13 to CTL-III-14; PR at CTL-III-10; CR/PR at Table CTL-III-6.

¹⁹⁵ See, e.g., CR/PR at Tables CTL-I-21, CTL-III-10.

¹⁹⁶ See, e.g., CR at CTL-I-33; PR at CTL-I-28; CR/PR at Table CTL-I-21. Although industry shipment information was reported for fourteen active mills, one closed mill, and ten service centers, usable financial data was only reported for twelve U.S. mills and five processors. See, e.g., CR at CTL-III-18; PR at CTL-III-12.

C. Cumulation¹⁹⁷

1. Framework and Background

We applied the legal standards as discussed in Section III above.

In the first reviews, the Commission found, based on the available information on capacity, production, product mix, and export orientation,¹⁹⁸ as well as the “weakened condition of the U.S. industry,” that the subject imports from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom each would be likely to have a discernible adverse impact on the domestic industry if the finding and orders were revoked. The Commission also found that there likely would be a reasonable overlap of competition between subject imports from all of those countries under review and the domestic like product, and among the subject imports from all of those countries, if the finding and orders were revoked. The Commission did not find any significant differences in the conditions of competition among those subject countries, except for Canada, with respect to which the order was revoked during those reviews and is therefore not subject to the current reviews.¹⁹⁹ For these reasons, the Commission exercised its discretion to cumulate subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom.

The threshold criterion for cumulation in these reviews is satisfied because all of the reviews of CTL plate were initiated on the same day.

We consider three issues in deciding whether to exercise our discretion to cumulate the subject imports: (1) whether imports from any of the subject countries are precluded from cumulation because they are likely to have no discernible adverse impact on the domestic industry; (2) whether imports of CTL plate from the subject countries are likely to compete with each other and with the domestic like product; and (3) other considerations, such as similarities and differences in the likely conditions of competition of the subject imports with regard to their participation in the U.S. market for CTL plate.²⁰⁰

¹⁹⁷ Commissioner Koplan and Commissioner Lane exercise their discretion to cumulate subject imports from all eleven subject countries. In doing so, they determine that (1) subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, assessed individually, are not likely to have no discernible adverse impact on the domestic industry in the event of revocation; (2) subject imports from these countries are likely to compete with each other and with the domestic like product in the event of revocation; and (3) many of the likely conditions of competition faced by subject imports from each of these subject countries are similar. See their separate views with respect to cumulation below in Section V, Separate Views of Commissioners Stephen Koplan and Commissioner Charlotte R. Lane on Cumulation with Respect to Cut-To-Length Plate Products.

¹⁹⁸ Although it noted that Canada and Mexico did not appear to export substantial quantities of subject plate, the Commission found that subject imports from these countries were still likely to have a discernible adverse impact on the domestic industry because “of their geographic proximity to the United States” as well as the fact that Mexican producer AHMSA was under bankruptcy protection, “an indication that it would have an incentive to maximize plate production and sales.” USITC Pub. 3364 at 20 n.101.

¹⁹⁹ In declining to exercise its discretion to cumulate subject imports from Canada due to differences in conditions of competition, the Commission noted that only one major Canadian plate mill, Stelco, remained subject to the order. The Commission found that Stelco “rarely exported significant quantities of subject plate to any country.” USITC Pub. 3364 at 19. Moreover, record evidence showed that Canada was a net importer of plate (with much of its imports originating from the United States), that demand for plate in Canada was strong, and that Canada had antidumping orders in place with respect to several countries. See, e.g., id.

²⁰⁰ Chairman Pearson and Commissioner Okun note that while they consider the same issues discussed in this section in determining whether to exercise their discretion to cumulate the subject imports, their analytical framework begins with whether imports from the subject countries are likely to face similar conditions of

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In so doing, we take into account the various arguments by the parties. Our focus in five-year reviews is not only on present conditions of competition, but also on likely conditions of competition in the reasonably foreseeable future.

We have determined, as discussed below, that subject imports from Mexico are likely to have no discernible adverse impact on the domestic industry in the event of revocation, and therefore, subject imports from Mexico are not eligible for cumulation with the other subject imports. We also have determined that subject imports from the remaining ten subject countries are likely to compete with each other and with the domestic like product in the event of revocation.²⁰¹ We determine finally that certain factors indicate that subject imports from Romania will likely compete under different conditions of competition than other subject imports with regard to their participation in the U.S. market for CTL plate and, therefore, we do not exercise our discretion to cumulate subject imports from Romania for purposes of our analysis of likely volume, likely price effects, and likely impact.²⁰² We therefore exercise our discretion to cumulate subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom.²⁰³

²⁰⁰ (...continued)

competition. For those subject imports which are likely to compete under similar conditions of competition, they next proceed to consider whether those imports are likely to compete with each other and with the domestic like product. Finally, if based on that analysis they intend to exercise their discretion to cumulate one or more subject countries, they analyze whether they are precluded from cumulating such imports because the imports from one or more subject countries, assessed individually, are likely to have no discernible adverse impact on the domestic industry. See Additional and Dissenting Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun, found in Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Second Review), USITC Pub. 3895 (Dec. 2006).

They join Vice Chairman Aranoff and Commissioner Hillman's discussion of the issues in this section, and reach the same conclusion. That is, Chairman Pearson and Commissioner Okun determine that subject imports from Mexico are likely to have no discernible adverse impact on the domestic industry in the event of revocation, and therefore, subject imports from Mexico are not eligible for cumulation with the other subject imports. They also determine that certain factors indicate that subject imports from Romania will likely compete under different conditions of competition than other subject imports and, therefore, they do not exercise their discretion to cumulate subject imports from Romania for purposes of their analysis of likely volume, likely price effects, and likely injury. Finally, Chairman Pearson and Commissioner Okun determine that (1) many of the likely conditions of competition faced by subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom are similar; (2) subject imports from these countries are likely to compete with each other and with the domestic like product in the event of revocation; and (3) subject imports from these countries, assessed individually, are not likely to have no discernible adverse impact on the domestic industry in the event of revocation. Therefore, Chairman Pearson and Commissioner Okun exercise their discretion to cumulate subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom.

²⁰¹ Chairman Pearson and Commissioner Okun examine the likelihood of a reasonable overlap of competition only after first determining whether subject imports are likely to face similar conditions of competition. Because they determine that certain factors indicate that subject imports from Romania will likely compete under different conditions of competition than other subject imports, they do not include subject imports from Romania in their analysis of the likelihood of a reasonable overlap of competition.

²⁰² See Allegheny Ludlum Corp. v. United States, Slip Op. 06-188, U.S. Court of International Trade (Dec. 22, 2006).

²⁰³ We find that cross-cumulation of dumped and subsidized subject imports is appropriate as an exercise of our discretion. See, e.g., Sugar from the European Union, and Sugar from Belgium, France, and Germany, Invs. Nos. 104-TAA-7 (Second Review) and AA1921-198-200 (Second Review), USITC Pub. 3793 at 11, n.47 (Aug. 2005).

2. Likelihood of No Discernible Adverse Impact

We consider all relevant factors in analyzing “no discernible adverse impact” in these reviews. Based on the record, we find that subject imports from Mexico are likely to have no discernible adverse impact on the domestic industry in the event the antidumping and countervailing duty orders on imports from Mexico are revoked. We do not find, however, that subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, or the United Kingdom are likely to have no discernible adverse impact if the antidumping finding, antidumping duty orders, and countervailing duty orders on imports from those countries are revoked.²⁰⁴

a. Mexico

We find that subject imports from Mexico are likely to have no discernible adverse impact on the domestic industry in the event of revocation. During the 1993 original investigations, subject imports from Mexico were 41,520 short tons in 1990 and 59,993 short tons in 1992, or 0.7 percent and 1.2 percent of apparent U.S. consumption in 1990 and 1992, respectively.²⁰⁵ Since the orders were imposed, subject imports from Mexico have maintained a minimal presence in the U.S. market, comprising less than 0.05 percent of the market in all years since 1997.²⁰⁶ Subject imports from Mexico have remained minimal despite an exemption from the Section 201 steel safeguards relief that imposed a 30 percent ad valorem tariff on CTL plate imports effective March 20, 2002, that was reduced to 24 percent on March 20, 2003, and ultimately terminated by the President on December 4, 2003.²⁰⁷

Mexico has a single producer of subject CTL plate, Altos Hornos de Mexico, S.A., de C.V. (“AHMSA”), and the Mexican industry has the smallest capacity and production of any of the subject industries.²⁰⁸ While reported production capacity for subject CTL plate from Mexico remained flat over the period of review, capacity utilization rose to a full-year period high of *** percent in 2005.²⁰⁹ Substantially all of AHMSA’s capacity is dedicated to serving increasing home market demand.²¹⁰ Even

²⁰⁴ Because we decline to cumulate subject imports from Romania with those from any other subject countries on the basis of differences in conditions of competition, we find it unnecessary to decide the issue of no discernible adverse impact with respect to Romania. Cf. Top-of-the-Stove Stainless Steel Cooking Ware from Korea, Invs. Nos. 701-TA-267 and 731-TA-304 (Review) (Remand), USITC Pub. 3485 at 5 (Jan. 2002) (declining to address criterion of no discernible adverse impact in the absence of evidence of a reasonable overlap of competition).

²⁰⁵ See, e.g., CR/PR at Table CTL-I-1.

²⁰⁶ See, e.g., CR/PR at Tables C-2, C-1. AHMSA’s posthearing brief contains revised 1998 and 1999 import statistics from the U.S. Census Bureau listing the volume of imports from Mexico as 568 tons and 181 tons in 1998 and 1999, respectively. See id. citing AHMSA’s Posthearing CTL Plate Br. at Exh. 11.

²⁰⁷ See, e.g., CR at OVERVIEW-12 to OVERVIEW-15; PR at OVERVIEW-10 to OVERVIEW-12; AHMSA’s Prehearing CTL Plate Br. at 8. Romania and Poland were the only other subject countries exempted from the safeguards imposed on CTL plate. See, e.g., CR at OVERVIEW-12 to OVERVIEW-15 n.30; PR at OVERVIEW-11 n.30.

²⁰⁸ In 2005, Mexico’s reported capacity was *** short tons, and its reported production was *** short tons.

²⁰⁹ See, e.g., CR/PR at Table CTL-IV-30. Mexico’s capacity utilization was *** percent in 1992 and *** percent in 1999.

²¹⁰ See, e.g., CR/PR at Table CTL-IV-31. AHMSA’s internal study projects an annual growth rate of *** percent in home market consumption for both subject and nonsubject CTL plate products. See, e.g., AHMSA’s Prehearing CTL Plate Br. at Exhibit A. Independent economic indicators and studies also point to continued overall economic growth in Mexico and in the industries that consume CTL plate. See, e.g., AHMSA’s Prehearing CTL Plate Br. at 11 n.44. Specifically, AHMSA notes that demand for CTL plate is expected to rise because Trinity, a major producer of railcars in both Mexico and the United States ***, recently opened a new railcar production facility in

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running at full capacity, AHMSA has been able to meet only a little over *** percent of home market demand, with the remainder being supplied by foreign sources.²¹¹ Indeed, growing home market demand has turned Mexico into a net importer of CTL plate.²¹² Throughout the period of review, the United States was the largest exporter of CTL plate to Mexico, accounting for *** percent of apparent Mexican consumption in 2005.²¹³

The Mexican CTL plate industry is not export-oriented.²¹⁴ In each year of the period of review, all or substantially all of Mexico's CTL plate shipments have been made to the home market.²¹⁵ AHMSA reported minimal CTL plate exports to the *** in 2001, and 2005 marked the only other year it reported exports to any other markets; even then, exports accounted for only *** percent of its shipments.²¹⁶ Moreover, U.S. CTL plate price levels will not serve as an incentive for AHMSA to start exporting to the United States. MEPS 2005-2006 pricing data, compared to home market prices supplied by AHMSA, show that AHMSA's prices in Mexico closely track U.S. CTL plate prices. At its ***, AHMSA's home market price was only *** than that of the domestic industry's, ***.²¹⁷ In *** months examined, ***.²¹⁸

²¹⁰ (...continued)

Mexico, and production from this facility is expected to increase over the next two years. See, e.g., id. at 16.

²¹¹ See, e.g., AHMSA's Prehearing CTL Plate Br. at 12. AHMSA reportedly accounts for *** percent of CTL plate production in Mexico. See, e.g., CR/PR at CTL-IV-48. We note that AHMSA has recently filed an antidumping duty petition with respect to CTL plate from China. See, e.g., AHMSA's Dec. 4, 2006 Letter. Nevertheless, there is no evidence on this record that significant volumes of Chinese CTL plate imports are displacing Mexican home market sales, or forcing Mexico to increase its exports. In fact, Mexican home market shipments have increased steadily since 2003, and as noted above, the data do not show any significant exporting activity by Mexico. See, e.g., CR/PR at Table CTL-IV-31.

²¹² See, e.g., CR at CTL-IV-50; PR at CTL-IV-25.

²¹³ See, e.g., AHMSA's Prehearing CTL Plate Br. at 13.

²¹⁴ Domestic interested parties have argued that Mexico's exports to Canada, following revocation of the Canadian antidumping order on CTL plate from Mexico in 2003, showed Mexico's ability to increase rapidly its exports following revocation. See, e.g., Mittal's Prehearing CTL Plate Br. at 16. In 2003, one of the three major Canadian producers of CTL plate, Stelco, exited from the industry, creating a supply deficit that could be filled only by imports. However, in 2004, when total CTL plate imports to Canada almost doubled, imports from Mexico declined to ***. In 2005, Canada's CTL plate imports from Mexico increased to *** short tons, but this figure represents less than a *** percent share of total CTL plate imports into Canada from the rest of the world. In interim 2006, Mexico's CTL plate exports to Canada were nominal. See, e.g., AHMSA's Prehearing CTL Plate Br. at Exh. 15 citing Certain Hot-Rolled Carbon Steel Plate Originating in or Exported from Mexico, the People's Republic of China, the Republic of South Africa and the Russian Federation, Expiry Review No. RR-2001-006 (Jan. 10, 2003) at 3, 10, 14-15.

²¹⁵ See, e.g., CR/PR at Table CTL-IV-31.

²¹⁶ See, e.g., CR at CTL-IV-47; PR at CTL-IV-25. To the extent AHMSA may ship CTL plate to the United States following revocation, it has stated that those shipments will serve a discrete set of multinational companies operating on both sides of the border that are end-users of CTL plate, as opposed to service centers or distributors. See, e.g., CTL Plate Hearing Tr. at 267-68 (Pierce). Since AHMSA cannot meet Mexican demand, and since the U.S. industry is the largest foreign supplier to the Mexican market, any limited sales by Mexico of CTL plate to these multinational companies, whose Mexican subsidiaries are already served by AHMSA, are likely to be at least partly offset by increased sales by the domestic industry to Mexican customers.

²¹⁷ See, e.g., AHMSA's Posthearing CTL Plate Br. at 9-10; see also, e.g., CR at CTL-V-3; PR at CTL-V-2 (per-unit transportation costs from Mexico to the United States estimated at 4.76 percent).

²¹⁸ See, e.g., AHMSA's Posthearing CTL Plate Br. at 10.

Domestic interested parties argue that AHMSA is likely to increase its shipments of CTL plate to the United States after revocation due to its planned capacity expansion.²¹⁹ The record indicates that AHMSA's planned expansion is intended to ***.²²⁰ These plans call for ***.²²¹ However, AHMSA's ***.²²² Since 1999, AHMSA has been operating under suspension of payment status, which will require it to overcome numerous hurdles in order to obtain financing to undertake the expansion, including an inability to access normal lines of credit, downgrades in its credit rating, and court approval before undertaking a debt obligation of this size.²²³ Even if AHMSA is able to obtain financing for this expansion, which is uncertain at this time, it will take AHMSA at least three years for this expansion to come on line, a time frame which for purposes of these reviews we do not consider to be within the reasonably foreseeable future.^{224 225}

For all of these reasons we find that subject imports from Mexico are likely to have no discernible adverse impact on the domestic industry within a reasonably foreseeable time in the event of revocation of the antidumping and countervailing duty orders on subject imports from Mexico, and, accordingly, we conclude that the statute precludes cumulation of subject imports from Mexico with other subject imports.

b. Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom

By contrast, we do not find that subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom would be likely to have no discernible adverse impact on the domestic industry in the event of revocation of orders covering those imports.

Relative to the U.S. market, the size of the CTL plate industry in each of these countries is significant. In 2005, the capacity in each subject country was equivalent to at least seven percent of apparent U.S. consumption.²²⁶ Each country has capacity to produce a large range of plate products, and the actual production of subject plate is significant in each country. Moreover, the CTL plate industries in all of the subject countries are globally recognized, and all subject countries export subject plate, although to varying degrees.²²⁷ Prior to the imposition of the antidumping finding, antidumping duty orders, and

²¹⁹ See, e.g., Mittal's Prehearing CTL Plate Br. at 15-16.

²²⁰ See, e.g., CR at CTL-IV-47; PR at CTL-IV-25.

²²¹ See, e.g., CR at CTL-IV-47; PR at CTL-IV-25.

²²² See, e.g., CR at CTL-IV-47; PR at CTL-IV-25.

²²³ See, e.g., CR at CTL-IV-47; PR at CTL-IV-25.

²²⁴ See, e.g., CR at CTL-IV-47; PR at CTL-IV-25; AHMSA's Posthearing CTL Plate Br. at 3-4. How we define the reasonably foreseeable future is explained in the conditions of competition section below.

²²⁵ We also note that counsel for some of the domestic interested parties conceded that Mexico should not be cumulated absent a proposed capacity expansion. As stated by counsel during the hearing, "if {AHMSA's capacity expansion} wasn't public ... {t}hen Mexico would probably be out of this case in a minute ... based on {its} present capacity compared to the amount of imports in the {Mexican} market." See, e.g., CTL Plate Hearing Tr. at 210.

²²⁶ See, e.g., CR/PR at Tables CTL-C-2, CTL-IV-9 (**% percent for Belgium), CTL-IV-14 (**% percent for Brazil), CTL-IV-19 (**% percent for Finland), CTL-IV-25 (**% percent for Germany), CTL-IV-37 (**% percent for Poland), CTL-IV-48 (**% percent for Spain), CTL-IV-50 (**% percent for Sweden), CTL-IV-53 (**% percent for Taiwan), and CTL-IV-58 (**% percent for the United Kingdom). Vice Chairman Aranoff notes that these percentages are even higher based on her definition of the domestic like product, which does not include micro-alloy products.

²²⁷ See, e.g., CR/PR at Tables CTL-IV-9, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-37, CTL-IV-49, CTL-IV-51, CTL-IV-53, and CTL-IV-58. In 2005, total exports of CTL plate as a percentage of total shipments for subject industries ranged from a low of **% percent for the **% industry to a high of **% percent for the **%

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countervailing duty orders, subject imports from each country were present in the U.S. market, and we find that upon revocation of the orders, subject imports from each country are likely to have at least some presence in the U.S. market.

With respect to product mix, the types of plate products manufactured and exported in each of the subject countries do not differ dramatically from the types of plate produced in the United States.²²⁸ Imports from each of the subject countries are likely to be substitutable for, and competitive with, domestically produced plate.²²⁹ Such competition is likely to be based, at least in part, on price, in light of the importance of price in purchasing decisions.²³⁰ Producers in each country undersold U.S. producers at times during the original investigation period, and, in the case of Germany, during this review period as well.²³¹ Accordingly, we cannot conclude that subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom would be likely to have no discernible adverse impact on the domestic industry in the event of revocation of orders covering those imports.

3. Likelihood of a Reasonable Overlap of Competition

In assessing likely competition for purposes of cumulation in original investigations, the Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product: (1) fungibility; (2) sales or offers in the same geographic markets; (3) common or similar channels of distribution; and (4) simultaneous presence.²³² In five-year reviews, the relevant inquiry is whether there likely would be a reasonable overlap of competition even if none currently exists because the subject imports are absent from the U.S. market. We consider these four factors in addition to those discretionary factors discussed below with respect to subject imports from Belgium, Brazil, Finland, Germany, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom.²³³ Because we do not cumulate subject imports from Mexico due to our no discernible adverse impact finding with regard to those subject imports, we find it

²²⁷ (...continued)

industry. See, e.g., CR/PR at Tables CTL-IV-9, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-37, CTL-IV-49, CTL-IV-51, CTL-IV-53, and CTL-IV-58.

²²⁸ See, e.g., Domestic Interested Parties Questionnaire Responses at II-13, II-14; CR/PR Tables CTL-IV-10, CTL-IV-11 (Belgium), CTL-IV-15, CTL-IV-16 (Brazil), CTL-IV-20, CTL-IV-21 (Finland), CTL-IV-26, CTL-IV-27 (Germany), CTL-IV-38, CTL-IV-39 (Poland), CTL-IV-54, CTL-IV-55 (Taiwan), and CTL-IV-59, CTL-IV-60 (United Kingdom). Publicly available data from Sweden indicates that “heavy plate” constituted the majority of SSAB’s plate production during the period of review, although the company has stated that it plans on reducing the volume of heavy plate production in favor of high-strength steel and other niche products. See, e.g., CR at CTL-IV-75; PR at CTL-IV-33. The record contains no information regarding the product mix from Spain.

²²⁹ See, e.g., CR at CTL-II-21; PR at CTL-II-13.

²³⁰ See, e.g., CR/PR at Table CTL-II-5.

²³¹ See, e.g., CR/PR at Table CTL-V-6. In these reviews, subject imports from Germany undersold the domestic like product. See, e.g., CR/PR at Table CTL-V-6.

²³² See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988); Mukand Ltd. v. United States, 937 F. Supp. 910, 915 (Ct. Int’l Trade 1996)).

²³³ Chairman Pearson and Commissioner Okun examine the likelihood of a reasonable overlap of competition only after first determining whether subject imports are likely to face similar conditions of competition. Because they determine that certain factors indicate that subject imports from Romania will likely compete under different conditions of competition than other subject imports, they do not include subject imports from Romania in their analysis of the likelihood of a reasonable overlap of competition.

unnecessary to decide the issue of the likelihood of a reasonable overlap of competition with respect to subject imports from this country.

In these reviews, the record indicates that domestically produced and imported CTL plate are fungible products. Consistent with the Commission's findings in the original investigations and the first reviews, the record in the current reviews indicates that the domestic like product and subject imports from Belgium, Brazil, Finland, Germany, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom are generally substitutable.²³⁴ For example, out of 103 responses from purchasers expressing familiarity with imports from subject countries (excluding Mexico), 42 reported CTL plate from these ten subject countries to be "always" interchangeable with U.S. produced CTL plate, 31 reported CTL plate from these ten subject countries to be "frequently" interchangeable with U.S.-produced CTL plate, 29 reported CTL plate from these ten subject countries to be "sometimes" interchangeable with U.S. produced CTL plate, and one reported CTL plate from these ten subject countries to be "never" interchangeable with U.S.-produced CTL plate.²³⁵ A vast majority of importers expressing familiarity with subject imports, 48 of 53, reported CTL plate from these subject countries to be "always" or "frequently" interchangeable with U.S.-produced CTL plate.²³⁶ Moreover, a vast majority of importers and purchasers expressing familiarity with subject imports reported that imports from subject countries were used interchangeably. A majority of purchasers reported that country of origin was rarely or never a factor in purchasing decisions.²³⁷ Purchasers were asked to compare domestic and subject CTL plate products on the basis of 20 ranking factors, and, although responses were limited, purchasers found that the U.S. product was generally comparable to, and sometimes superior to, subject imports.²³⁸

German and U.K. producers were the only respondent interested parties to present arguments regarding the likelihood of a reasonable overlap of competition. They both argued that their exports are not substitutable for the domestic product because they currently export specialty CTL plate, and ***. However, the record refutes their contentions. Eleven of 14 importers and purchasers expressing familiarity with imports from the United Kingdom reported that such imports were "always" or "frequently" interchangeable with U.S.-produced CTL plate, while 16 of 20 importers and purchasers expressing familiarity with imports from Germany reported that such imports were "always" or "frequently" interchangeable with U.S.-produced CTL plate.²³⁹ Moreover, the record shows that both U.K. and German producers produce and export to non-U.S. markets significant quantities of carbon structural steel plate less than four inches thick, which are directly substitutable for U.S. produced CTL

²³⁴ In the original investigations and the first reviews the Commission stated that specialized or "niche" products constituted only a small percentage of imports from any one country, and that subject countries continue to produce substantial volumes of commodity CTL plate that accounted for a large share of the U.S. market. See, e.g., USITC Pub. 2664 at 20; USITC Pub. 3364 at 21; USITC Pub. 3587 at 9 (Remand Determination).

²³⁵ See, e.g., CR/PR at Table CTL-II-8. Large numbers of purchasers and importers reported that they had no familiarity with imports from all or most of the subject countries. A majority of purchasers also stated that imported and U.S. produced CTL plate are generally used in the same applications.

²³⁶ See, e.g., CR/PR at Table CTL-II-8.

²³⁷ See, e.g., CR at CTL-II-29 to CTL-II-30; PR at CTL-II-19 to CTL-II-20. Twelve purchasers reported that certain grades, types, or sizes of CTL plate are available from only a single source. *** reported that abrasion-resistant material is only available from Sweden, Germany, and Canada, while *** reported that Germany has a patented material with a unique composition. See, e.g., CR at CTL-II-25; PR at CTL-II-16.

²³⁸ See, e.g., CR/PR at Table CTL-II-7. No purchaser completed the comparison between the United States and Belgium, Brazil, Finland, Romania, Spain, Taiwan, or the United Kingdom, although five purchasers completed the comparison between the United States and "all foreign countries."

²³⁹ See, e.g., CR/PR at CTL-Table II-8. German producers reported that ***. See, e.g., CR at CTL-II-11 n.16; PR at CTL-II-7 n.16.

plate. Although U.K. and German producers do not currently compete in the U.S. market to any significant degree, the focus of the Commission's inquiry here is on "likely," not current, competition.²⁴⁰

We, therefore, conclude that subject imports from Belgium, Brazil, Finland, Germany, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom are sufficiently fungible with one another and with the domestic like product.

With respect to geographic overlap and simultaneous presence, in the first reviews, the Commission found that the record was "mixed" concerning simultaneous market presence and geographic overlap, but found that, "in light of the importance of sales to steel service centers, which are dispersed throughout the United States and hold sizeable plate inventories, we find it likely that subject imports from each subject country would be simultaneously present in the U.S. market as a whole and in the same geographical markets as other subject imports and the domestic like product."²⁴¹

Similar to the record in the first reviews, the record in the current reviews is mixed regarding geographic overlap and simultaneous presence in the market. The record continues to reflect that current producers and importers as a whole reported nationwide sales. Subject imports were also generally available in multiple regions of the country during the review period.²⁴²

Subject imports from some subject countries were not present during some of the current review period. Imports of subject merchandise from all subject countries, except Romania, have declined substantially since the orders were imposed. There were reportedly *** imports of subject CTL plate from Belgium (except in 2005), Brazil, Finland, Poland, Taiwan, and the United Kingdom (except in 2003). According to official import statistics, there were no imports of subject CTL plate from Spain in 2001, and from 2003 through 2005, and from Sweden in 2003. Prior to the imposition of the orders, subject imports from each country were present in the U.S. market, and we find that upon revocation of the orders, subject imports from each country are likely to have at least some presence in the U.S. market.

The record also indicates that there is sufficient overlap in the channels of distribution for domestic and imported CTL plate. In the first reviews, the Commission found that "domestic producers and importers ship plate to end users, distributors, and service centers."²⁴³ This is generally consistent with the record in the current reviews, although there were too little data reported to comment specifically on imports from subject countries.²⁴⁴

On balance, we find that subject imports from the ten subject countries would be sufficiently fungible, move in the same channels of distribution, and compete in the same geographic markets during the same periods, and we therefore conclude that there would likely be a reasonable overlap of competition among subject imports from Belgium, Brazil, Finland, Germany, Poland, Romania, Spain,

²⁴⁰ See generally Chefline Corp. v. United States, 219 F. Supp. 2d 1313, 1314 (Ct. Int'l Trade 2002) ("The statute and legislative history are clear: the Commission is not required to find that subject imports currently compete in the U.S. market."); cf. SAA at 888 (regional industry); see also, e.g., Granular Polytetrafluoroethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 to 386 (Second Review), USITC Pub. 3823 at 13-14 (Dec. 2005). ("While subject imports from Japan currently consist of niche products, the current composition of subject imports is affected by the discipline of the antidumping duty orders and thus not necessarily indicative of likely post-revocation behavior.") (finding a likely reasonable overlap of competition).

²⁴¹ USITC Pub. 3364 at 22.

²⁴² See, e.g., CR at CTL-II-3; PR at CTL-II-3; CR/PR at Table CTL-II-2. Seven of nineteen producers and seven of fifteen importers reported selling nationwide during the review period.

²⁴³ USITC Pub. 3364 at 21.

²⁴⁴ See, e.g., CR at CTL-II-1; PR at CTL-II-1.

Sweden, Taiwan, and the United Kingdom and between these subject imports and the domestic like product in the event of revocation.²⁴⁵

4. Other Considerations

In determining whether to exercise our discretion to cumulate subject imports from Belgium, Brazil, Finland, Germany, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom,²⁴⁶ we also examine other considerations, such as similarities and differences in the likely conditions of competition of the subject imports with regard to their participation in the U.S. market for CTL plate.

Several factors indicate that subject imports from Romania will likely compete in the U.S. market under different conditions of competition than other subject imports, if the antidumping duty order on CTL plate imports from Romania were revoked.

The Romanian CTL plate industry has undergone significant changes since the original investigations and the first five-year reviews that distinguish it from the CTL plate industries in the other subject countries. Most importantly, since April 2005, the lone Romanian producer of CTL plate has been in the same corporate group as a major U.S. producer of CTL plate. During the original investigations, the Commission identified two state-owned Romanian producers of CTL plate, Sidex SA Galati and Metalexportimport. During the first reviews, there remained only one producer, Sidex.²⁴⁷ Since the first five-year reviews, Sidex was privatized and purchased in 2001 by LNM Holdings, which eventually brought the company under the control of the multinational Mittal Group of steel companies. The Romanian producer now operates under the name Mittal Steel Galati.²⁴⁸ As of April 2005, Mittal Steel Co., NV purchased the assets of U.S. CTL plate producer International Steel Group (“ISG”), thereby creating Mittal Steel USA, which consequently is now affiliated with its Romanian sister company Mittal Steel Galati.²⁴⁹ This newly arising corporate affiliation between Mittal Steel Galati and Mittal Steel USA

²⁴⁵ See *Siderca S.A.I.C. v. United States*, 391 F. Supp. 2d 1353, 1364-65 (Ct. Int’l Trade 2005) (For cumulation in reviews, “[t]here is no requirement that the ITC find that all four subfactors are independently supported by a ‘likeliness’ determination.”), citing *Wieland Werke*, 718 F. Supp. at 50.

²⁴⁶ We find it unnecessary to reach the issue of whether subject imports from Mexico are likely to compete in the U.S. market under different conditions of competition than other subject imports, because we decline to exercise our discretion to cumulate such imports on the basis of our finding of no likely discernible adverse impact, as discussed above.

²⁴⁷ See, e.g., CR at CTL-IV-64; PR at CTL-IV-29.

²⁴⁸ See, e.g., CR at CTL-IV-64 to CTL-IV-65; PR at CTL-IV-30.

²⁴⁹ See, e.g., CR/PR at Table CTL-III-1. In 2005, Mittal Steel USA accounted for *** percent of U.S. production of non-alloy CTL plate and *** percent of U.S. production of carbon CTL plate. Mittal Steel USA also has a corporate relationship with another subject producer, Polish producer Huta Batory (*** percent share). Further, once the Arcelor-Mittal merger is finalized ***, Mittal also will be linked to producers in Belgium, Germany, and Spain, which are subsidiaries of the Arcelor Group. See, e.g., CR at CTL-I-33 to CTL-I-34; PR at CTL-I-28. While these corporate relationships ultimately may affect the behavior of those producers in the same manner in which the behavior of Mittal Steel Galati will likely be affected, at this time we cannot determine that it is more likely than not that there will be the same effect in the reasonably foreseeable future. First, Mittal only has a partial ownership interest in Polish producer Huta Batory, and Huta Batory represents less than *** of Poland’s CTL plate production capacity. See, e.g., CR at CTL-IV-54. Second, in the case of Belgium and Germany, Mittal’s eventual relationship with the Arcelor Group producers in those countries represents only a portion of the industries in Belgium (Industeel is one of two Belgian producers and only accounts for about *** percent of Belgian CTL plate production) and Germany (Dillinger is *** of three German CTL plate producers). See, e.g., CR at CTL-IV-13, CTL-IV-41; PR at CTL-IV-12. Finally, while there is only one Spanish producer, it did not respond to the Commission’s questionnaire, and thus, we lack any data upon which to evaluate the likely effects of the eventual Arcelor-Mittal

(continued...)

will make it likely that decisions as to how Mittal Steel Galati will respond to revocation of the antidumping duty order will be made at the corporate level with the best interests of the U.S. affiliate in mind.²⁵⁰

While the reported capacity of the CTL plate industry in each of the subject countries ***, Mittal Steel Galati's capacity *** during the period of review.²⁵¹ Mittal Steel Galati's reported capacity increased from *** short tons in 2000 to *** short tons in 2003, before declining to *** short tons in 2005, ***.²⁵² While the Romanian industry has increased its production over the period of review, in 2005 it still had the *** level of capacity utilization, *** percent, of any of the subject countries, and as a result, had the *** amount of excess capacity of any of the subject countries.²⁵³

Finally, the record also indicates that Romania is the only subject country that faces tariff barriers in third-country markets.²⁵⁴ Two of those countries with tariff barriers in place, Mexico and Canada, limit Romania's export markets in North America.

For these reasons, we find that the conditions of competition with respect to Romania are sufficiently different so as to provide a reasonable basis for us to decline to exercise our discretion to cumulate subject imports from Romania with those from the other subject countries. We do not find different conditions of competition sufficient to warrant our declining to exercise our discretion to cumulate the subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, or the United Kingdom.

5. Conclusion

In sum, we determine that subject imports from Mexico are likely to have no discernible adverse impact on the domestic industry in the event of revocation, and are therefore ineligible for cumulation. With respect to the remaining countries, we find that the no discernible adverse impact exception to cumulation does not apply and that there would likely be a reasonable overlap of competition between subject imports from each country and the domestic like product as well as among subject imports from each country. We also determine, based on the existence of unique conditions of competition with respect to Romania, not to exercise our discretion to cumulate subject imports from Romania with those from any of the other subject countries.

Accordingly, for the reasons discussed above, we consider subject imports from Mexico separately from all other subject imports, we consider subject imports from Romania separately from all other subject imports, and we exercise our discretion to cumulate subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom.²⁵⁵

²⁴⁹ (...continued)

merger with regard to subject imports from Spain. See, e.g., CR at CTL-IV-73; PR at CTL-IV-31.

²⁵⁰ There were no subject imports from Romania during the first half of 2006. See, e.g., CR/PR at Table CTL-IV-1.

²⁵¹ The record contains no information regarding the capacity or capacity utilization trends for Spain and Sweden over the period of review.

²⁵² See, e.g., CR/PR at Table CTL-IV-43. Romania's reported increase in capacity was ***. See, e.g., CR at CTL-IV-65; PR at CTL-IV-30.

²⁵³ See, e.g., CR/PR at Table CTL-IV-43.

²⁵⁴ See, e.g., CR at CTL-IV-68; PR at CTL-IV-30.

²⁵⁵ We note even if we had decided to exercise our discretion to cumulate subject imports from all eleven subject countries, we would have reached negative determinations with respect to subject CTL plate from each of the eleven countries.

D. Likelihood of Continuation or Recurrence of Material Injury If the Antidumping Duty Orders and Finding and Countervailing Duty Orders Are Revoked

1. In General

We applied the legal standards discussed in section III above.²⁵⁶ As a preliminary matter, in view of the nature of this industry and market, for purposes of these reviews, and based on the facts on this record, we have given significantly greater weight to developments likely to occur in the next two years than to those pertaining to later dates, although we cite other information as appropriate.²⁵⁷

2. Conditions of Competition and Business Cycle²⁵⁸

a. The Original Investigations

In the 1993 original investigations, the Commission found that demand for CTL plate was generally declining over the period of investigation, and about 44 percent of domestic shipments and about 79 percent of imported CTL plate were sold to service centers. It found that service centers, which purchased CTL plate from a number of sources, did not require extensive pre-sale certification

²⁵⁶ Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv); see also SAA at 887. In the final results of its second five-year reviews of the antidumping duty orders on CTL plate, Commerce assigned the following likely margins. Belgium: Forges de Clabecq, S.A. 6.78 percent, Industeel 13.38 percent, all others 6.84 percent; Brazil: Usiminas/Cosipa 42.68 percent, all others 75.54 percent; Finland: Rautaruukki 40.36 percent, all others 40.36 percent; Germany: Dillinger 36.00 percent, all others 36.00 percent; Mexico: AHMSA 49.25 percent, all others 49.25 percent; Poland: country-wide 61.98 percent; Romania: Metalexportimport, S.A. 75.04 percent, all others 75.04 percent; Spain: Ensidesa 105.61 percent, all others 105.61 percent; Sweden: SSAB 24.23 percent, all others 24.23 percent; Taiwan: CSC 34.00 percent, all others 34.00 percent; and United Kingdom: British Steel 109.22 percent, all others 109.22 percent. See, e.g., CR/PR at Table CTL-I-14. In the final results of its second five-year reviews of the countervailing duty orders on CTL plate, Commerce assigned the following likely subsidization rates. Belgium: Cockerill 2.82 percent, Industeel 0.56 percent, all others 0.50 percent; Brazil: Usiminas 5.44 percent, Cosipa 48.64 percent, all others 23.10 percent; Mexico: AHMSA 28.32 percent, all others 20.25 percent; Spain: country-wide 33.68 percent; Sweden: de minimis. See, e.g., CR/PR at Table CTL-I-15.

In addition, the statute provides that “if a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(6). In its unpublished Issues and Decision Memoranda issued in these second reviews, Commerce described 19 programs with respect to CTL plate from Belgium, and, with the exception of the “Promotion Brochure” and “Audio Visual Calling Card” programs, these programs do not fall within the meaning of Article 3. Commerce described 5 programs with respect to CTL plate from Brazil, none of which fall within the meaning of Article 3. Commerce described 11 programs with respect to CTL plate from Mexico, 2 of which were found to be export subsidies as described in Article 3 (Bancomext Export Loans and PITECH Duty-Free Imports for Companies that Export). Commerce described 6 programs with respect to CTL plate from Spain and 7 programs with respect to CTL plate from Sweden, and none of them fall within the meaning of Article 3. Commerce did not indicate that any of the programs involved Article 6.1 subsidies. See, e.g., CR at OVERVIEW-17 & nn.36-40; PR at OVERVIEW-10 & nn.36-40.

²⁵⁷ We note that this timeframe is consistent with the period advocated by domestic interested parties. See, e.g., CTL Plate Hearing Tr. at 385 (Brightbill) (“We believe two years is the appropriate timeframe for looking at what is reasonably foreseeable.”)

²⁵⁸ We applied the legal standards discussed in section III above.

procedures, and that virtually all CTL plate products were produced to ASTM standards in one of three standardized commercial grades.²⁵⁹

b. The First Reviews

In the first reviews, the Commission found that demand in the U.S. market for CTL plate, which generally parallels the U.S. economy, had increased since the original investigations. It found that CTL plate products are used in industrial and agricultural equipment, construction, and transportation. It found that several domestic mills had closed, and that the overall industry's capacity increased as some companies made the transition from conventional reversing mills to Steckel mills. It found that the domestic industry had a high ratio of fixed to total costs such that it must produce large volumes to operate profitably. It concluded that CTL plate is a commodity product sold primarily on the basis of price, and increasingly to service centers, entities that had become more consolidated and more sophisticated. The Commission also noted that there had been additional waves of imports from a number of suppliers throughout the world that resulted in suspension agreements being signed with China, Russia, South Africa, and Ukraine in 1997 and then antidumping and countervailing duty orders being put in place in 2000 with respect to imports from France, India, Indonesia, Italy, Japan, and Korea.²⁶⁰

c. The Current Proceedings

To the extent that non-alloy steel plate constitutes a substantial portion of the carbon CTL plate produced in the United States,²⁶¹ we find that the conditions of competition in the U.S. market are the same whether or not the domestic like product is expanded to include micro-alloy products. We find the following conditions of competition relevant to our determinations in these reviews.

(1) Demand

CTL plate often accounts for a relatively large percentage of the total cost of end-use products, although the cost share varies widely depending on end use.²⁶² While there are reported substitutes for CTL plate, the potential for substitution is often limited by end use.²⁶³ All parties agree that demand for CTL plate is derived from the demand for end-use applications.²⁶⁴ In terms of shipments in the U.S. market in 2005 compiled from American Iron & Steel Institute ("AISI") reporting companies, more than half of shipments classified by AISI as CTL plate (54.1 percent) were for construction, 25.0 percent were for steel service centers and distributors, 8.7 percent were for rail transportation, 6.1 percent were for

²⁵⁹ See, e.g., USITC Pub. 2664 at 216-17. Conditions of competition were not separately discussed in the 1979 original determination concerning subject imports from Taiwan, which involved a regional industry.

²⁶⁰ See, e.g., USITC Pub. 3664 at 23-25.

²⁶¹ See, e.g., CR/PR at Table C-1, Table C-2 (indicating that in 2005, 1.3 million short tons of micro-alloy CTL plate were produced compared to 7.3 million short tons of non-alloy CTL plate, such that non-alloy CTL plate constituted more than four-fifths of U.S. carbon steel plate production).

²⁶² See, e.g., CR at CTL-II-20; PR at CTL-II-13.

²⁶³ See, e.g., CR at CTL-II-19; PR at CTL-II-12.

²⁶⁴ See, e.g., CR at CTL-II-16; PR at CTL-II-10; Mittal's Prehearing CTL Plate Br. at 43; Joint Respondents' Prehearing CTL Plate Br. at 26; Caterpillar's Prehearing CTL Plate Br. at 6.

machinery, industrial equipment, and tools, and the remainder were for oil and gas, shipbuilding and marine equipment, electrical and agricultural equipment, and other end-use markets.²⁶⁵

(a) U.S. Market

Since the original investigations, demand, as measured by apparent U.S. consumption (the sum of subject and non-subject imports and the domestic industry's U.S. shipments) has fluctuated.²⁶⁶ During the current period of review, demand for carbon CTL plate declined from 7.7 million short tons in 2000 to 7.1 million short tons in 2001, increased to 7.5 million short tons in 2002, declined to 7.3 million short tons in 2003 and then increased sharply to 8.3 million short tons in 2004 and to 8.6 million short tons in 2005; demand in the first six months of 2006 ("interim 2006") (5.2 million short tons) was also much higher than in interim 2005 (4.3 million short tons).²⁶⁷ Explanations offered for the increase in demand during the period of review included the improved economy, increased investment, lower interest rates, increased global consumption, increased shipbuilding, increased oil and gas exploration, increased use for military applications, rebuilding activities after the hurricanes of 2005, and increased construction and manufacturing activity.²⁶⁸ Thirteen of sixteen responding purchasers who are end users reported that the demand for their firms' final products that use CTL plate changed since 2000, with most citing increases in demand for these final products. In identifying the major factors that contributed to the demand changes, purchasers reported factors such as a growing U.S. economy, increased pipeline construction, new ship designs, and expanded product lines.²⁶⁹

During this time of increasing demand in the U.S. market, raw material and energy costs increased, and CTL plate prices also increased. Raw material costs vary depending on the production process, with steel scrap playing a larger role in the raw material costs for electric arc furnace ("EAF")

²⁶⁵ See, e.g., CR at CTL-II-17; PR at CTL-II-11.

²⁶⁶ According to information from the 1979 original investigation of subject imports from Taiwan, apparent U.S. consumption declined from 10.0 million short tons in 1974 to 7.7 million short tons in 1975 and to 6.8 million short tons in 1976 before increasing to 7.4 million short tons in 1977 and 8.6 million short tons in 1978. See, e.g., USITC Pub. 970 at A-2. Due to changes in the composition of the domestic industry, differences in the identities of the responding companies, and differences in the scope of the two investigations, these data are not directly comparable with data from the 1993 original investigations. According to the data in the latter investigations, apparent U.S. consumption declined from 5.6 million short tons in 1990 to 4.8 million short tons in 1991 before increasing to 5.0 million short tons in 1992. See, e.g., CR/PR at Table CTL-I-1. As of the time of the first reviews of these orders, apparent U.S. consumption increased from 6.6 million short tons in 1997 to 8.2 million short tons in 1998 before declining to 6.0 million short tons in 1999. See, e.g., CR/PR at Table CTL-I-1. Again, due to changes in the composition of the domestic industry, differences in the number and types of responding companies (including the response rate of bar mills), and especially the Commission's decision to include service center processors in the industry data in the first reviews, these data are not directly comparable.

²⁶⁷ See, e.g., CR/PR at Table C-2. These data include shipments of micro-alloy CTL plate; although the Commission did not expand the domestic like product to include micro-alloy CTL plate in the first reviews, it acknowledged that some of the data it relied upon in those reviews contained micro-alloy shipments to the extent that some domestic producers were unable to segregate their micro-alloy data from their non-alloy CTL plate data. See, e.g., USITC Pub. 3364 at 23 n.126. During the period of review, demand for non-alloy CTL plate, as measured by apparent U.S. consumption declined from 6.8 million short tons in 2000 to 6.2 million short tons in 2001, increased to 6.5 million short tons in 2002, declined to 6.4 million short tons in 2003 and then increased to 7.0 million short tons in 2004 and to 7.3 million short tons in 2005; demand in the first six months of 2006 ("interim 2006") (4.4 million short tons) was also higher than in interim 2005 (3.6 million short tons). See, e.g., CR/PR at Table C-2.

²⁶⁸ See, e.g., CR at CTL-II-15; PR at CTL-II-10.

²⁶⁹ See, e.g., CR at CTL-II-17; PR at CTL-II-11.

mini-mills, for example.²⁷⁰ Regardless of the production methodology used, the cost of raw materials (e.g., iron ore, coal, and steel scrap) and energy are important components of the total cost of producing CTL plate.²⁷¹ Prices in the United States of iron ore and coal rose over the period of review, with the increase for iron ore occurring primarily in 2005 and 2006.²⁷² The price of iron and steel scrap in the United States decreased in 2000 and 2001 and then increased markedly.²⁷³ After a decrease in early 2005, scrap prices then increased through mid-2006 and only fell slightly in late 2006.²⁷⁴ The prices of both natural gas and electricity in the United States were higher in interim 2006 than in any of the full years between 2000 and 2005, and the prices of both generally rose over the period of review.²⁷⁵ During the period of review, all 19 responding U.S. producers reported increased CTL plate selling prices as a direct result of higher raw material prices, and five producers reported implementing raw material surcharges.²⁷⁶

Domestic interested parties acknowledge that the industry's demand forecasts have been positive until recently, but assert that the recent increases in demand in the U.S. market are not likely to continue and demand will decline or grow more slowly.²⁷⁷ They point to two ways in which there will be changes in demand: (1) they expect declines in service center purchases while service centers work off inventories; and (2) they project slowing or declines in demand for CTL plate by end users. Domestic interested parties assert that there is little or no disagreement that service center inventories are historically high and appear to be at their peak; they believe that an inventory draw-down, with its accompanying rapid price declines, has begun and will continue to occur in the fourth quarter of 2006.²⁷⁸ They also project a slowing or decline in demand because of declining demand from end users.²⁷⁹ They point to testimony that domestic producers will be idling equipment or limiting shifts in the fourth quarter of 2006 due to softening demand as well as testimony by other domestic producers that their order books are not being filled as quickly as was the case earlier in 2006.²⁸⁰

Record data, however, contradict these claims, and instead indicate that demand in the U.S. market likely will continue to be strong for the reasonably foreseeable future. With respect to service center inventories, the evidence shows that inventory draw-downs are a regular but temporary occurrence

²⁷⁰ See, e.g., CR at CTL-I-22; PR at CTL-I-19.

²⁷¹ See, e.g., CR at CTL-V-1; PR at CTL-V-1.

²⁷² See, e.g., CR at CTL-V-1; PR at CTL-V-1; CR/PR at Figure CTL-V-1.

²⁷³ See, e.g., CR at CTL-V-1; PR at CTL-V-1.

²⁷⁴ See, e.g., CR at CTL-V-1; PR at CTL-V-1.

²⁷⁵ See, e.g., CR at CTL-V-1; PR at CTL-V-1 and V-2.

²⁷⁶ See, e.g., CR at CTL-V-2; PR at CTL-V-2.

²⁷⁷ See, e.g., IPSCO/Oregon's Prehearing CTL Plate Br. at 24, 27, Exh. 3; Mittal's Prehearing CTL Plate Br. at 43; Nucor's Prehearing CTL Plate Br. at 30-32; CTL Plate Hearing Tr. at 46-47 (Tulloch), 52-53 (McFadden), 56 (Insetta), 74 (Ballou), 114 (McFadden), 137 (Insetta); IPSCO/Oregon's Posthearing CTL Plate Br. at 9-13; Mittal's Posthearing CTL Plate Br. at 4-5 & n.13; Nucor's Posthearing CTL Plate Br. at 10-12, App. 3 at 1-7.

²⁷⁸ See, e.g., IPSCO/Oregon's Prehearing CTL Plate Br. at 2, 27; Mittal's Prehearing CTL Plate Br. at 29, 43-45; CTL Plate Hearing Tr. at 37 (Schagrin), 46-48 (Tulloch), 57-58 (Insetta), 74 (Ballou), 78-79 (Ruane), 193-95 (Ruane); IPSCO/Oregon's Posthearing CTL Plate Br. at 2-3, 9-13, Exh. 2; Mittal's Posthearing CTL Plate Br. at 3-5; Nucor's Posthearing CTL Plate Br. at App. 3 at 1-7.

²⁷⁹ See, e.g., Mittal's Prehearing CTL Plate Br. at 29, 43-45; CTL Plate Hearing Tr. at 56 (Insetta), 112-13 (Tulloch), 114 (McFadden); IPSCO/Oregon's Posthearing CTL Plate Br. at 3, 9-13; Nucor's Posthearing CTL Plate Br. at App. 3 at 1-7.

²⁸⁰ See, e.g., CTL Plate Hearing Tr. at 52-53 (McFadden), 86-87 (Tulloch), 129 (Tulloch), 137 (Insetta); Mittal's Posthearing CTL Plate Br. at 6-7, Conf. Exh. 2; Nucor's Posthearing CTL Plate Br. at App. 3 at 1-7.

in this industry.²⁸¹ In the recent 2005 reviews of CTL plate orders involving other countries, domestic interested parties also pointed to the anticipated effects of an inventory overhang, but our data in these reviews do not show any meaningful change in the market dynamics after that inventory correction.²⁸² Indeed, in their interviews with industry press, domestic producers anticipate that any effects of the current inventory adjustment will be temporary as well.²⁸³ Demand from end users is also expected to increase in the reasonably foreseeable future, as illustrated in domestic producers' hearing testimony,²⁸⁴ anecdotal information collected in these reviews,²⁸⁵ forecasts by industry observers²⁸⁶ as well as

²⁸¹ Respondent interested parties assert that the inventory data used by the domestic interested parties and reproduced in the staff report reflect a large proportion of non-subject coiled plate inventories and that absolute growth in inventory levels is not surprising in a growing market. In their view, inventory turnover rates measured by months of shipments on hand are more instructive. See, e.g., Brazilian Respondents' Posthearing CTL Plate Br. at 9 Exh. 1 at 1-14. We find that the service center data are a reliable depiction of the trend in plate inventories. We have examined both inventory levels as well as inventory turnover. Although these data do include some non-subject plate (e.g., plate in coils), they include only carbon plate. Additionally, plate in coils held by service centers, unlike plate in coils held by fabricators or pipe mills, frequently is converted into CTL plate. See, e.g., CR at CTL-III-13 n.26; PR at III-9 n.26; CR/PR at Figure CTL-III-1. Indeed, as noted above, we include service centers that process coiled hot-rolled plate into CTL plate in the domestic industry.

²⁸² Apparent U.S. consumption in 2005 was higher than in 2004, and apparent U.S. consumption in interim 2006 exceeded demand in interim 2005. See, e.g., CR/PR at Tables C-2, C-1. Likewise, although there was some leveling off or small decrease in prices in the U.S. market in 2005, the data do not show the sort of dramatic price declines that domestic interested parties suggest would have accompanied such inventory destocking. See, e.g., CR at CTL-V-23; PR at CTL-V-15; CR/PR at Figures CTL-V-3 to CTL-V-7, Tables CTL-V-1 to CTL-V-5. Moreover, the record demonstrates that the 2005 inventory correction took only a few months, after which time U.S. producers' production, shipments, and prices quickly regained and exceeded their pre-correction levels. See, e.g., CR/PR at Tables C-2, C-1, CTL-V-1 to CTL-V-5.

²⁸³ See, e.g., Brazilian Respondents' Posthearing CTL Plate Br. at 9-10, Exh. 1 at 1-14; CTL Plate Hearing Tr. at 113 (Tulloch), 135 (Tulloch).

²⁸⁴ IPSCO reported that demand growth is at a high level now and will continue at that level or perhaps a slightly lower level, particularly for energy, transportation, and construction equipment. See, e.g., CTL Plate Hearing Tr. at 111-13 (Tulloch). Oregon reported that it expects the large diameter pipe market to be strong over the next year and a half, although it expects overall demand from service centers will be down in 2007. See, e.g., CTL Plate Hearing Tr. at 114-15 (Montross). Mittal reported that it expects 2007 to be about the same as 2006 for CTL plate used by OEMs and fabricators. See, e.g., CTL Plate Hearing Tr. at 116 (Insetta). We recognize that demand associated with the recently enacted \$280 billion 2005 Transportation Equity Act may not be as great as joint respondent interested parties argued. Compare, e.g., Corus' Posthearing CTL Plate Br. at App. H at 3-4 and exhibits with, e.g., CTL Plate Hearing Tr. at 116-17 (Insetta), 170-71 (Montross), 171-72 (Insetta), 172 (Price); Mittal's Posthearing CTL Plate Br. at Answers to Commissioner Koplan's Questions at 13-16; Nucor's Posthearing CTL Plate Br. at App. 3 at 5-7.

²⁸⁵ Reports from earlier in 2006 suggested that the U.S. market for CTL plate was buoyed by bridge and highway construction, heavy equipment production, barge building, shipbuilding, and the continued strength of the energy market. Indications at the time were that the CTL plate market would remain strong throughout 2006 and potentially beyond. See, e.g., CR at CTL-II-16 n.26; PR at CTL-II-10 n.26 (citing "Carbon plate prices firm as demand holds steady," American Metal Market, June 14, 2006, found at http://amm.com/2006-06-13_13-48-34.html, retrieved September 1, 2006). More recently, IPSCO reported that strong demand conditions are expected to extend into 2007, not only from the energy sector, but also from the production of barges, ships, and railcars. See, e.g., CR at CTL-II-16; PR at CTL-II-10 (citing "Strong North American Plate Demand Expected to Continue," Steel Business Briefing, October 11, 2006 in Brazilian Posthearing CTL Plate Br. at Exh. 2). Other published reports also indicate that end user demand for CTL plate in the United States continues to be strong, especially from the oil and gas industry, even as sheet demand has weakened. See, e.g., CR at CTL-IV-110; PR at CTL-IV-44.

²⁸⁶ *** publishes data on historical, current, and forecast consumption of reversing mill plate. These data are understated to the extent that they do not include plate cut from coils produced on a strip mill or Steckel mill plate,

(continued...)

predictions made by industry officials.²⁸⁷ Importantly, projections of likely increased demand from CTL plate end users are not limited to a single industry but encompass a wide variety of end user industries, each of which is likely to have strong demand for CTL plate in the reasonably foreseeable future. Thus, the contrary arguments made by the domestic industry in these proceedings²⁸⁸ simply do not override the weight of the evidence indicating likely continued strong and growing demand in the U.S. market in the reasonably foreseeable future.

(b) Global Market

Consistent with published data on global demand,²⁸⁹ ten producers, 7 importers, and 21 purchasers reported that demand outside the United States also increased over the period of review. They cited factors such as rapidly increasing demand in China and other industrializing countries in Asia and Latin America; the economic recovery in Japan; increased shipbuilding, mining, and oil and gas exploration; increased investment; improvements to infrastructure; the relocation of manufacturing activities outside of the United States; and global economic growth as reasons for the increase.²⁹⁰ In addition, the European Union has grown as a market since 2000 with the addition of thirteen new member states in 2004 and 2005 and remains a substantial non-U.S. market for exports.²⁹¹ The record also

²⁸⁶ (...continued)

but they are overstated due to the fact that they do not distinguish between carbon and non-carbon steel. Nevertheless, these data are consistent with other sources indicating an expectation of continued demand. See, e.g., CR at CTL-IV-97 & n.175; PR at CTL-IV-40 & n.175. According to ***, consumption of reversing mill plate in North America (of which the U.S. market is a substantial subset) was as follows between 1994 and 2005: ***. ***. See, e.g., CR/PR at Table CTL-IV-68.

²⁸⁷ For example, in a September 2006 presentation for the Metals Service Center Institute Economic Summit Forecast 2007, domestic producers anticipated that ***. See, e.g., CR at CTL-II-16, CTL-III-8 n.19; PR at CTL-II-10; IPSCO/Oregon's Posthearing CTL Plate Br. at Exh. 5; see also, e.g., German Respondents' Prehearing CTL Plate Br. at 11-14 (citing MEPS International Steel Review, ***, SBB Global Market Outlook, Welded Steel Tube & Pipe Monthly, and John Ferriola, Executive Vice President of the Sheet Mill Group of Nucor in an American Metal Market article); Caterpillar's Prehearing CTL Plate Br. at 2, 6-7; Joint Respondents' Prehearing CTL Plate Br. at 27-29 (citing Ferriola as well as IPSCO's executive vice president and chief commercial officer); Emergency Committee for American Trade's October 30, 2006, Written Submission at 3-4.

²⁸⁸ See, e.g., IPSCO/Oregon's Prehearing CTL Plate Br. at 24, 27, Exh. 3; Mittal's Prehearing CTL Plate Br. at 29-30, 43-45; IPSCO/Oregon's Posthearing CTL Plate Br. at 2-3, 9-13, A-5 to A-6, Exhs. 2, 5. We give little weight to the economic modeling prepared by domestic interested parties during these proceedings, which, inter alia, do not take into consideration each of the statutory criteria that govern these proceedings. See, e.g., Brazilian Respondents' Posthearing CTL Plate Br. at Exh. 1 at 23-29; see also, e.g., Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063 to 1068 (Final), USITC Pub. 3748 at n.246 (Jan. 2005).

²⁸⁹ See, e.g., CR/PR at Table CTL-IV-67 (reproducing *** data indicating that global reversing mill plate consumption has increased from *** short tons in 2000 to *** short tons in 2005). As noted above, although these data pertain to reversing mill plate consumption and are in some respects both over- and under-inclusive, we find the trends to be consistent with other record data. See also, e.g., Joint Respondents' Prehearing CTL Plate Br. at 35-36.

²⁹⁰ See, e.g., CR at CTL-II-21; PR at CTL-II-13.

²⁹¹ See, e.g., CR at CTL-IV-113 to CTL-IV-114; PR at CTL-IV-46 to CTL-IV-47; CR/PR at Tables CTL-IV-68, CTL-IV-69; German Respondents' Prehearing CTL Plate Br. at 17-20.

indicates that global demand is likely to continue to be strong and growing, including in the markets primarily served by subject producers.²⁹²

(2) Supply

(a) U.S. Market

Since the original investigations, there have been a number of changes in the identity of the suppliers to the U.S. market, although the U.S. market continues to be supplied primarily from the U.S. industry's shipments as well as by smaller volumes of subject and non-subject imports. Twelve U.S. mills were the primary sources of supply to the U.S. market in 1978,²⁹³ and there were likewise twelve U.S. mills supplying the U.S. market in 1992, although some of the primary producers had changed.²⁹⁴ As of the first reviews of these orders, after additional changes to the players, there were thirteen U.S. mills and seven processors supplying the U.S. market.²⁹⁵ During the period of review, there were fourteen U.S. mills and ten processors that accounted for the domestic industry's shipments,²⁹⁶ and changes in the identity of the producers (particularly of the mills) continued.²⁹⁷

Several U.S. mills filed for bankruptcy during the period of review, and several shuttered production capacity.²⁹⁸ In addition, the CTL plate assets of several U.S. mills were purchased over the

²⁹² Demand for CTL plate is expected to grow steadily through 2010 in China, the Pacific Basin, and ex-communist countries, as defined by ***. See, e.g., CR at CTL-II-21 n.29; PR at CTL-II-13 (citing IPSCO/Oregon's Posthearing CTL Plate Br. at Exh. 10). *** has also forecast continued demand growth in China, East and South East Asia (excluding China), Eastern Europe and Latin America in 2007. See, e.g., CR/PR at Table CTL-IV-69. Consistent with other commentators, see, e.g., German Respondents' Prehearing CTL Plate Br. at 14-17, *** has also forecast continued increases in CTL plate demand in Europe as compared to the current level. See, e.g., CR/PR at Table CTL-IV-69.

²⁹³ They were Armco Steel Corp., Bethlehem Steel Corp., Gilmore Steel Corp., Inland Steel Co., Interlake, Inc., Jones & Laughlin Steel Corp., Kaiser Steel Corp., Lukens Steel Co., Phoenix Steel Corp., Republic Steel Corp., U.S. Steel Corp., and Youngstown Sheet & Tube Co. See, e.g., USITC Pub. 970 at A-5.

²⁹⁴ They were ***. See, e.g., Mem. INV-Q-115 at Table 12 (Jul. 20, 1993), as amended by Mem. INV-Q-116 (July 20, 1993); INV-Q-118 (July 21, 1993), INV-Q-119 (July 21, 1993), INV-Q-121 (July 22, 1993), INV-Q-122 (July 26, 1993); INV-Q-123 (July 27, 1993). The Commission did not include service centers in the domestic industry in either the 1979 or 1993 original determinations.

²⁹⁵ The mills were Bethlehem, California, Citisteel, Denro, Geneva, Gulf States, IPSCO, LeTourneau, National, North Star, Oregon, Tuscaloosa, and USX, and the processors included Cargill, Friedman, JIT, Olympic, O'Neal, Paper Cal, and Primary. See, e.g., Mem. INV-X-221 at OVERVIEW Table 2 (Oct. 18, 2000).

²⁹⁶ They include fourteen active U.S. mills (Arkansas Steel, Claymont, CMC Steel Alabama, CSI, Gerdau Ameristeel, IPSCO, Jindal, Kentucky Electric, LeTourneau, Mittal, Nucor, Oregon, U.S. Steel, and WCI) and one closed mill (Geneva) from whom the Commission received data as well as ten service centers from whom it also received questionnaire responses (American Steel, Cargill, Feralloy, Friedman, IPSCO, Olympic, PDM, Primary, Robinson, and Steel Warehouse). See, e.g., CR at CTL-I-33; PR at CTL-I-28; CR/PR at Table CTL-I-21.

²⁹⁷ See, e.g., Mittal's Prehearing CTL Plate Br. at 29-30, 56-57; Nucor's Posthearing CTL Plate Br. at 8; German Respondents' CTL Plate Br. at App. 1.

²⁹⁸ Geneva Steel filed for bankruptcy in February 1999, emerged from bankruptcy as Geneva Steel Holdings in January 2001, shut down its operations in December 2001, and filed for bankruptcy again in January 2002. Geneva's production assets were ultimately sold to a Chinese firm, Qindao Iron & Steel Co. Gulf States Steel also filed for bankruptcy and in 2000, while in bankruptcy proceedings, closed its mill and liquidated the company; the new owner announced plans to develop the property into an industrial park and sell the equipment to a Chinese company. LTV also filed for bankruptcy in 2000, National Steel filed in 2002, and WCI entered chapter 11

(continued...)

course of the period of review. For example, in April and May 2002, International Steel Group (“ISG”) acquired many of the assets of Acme Steel and LTV.²⁹⁹ In 2003, U.S. Steel acquired the integrated steelmaking assets of National Steel.³⁰⁰ In May 2003, ISG acquired most of the assets of bankrupt, but active, Bethlehem Steel Corporation, including the facilities at Burns Harbor, Indiana; Sparrows Point, Maryland; and Coatesville and Conshohocken, Pennsylvania.³⁰¹ ISG exchanged its pickle line at Indiana Harbor Works for U.S. Steel’s Gary Works’ plate mill.³⁰² In 2004, Nucor purchased substantially all of the steelmaking assets of Corus’ Tuscaloosa, Alabama facility.³⁰³ Cargill, Inc., the parent company of North Star, sold the fixed assets and working capital of North Star to Gerdau Ameristeel.³⁰⁴ In April 2005, ISG was merged into Mittal Steel Company, N.V. (formerly Ispat International N.V.), and the U.S. CTL plate facilities of ISG are now referred to as Mittal Steel USA.³⁰⁵ In June 2006, Mittal Steel Company, N.V. announced its intention to merge with Arcelor S.A. to form Arcelor Mittal.³⁰⁶ Finally, two producers opened greenfield EAF mini-mills in the United States during the period of review that added a total of *** short tons of new capacity to the domestic industry.³⁰⁷ Nucor opened a new plate mill in Hertford County, North Carolina in 2000.³⁰⁸ IPSCO opened a new plate mill in Mobile County, Alabama in 2001.³⁰⁹

As a result of these changes, the face of the U.S. industry has evolved in two fundamental ways: (1) the rising role of EAF mini-mill production facilities and the different cost structures that they involve; and (2) the consolidation of several of the integrated producers under a single company, Mittal.³¹⁰ While new entrants such as Nucor do not have the same legacy costs as some of the integrated mills, even the integrated mills have shed some of their legacy costs through the bankruptcy process and have reduced their propensity to take on such costs in the future by entering into new and innovative labor

²⁹⁸ (...continued)

bankruptcy protection in 2003. Newport ceased producing its own hot-rolled steel for pipe production in 2001. Kentucky Electric Steel filed for chapter 11 bankruptcy protection in 2003, and a newly formed entity (KES Acquisition Co. LLC) purchased these assets and restarted production in early 2004. In 2004, Oregon Steel idled its Napa pipe mill to focus on CTL plate production. See, e.g., CR at CTL-III-1, CTL-III-3 to CTL-III-4; PR at CTL-III-1, III-3 to CTL-III-4; CR/PR at Table CTL-III-1.

²⁹⁹ See, e.g., CR/PR at Table III-1; German Respondents’ Prehearing CTL Plate Br. at App. 1. Neither Acme nor LTV produced CTL plate in more than minimal quantities. See, e.g., CR at Table CTL-I-1.

³⁰⁰ See, e.g., CR/PR at Table CTL-I-1.

³⁰¹ See, e.g., CR/PR at Table CTL-III-1; German Respondents’ Prehearing CTL Plate Br. at App. 1.

³⁰² See, e.g., CR at III-6; PR at CTL-III-5.

³⁰³ See, e.g., CR/PR at Table CTL-III-1; Corus’ Prehearing CTL Plate Br. at 8, Exh. 5.

³⁰⁴ See, e.g., CR/PR at Table CTL-III-1.

³⁰⁵ See, e.g., CR/PR at Table CTL-III-1; German Respondents’ Prehearing CTL Plate Br. at 3, App. 3.

³⁰⁶ See, e.g., German Respondents’ Prehearing CTL Plate Br. at 3, App. 4; Mittal’s Posthearing CTL Plate Br. at Answers to Vice Chairman Aranoff’s Questions at 2-4.

³⁰⁷ See, e.g., CR at CTL-III-5 to CTL-III-6; PR at CTL-III-4 to CTL-III-5.

³⁰⁸ See, e.g., CR/PR at Table CTL-III-1; German Respondents’ Prehearing CTL Plate Br. at 3.

³⁰⁹ See, e.g., CR/PR at Table CTL-III-1; German Respondents’ Prehearing CTL Plate Br. at 3-4.

³¹⁰ By 2005, IPSCO and Nucor together accounted for *** percent of domestic production of non-alloy CTL plate compared to *** percent for Mittal. Mittal does account, however, for ***. See, e.g., CR at CTL-I-33 to I-34, CTL-III-3 n.4; PR at CTL-I-28, CTL-III-3; CR/PR at Table CTL-I-21; see also, e.g., Joint Respondents’ Prehearing CTL Plate Br. at 4-14.

agreements, thereby reducing both fixed costs and direct labor costs.³¹¹ Changes in the domestic industry have also contributed to increases in productivity³¹² as well as better rationalization of production capacity.³¹³ Domestic producer Nucor asserts that additional industry improvements of the kind that occurred over the period of review (such as the entry of EAF mini-mills and the shedding of some of the integrated producers' legacy costs) would not be expected during the reasonably foreseeable future.³¹⁴ Nevertheless, going forward the U.S. industry will continue to benefit from significant events such as these. The removal of some legacy costs has reduced the U.S. industry's fixed costs and gives it more flexibility when setting production levels in the face of rising variable costs (such as rising raw material costs). The consolidation of some of the U.S. industry's production assets will likely also make it easier to re-calibrate production in response to changes in demand in order to maintain prices.³¹⁵ For example, in response to perceived inventory oversupply at the service centers, rather than continuing their production operations at full capacity as they would have at the time of the original investigations, U.S. producers recently opted to conduct planned maintenance outages earlier than scheduled.³¹⁶

In addition to shipments from U.S. producers, there were also subject and non-subject imports (particularly from Canada and Korea) supplying the U.S. market during the period of review.³¹⁷ The domestic industry's share of apparent U.S. consumption fluctuated over the period of review, but was always at least 89 percent.³¹⁸ Market share for the nine cumulated subject countries also fluctuated over the period of review, but never accounted for more than one percent of apparent U.S. consumption.³¹⁹

³¹¹ See, e.g., CR/PR at Tables C-2, C-1 (showing declines of *** in unit labor costs between 2000 and 2005); German Respondents' Prehearing CTL Plate Br. at 2-3, App. 1 (citing ISG's Annual Report at 2 (2003)). Mittal's predecessor, ISG, negotiated revised labor agreements with its purchase of Bethlehem Steel. In addition to a reduction in salaries and healthcare benefits, Bethlehem's unfunded \$3.7 billion pension plan was transferred to the Pension Benefit Guarantee Corporation. ISG's labor agreement with the United Steelworkers of America, created in 2004 and in effect until 2008, established a trust to fund retiree, health, and welfare benefits. Contributions to the trust are based on quarterly profits and overtime hours worked. See, e.g., CR at CTL-III-7; PR at CTL-III-5; Mittal's Prehearing CTL Plate Br. at 57.

³¹² See, e.g., CR/PR at Tables C-2, C-1 (showing large increases in productivity notwithstanding declines in the total number of production and related workers (PRWs) employed by the U.S. industry).

³¹³ For example, although the former U.S. Steel plate mill facility at Gary Works was shut down, the resumption of production at the 110 inch mill at Burns Harbor, which had been idle since 2000, effectively replaced the capacity lost by shutting down the Gary Works facility and increased efficiency by producing closer to the source of the slabs. See, e.g., CR at CTL-III-6; PR at CTL-III-4; CR/PR at Table CTL-III-1.

³¹⁴ See, e.g., Nucor's Posthearing CTL Plate Br. at App. 7 at 2.

³¹⁵ Domestic interested parties point out that there has been some consolidation among service centers since the original investigations. They assert that service centers have increased their geographic presence and play a larger role in distributing product through the U.S. market. While we agree that the service centers, whose role has increased over the years, are "independent" of the U.S. mills, domestic interested parties overlook that, by definition in these reviews, the domestic industry *includes* service centers that produce CTL plate. Moreover, any additional pricing power that service centers may have gained through consolidation has apparently had little impact on restraining prices in the U.S. market during the period of review. See, e.g., Brazilian Respondents' Posthearing CTL Plate Br. at 11-12.

³¹⁶ See, e.g., CR at CTL-III-8; PR at CTL-III-6.

³¹⁷ See, e.g., CR at CTL-IV-5; PR at CTL-IV-5; CR/PR at Tables C-2, C-1.

³¹⁸ See, e.g., CR/PR at Tables C-2, C-1.

³¹⁹ See, e.g., CR/PR at Tables C-2, C-1. Because the volume of subject imports from Mexico was so small over the period of review, including Mexico does not change these trends. See, e.g., CR/PR at Table C-1. Indeed, combined market share for the eleven subject countries fluctuated over the period of review, largely as a function of the volume of subject imports from Romania, but peaked at 2.1 percent in 2004. See, e.g., CR at Table C-1.

Non-subject import volumes also fluctuated over the period of review, reaching a period high in interim 2006.³²⁰

During the period of review, there were a number of trade remedy measures in place that may have contributed to fluctuations in import levels in the U.S. market. In addition to the antidumping and countervailing duty orders and antidumping duty finding in place concerning subject imports,³²¹ during at least some if not all of the period of review there were also antidumping duty orders or suspension agreements in effect with respect to CTL plate imports from eleven other countries.³²² Moreover, subsequent to the first reviews of these orders, in response to a request from the Office of the United States Trade Representative and a resolution adopted by the Committee on Finance of the U.S. Senate, the Commission conducted an investigation under section 201 of the Trade Act of 1974 of imports of certain steel products, including CTL plate. The Commission reached, *inter alia*, an affirmative determination with respect to certain flat-rolled steel including CTL plate. The President subsequently implemented corresponding safeguard measures,³²³ including an additional tariff of 30 percent *ad valorem* on imports effective March 20, 2002, that was reduced to 24 percent on March 20, 2003, and ultimately terminated by the President on December 4, 2003, after the Commission had conducted a mid-term review of the measures.³²⁴

Questionnaire respondents reported a number of factors that affected the availability of CTL plate in the U.S. market since 2000.³²⁵ Twenty-five purchasers reported that there had been problems with supply, with most reporting that domestic mills had placed them on allocation or controlled order entry from early 2004 to early-to-mid 2005.³²⁶ Four of the 19 responding producers and 5 of the 16 responding importers reported having refused, declined, or been unable to supply CTL plate since 2000. *** reported limiting orders from new accounts, reserving space for regular customers, concentrating on contractual and local accounts, or closing order books beginning in 2004.³²⁷ Six purchasers reported being placed on

³²⁰ See, e.g., CR/PR at Tables C-2, C-1.

³²¹ During the period of review, qualified U.S. producers of CTL plate were eligible to receive disbursements from the U.S. Customs and Border Protection under the Continued Dumping and Subsidy Offset Act of 2000, also known as the Byrd Amendment (19 U.S.C. § 1675(c)) related to the orders under review. See, e.g., CR at CTL-I-17; PR at CTL-I-16; CR/PR at Tables CTL-16, CTL-17.

³²² See, e.g., CR/PR at Table OVERVIEW-3.

³²³ Safeguard measures did not apply to CTL plate imports from Mexico, Poland, or Romania. See, e.g., CR at OVERVIEW-14 at n.30; PR at OVERVIEW-11 at n.30.

³²⁴ The President also instructed the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of certain steel products. Import licensing measures remained in place through March 21, 2005, at which time modified measures, which remain in place, were instituted. See, e.g., CR at OVERVIEW-12 to OVERVIEW-15; PR at OVERVIEW-10 to OVERVIEW-12.

³²⁵ They included the consolidation of the domestic industry; the U.S. safeguard measures on steel that increased duties on CTL plate between March 2002 and December 2003; increased U.S. capacity; bankruptcies, shutdowns, outages, or consolidations of some U.S. production facilities; increased energy and transportation costs; increased imports from non-subject countries; increased production and demand in China and India; and the U.S. military's involvement in Iraq. See, e.g., CR at CTL-II-4; PR at CTL-II-3; see also, e.g., Caterpillar's Prehearing CTL Plate Br. at 7-8; Caterpillar's Posthearing Submission at 1-3; Brazilian Respondents' Posthearing CTL Plate Br. at 10-11.

³²⁶ See, e.g., CR at CTL-II-5; PR at CTL-II-4. *** reported that in 2003 through 2005, there was limited heat-treatment material available, and *** reported that Mittal had customers on allocation in 2005 for thick plate. See, e.g., CR at CTL-II-5; PR at II-4.

³²⁷ See, e.g., CR at CTL-II-5 to CTL-II-6; PR at CTL-II-4. Mittal's Sparrows Point blast furnace was temporarily idled in June 2006 due to an electrical storm, but is now fully operational. Its Conshohocken plate mill was temporarily idled as a result of a motor failure, but became operational again in ***. On October 24, 2006, one of Mittal's Burns Harbor blast furnaces was idled due to a mishap. The blast furnace returned to planned levels of

(continued...)

allocation or having problems obtaining CTL plate from ***, but in its producer questionnaire response, *** reported that it was not unable and did not refuse or decline to supply CTL plate since 2000.³²⁸ The record indicates that supply continued to be tight into 2006, especially for specific products or grades.³²⁹

With respect to likely supply in the U.S. market in the reasonably foreseeable future, antidumping duty orders or suspension agreements remain in place on CTL plate imports into the U.S. market from China, India, Indonesia, Italy, Japan, Korea, Russia, and the Ukraine.³³⁰ The U.S. industry's average production capacity fluctuated over the period of review as production facilities were closed, rationalized, and as the greenfield EAF mini-mills ramped up production.³³¹ No new additions to the U.S. industry's production capacity have been reported for the reasonably foreseeable future.³³²

(b) Global Supply

Domestic interested parties forecast large expansions in global capacity, particularly in China, and project a growing imbalance between supply and demand.³³³ According to record data, demand from China increased substantially in recent years³³⁴ and contributed to increased prices both globally and in the U.S. market.³³⁵ At least initially, much of the increased demand was reportedly met by CTL plate imported into China from other sources. As Chinese producers continued to increase their production

³²⁷ (...continued)

operation on ***. See, e.g., CR at CTL-III-6 to CTL-III-7; PR at CTL-III-5 to CTL-III-6.

³²⁸ See, e.g., CR at CTL-II-6 n.7; PR at CTL-II-4 n.7.

³²⁹ Five purchasers reported that domestic mills had placed them on allocation or controlled order entry in 2006, and another purchaser reported that supply has been tight in 2006. See, e.g., CR at CTL-II-5; PR at CTL-II-4; Brazilian Respondents' Posthearing CTL Plate Br. at 10-11.

³³⁰ See, e.g., CR/PR at Table OVERVIEW-3.

³³¹ See, e.g., CR/PR at Tables C-2, C-1. We note that increases in demand in the U.S. market over the period of review were not fully matched by an increase in U.S. producers' shipments. The U.S. industry's CTL plate production capacity increased by 7.0 percent between 2000 and 2005, whereas the overall increase in apparent U.S. consumption was 11.2 percent. See, e.g., CR/PR at Tables CTL-I-1, C-2. In the higher growth period from 2003 to 2005 (when the increase in apparent U.S. consumption was 18.2 percent), the U.S. industry's production capacity actually declined by 3.2 percent. Although demand was 20.3 percent higher in interim 2005 than in interim 2006, the U.S. industry's production capacity was only 3.4 percent higher in the latter interim period. See, e.g., CR/PR at Tables CTL-I-1, C-2; see also, e.g., Joint Respondents' Prehearing CTL Plate Br. at 29-30.

³³² See, e.g., CR at CTL-III-7 to CTL-III-8; PR at CTL-III-5 to CTL-III-6; Joint Respondents' Prehearing CTL Plate Br. at 29-35. *** also notes no changes to forecasted reversing mill or Steckel mill capacity for 2006-09. See, e.g., ***. Respondent interested parties also point out that additional U.S. production capacity may be allocated to specific end users as the result of recent acquisitions by domestic producers. See, e.g., Brazilian Respondents' Posthearing CTL Plate Br. at 10-11 (citing, e.g., IPSCO's acquisition of major CTL plate consumers that will likely tie up more supply).

³³³ See, e.g., IPSCO/Oregon's Prehearing CTL Plate Br. at 1; Mittal's Prehearing CTL Plate Br. at 29-42, App. 5; Nucor's Prehearing CTL Plate Br. at 2, 8-29; Nucor's Posthearing CTL Plate Br. at 12-14, App. 2; Mittal's Posthearing CTL Plate Br. at 7-10, Exh. Hillman at 16-17, Conf. Exh. 3 (containing ***).

³³⁴ According to ***, reversing mill plate consumption in China grew from *** in 1994 to *** in 1999, an increase of *** percent. See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2. Consumption in China continued to grow, increasing from *** in 2000 to an expected *** in 2005, an increase of *** percent. See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2. China's CTL plate production is projected to exceed its consumption by *** metric tons in 2006, compared to estimated excess production ranging from *** to *** metric tons annually during 2007 through 2010. See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2.

³³⁵ See, e.g., Nucor's Prehearing CTL Plate Br. at 8-10.

capacity, by approximately 2005, China became a net exporter of CTL plate.³³⁶ Although there has been a large increase in Chinese production over the period of review, future increases in Chinese production are not forecast to be anywhere near as large, and the volume of China's net CTL plate exports is not expected to grow much beyond the levels seen in 2006.³³⁷ Moreover, as discussed in more detail below, record data do not show any significant decline in prices in either the U.S. or global markets associated with the change in China's status from a net importer to a net exporter in 2005 or the increase in its production relative to consumption in 2006.

(3) Substitutability

There are some differences in CTL plate depending on the production methodologies used, but also considerable overlap. For example, there may be differences associated with the choice of semifinished product inputs,³³⁸ the width ranges of the machines used,³³⁹ and the limitations on product use associated with the underlying production process.³⁴⁰ CTL plate may be produced in a variety of grades and is used in a variety of applications, such as the manufacture of storage tanks, heavy machinery and machinery parts, ships and barges, agriculture and construction equipment, and general load-bearing structures.³⁴¹ Some grades of CTL plate have superior strength and performance characteristics and typically are made to order for customers seeking specific properties, such as improved malleability, hardness or abrasion resistance, impact resistance or toughness, higher strength, and ease in machining and welding.³⁴² These particular properties are achieved by chemically refining the steel by increasing or decreasing specific elements, and by accurate temperature control while hot rolling or heat treating the

³³⁶ See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2.

³³⁷ According to ***, Chinese reversing mill plate production increased from *** tons in 2000 to *** tons in 2006, an increase of *** percent, but is projected to increase from *** in 2006 to *** tons in 2008, an increase of only *** percent. See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2.

³³⁸ Most CTL plate in the United States is produced from cast slabs, although ingots may be used to produce thicker plates since continuous cast slabs of sufficient thickness are not available. See, e.g., CR at CTL-I-23; PR at CTL-I-20.

³³⁹ Reversing mills produce plate ranging from 0.187 to 20 inches (4.75 to 508 mm) in thickness and from 48 to 154 inches (1,219 to 3,912 mm) in width. For much longer or thinner plates, specialized reversing plate mills called Steckel mills typically produce plate that ranges from 0.187 to 0.750 inches (4.75 to 19.1 mm) in thickness and 48 to 96 inches (1,219 to 2,438 mm) in width, although installed equipment can produce wider plate. Hot-strip mills that primarily produce hot-rolled sheet may also be used to produce plate up to 72 inches wide and between three-sixteenths and one-half inch in thickness. Where narrow widths are needed, such as for machine parts, wide flat bars from bar mills might be preferred. See, e.g., CR at CTL-I-23 to CTL-I-24, CTL-I-26; PR at CTL-I-20 to CTL-I-26.

³⁴⁰ Because of its capability to cross roll, a reversing mill is somewhat flexible with regard to the slab width used to produce a given plate width. Steckel mills and continuous hot-strip mills can only use slabs slightly wider than the width of the plate to be produced, but have the advantage of being able to roll longer, heavier slabs than could be used on a reversing plate mill. Because of its generally thicker dimensions, plate from a reversing mill is preferred for welded load-bearing and structural applications, such as bridgework; machine parts (e.g., the body of the machine or its frame); transmission towers and light poles; buildings; mobile equipment (e.g., cranes, bulldozers, scrapers, and other tracked or self-propelled machinery); and heavy transportation equipment, such as railroad cars (especially tanker cars) and oceangoing ships. Certain end users, such as those that burn out parts from plate, concerned about "coil set memory" (the possibility that the edges of plate cut from coils will curl on heating) may prefer plate from a reversing mill. See, e.g., CR at CTL-I-24; PR at CTL-I-20 to CTL-I-21. Processors generally do not have the capability of producing thicker plate (including plate that is over 1 inch in thickness), wide plate, or plate with special chemistries. See, e.g., CR at CTL-II-7; PR at CTL-II-5.

³⁴¹ See, e.g., CR at CTL-II-1; PR at CTL-II-1.

³⁴² See, e.g., CR at CTL-II-1; PR at CTL-II-1.

plate. Specialized grades of CTL plate are used to manufacture railroad cars, line pipes, mobile equipment, highway and railway bridges, pressure vessels, military armor, and machinery components.³⁴³

In addition to price, quality is also an important factor to purchasers in this industry.³⁴⁴ Purchasers are generally indifferent to country of origin, although there are some products that are reportedly only available from certain sources.³⁴⁵ There are some differences in lead times between domestic and imported products,³⁴⁶ but overall, as indicated in our cumulation discussion, we find subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom to be generally substitutable for one another and for the domestic like product.³⁴⁷

(4) Business Cycle

Consistent with our finding that demand for CTL plate is derived from demand for end-use applications,³⁴⁸ and in light of the wide variety of customers and multiplicity of distinct industries for which CTL plate is used,³⁴⁹ we do not find that the CTL plate market is characterized by a regular and measurable business cycle that might be characteristic of other industries.³⁵⁰ Although the various industries that use CTL plate may each be characterized by a specific business cycle, CTL plate producers respond to several different end-user industries and their individual business cycles. The diversity of customers and industries that use CTL plate limits the effects of upturns or downturns in demand from particular customers or other user industries, particularly to the extent that, at any given time, some CTL

³⁴³ See, e.g., CR at CTL-II-1; PR at CTL-II-1.

³⁴⁴ When asked to list the three most important factors considered when choosing a supplier, price and quality were the most commonly cited factors overall; 12 of 38 responding purchasers reported that quality was the most important factor, and 11 reported that price was the most important factor. See, e.g., CR at CTL-II-23-II-24; PR at CTL-II-15. Nineteen of 37 purchasers reported that they “always” or “usually” purchased the lowest priced CTL plate. See, e.g., CR at CTL-II-24; PR at CTL-II-16.

³⁴⁵ A majority of purchasers reported that country of origin was rarely or never a factor in purchasing decisions. See, e.g., CR at CTL-II-29 to CTL-II-30; PR at CTL-II-20. Twelve purchasers reported that certain grades, types, or sizes of CTL plate are available from only a single source. *** reported that abrasion-resistant material is only available from Sweden, Germany, and Canada, while *** reported that Germany has a patented material with a unique composition. See, e.g., CR at CTL-II-25; PR at CTL-II-16.

³⁴⁶ Nine of the seventeen responding producers reporting selling at least 90 percent of their CTL plate produced to order with lead times ranging from three to fifteen weeks; five producers reporting selling at least 70 percent of their CTL plate from inventory, with lead times from two days to one week; and the other three producers having a relatively even split between selling from inventory and producing to order. See, e.g., CR at CTL-II-31; PR at CTL-II-21. All seven responding importers reported selling at least 95 percent of their CTL plate produced to order, with lead times ranging from three to six months. See, e.g., CR at CTL-II-31; PR at CTL-II-21.

³⁴⁷ Commissioner Koplán and Commissioner Lane find subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom to be generally substitutable for one another and for the domestic like product.

³⁴⁸ See, e.g., CR at CTL-II-16; PR at CTL-II-10; Mittal’s Prehearing CTL Plate Br. at 43; Joint Respondents’ Prehearing CTL Plate Br. at 26; Caterpillar’s Prehearing CTL Plate Br. at 6.

³⁴⁹ See, e.g., CR/PR at Table CTL-II-17.

³⁵⁰ We note that thirteen of the nineteen responding producers, ten of the fourteen responding importers, and twenty-one of thirty-five responding purchasers reported that the CTL plate market is not subject to business cycles or conditions of competition distinctive to CTL plate. See, e.g., CR at CTL-II-18; PR at CTL-II-12. Among the fourteen purchasers reporting that the market is subject to distinct business cycles or conditions of competition, six reported that some specific end-use markets influence the overall business cycle of the CTL plate market. Others reported that the raw material costs, import/export dynamics, or the limited number of suppliers in the world are factors that affect the overall business cycle for the CTL plate market. See, e.g., CR at CTL-II-18; PR at CTL-II-12.

plate end-user industries are likely at different positions in their business cycles than other CTL plate end-user industries.

3. The Likely Volume of Cumulated Subject Imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom Would Not Be Significant in the Event of Revocation³⁵¹

a. The Commission's Original Investigations and First Reviews

In the 1979 original finding, the Commission found the volume of subject imports from Taiwan increased rapidly from a first shipment of approximately 1,000 tons in December 1977 to 47,667 tons in 1978, with a commensurate increase in U.S. market penetration from less than 0.1 percent in 1977 to about 6.6 percent in 1978.³⁵² In the 1993 original determinations, the Commission found that the cumulated volume of CTL plate was significant in terms of both absolute volume and market share.³⁵³ The absolute volumes of cumulated imports considered by each Commissioner decreased between 1990 and 1991 before a partial recovery in 1992, although the cumulated imports increased their market share during a period of declining apparent domestic consumption.³⁵⁴

In the first reviews, the Commission exercised its discretion to cumulate all subject countries except for Canada. It found that the likely volume of cumulated subject imports would be significant because, on a cumulative basis, capacity was significant and the excess capacity of the subject countries greatly exceeded the volume of total subject imports in the 1993 investigations; product shifting was not difficult; there were foreign CTL plate inventories; all subject countries (except for Mexico) were significant exporters; there were a number of barriers to importation of subject CTL plate to other countries; and the recent imposition of U.S. orders on CTL plate from other countries would, in the event of revocation, give importers an incentive to purchase low-priced CTL plate from subject producers who would want to maximize production capacity.³⁵⁵ The Commission found that, as a result of the price-sensitive nature of the CTL plate market and the weakened condition of the domestic industry, even a relatively modest amount of subject imports would have a significant effect on U.S. prices and the U.S. industry.³⁵⁶

b. The Current Proceedings

In these reviews, we examine the likely cumulated volume of CTL plate imports from nine countries (Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom) in the event of revocation.³⁵⁷

³⁵¹ We applied the legal standards discussed in section III above.

³⁵² See, e.g., USITC Pub. 970 at 5.

³⁵³ The four Commissioners joining in the majority opinion used different combinations of cumulated countries in their analyses, as noted above, and all included imports from Canada, which are no longer subject to any orders.

³⁵⁴ See, e.g., USITC Pub. 2664 at 237-38.

³⁵⁵ See, e.g., USITC Pub. 3364 at 27-28.

³⁵⁶ See, e.g., USITC Pub. 3364 at 28.

³⁵⁷ Vice Chairman Aranoff examines the likely cumulated volume of CTL imports from nine countries, but, because she defines the domestic like product differently than Chairman Pearson, Commissioner Hillman, and Commissioner Okun, she refers to data for the non-alloy CTL plate industry such as that summarized in Table C-1. Commissioner Koplman and Commissioner Lane examine the likely cumulated volume of CTL imports from eleven subject countries (Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the

(continued...)

At the time of the 1993 original investigations, the volumes of subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, and the United Kingdom were individually relatively small. None of these subject countries had a market share that exceeded 2.0 percent during the original period of investigation. The volume from each of these sources declined between 1990 and 1992, before these orders were imposed in 1993.³⁵⁸ Collectively, the volume from these countries accounted for 9.6 percent of apparent U.S. consumption in 1990 and declined to 7.1 percent of apparent U.S. consumption by volume in 1992.³⁵⁹ Not only were subject import volumes from these subject countries generally declining before the imposition of the orders, but their cumulated volume continued to be small after the orders were imposed, never exceeding one percent of apparent U.S. consumption in the time periods covered by the first reviews or the current period of review.³⁶⁰ Indeed, for several subject countries, there have been no imports into the U.S. market since the imposition of the orders.³⁶¹ The only two of these nine subject countries that consistently reported U.S. imports of over 1,000 short tons were Belgium and Germany, but record data indicate that even these volumes are probably overstated to the extent that the Belgian imports include out-of-scope floor plate and the German imports include out-of-scope X-70 plate.³⁶²

There have been significant declines in production capacity in many of these subject countries since the original investigations, including for each of the countries with relatively larger capacities at the time of the original investigations.³⁶³ As a result, combined production capacity for the nine subject countries has declined substantially since the original investigations.³⁶⁴ Nor does the record reflect any likely significant increase in production capacity in the subject countries in the reasonably foreseeable future. The only reported future production capacity increases are for producers in ***. The expansion

³⁵⁷ (...continued)

United Kingdom) in the event of revocation and because they concur with Vice Chairman Aranoff's definition of the domestic like product, they also refer to data for the non-alloy CTL plate industry such as that summarized in Table C-1.

³⁵⁸ See, e.g., CR/PR at Table CTL-I-1.

³⁵⁹ See, e.g., CR/PR at Table CTL-I-1. Imports from Taiwan were already subject to order at the time of the 1993 original investigations; at the time of the 1979 original investigation of subject imports from Taiwan, the volume of CTL plate from Taiwan did increase over the period of investigation, but from a level of zero, since imports from Taiwan had not previously been in the U.S. market. See, e.g., CR/PR at Table CTL-I-1.

³⁶⁰ See, e.g., CR/PR at Tables CTL-I-1, C-2, C-1. Commissioner Koplan and Commissioner Lane note that the volume of subject imports from Mexico has never exceeded *** percent of apparent U.S. consumption, regardless of the time period examined, including the 1993 original investigations, the first reviews or the second reviews. They note that the volume of subject imports from Romania has never exceeded *** percent of apparent U.S. consumption, regardless of the time period examined. See, e.g., CR/PR at Tables CTL-I-1, C-1. Moreover, the market share of the eleven cumulated subject countries declined from 10.9 percent in 1990 to 8.7 percent in 1992 and has never been greater than 2.1 percent of apparent U.S. consumption of the non-alloy CTL plate market since then. See, e.g., CR/PR at Table CTL-I-1, C-1.

³⁶¹ See, e.g., CR/PR at Tables CTL-I-1, C-2, C-1.

³⁶² See, e.g., CR at CTL-IV-1; PR at CTL-IV-1; compare, e.g., CR/PR at Table CTL-IV-1 with CR at CTL-IV-5; PR at CTL-IV-5.

³⁶³ See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57 (***).

³⁶⁴ The current combined production capacity of the nine subject countries is *** short tons, but if the capacities of each subject country had at the time of their respective original investigations been combined, that capacity would have been *** short tons. (figures derived from CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57). Commissioner Koplan and Commissioner Lane note that the inclusion of data for Mexico and Romania do not change this trend. See also, e.g., CR/PR at Tables CTL-IV-30, CTL-IV-42.

of capacity by about *** in ***, however, is not expected to come into operation until ***,³⁶⁵ or beyond what we consider to be the reasonably foreseeable future in these reviews. The planned expansion in ***³⁶⁶ *** is contingent on certain conditions that are not expected to occur until ***,³⁶⁷ or beyond what we consider to be the reasonably foreseeable future.

Not only are the increases in production capacity in the nine subject countries likely to be limited in the reasonably foreseeable future, but subject producers are operating at high capacity utilization levels, levels that for each subject country except for *** are higher than during the original investigations.³⁶⁸ Available data indicate an overall capacity utilization of approximately *** percent.³⁶⁹ The combined excess capacity in 2005 in the nine cumulated countries was *** short tons, which was equivalent to approximately *** percent of apparent U.S. consumption in that year.³⁷⁰ While the available excess capacity is not insubstantial in relation to the U.S. market, we do not find it likely that such volumes would be shipped to the United States if the finding and orders were revoked. Given that the subject foreign producers were generally operating at high levels of capacity utilization in 2005 (over 90 percent in most cases),³⁷¹ and demand is projected to remain strong and even grow in the reasonably foreseeable future in the markets that these foreign producers serve,³⁷² these producers do not lack markets in which to sell their production. In addition, as discussed below, prices in the markets into which these producers sell are high and comparable to U.S. prices, even prior to allowing for higher

³⁶⁵ See, e.g., CR at CTL-IV-21; PR at CTL-IV-14. Commissioner Koplan and Commissioner Lane find that the ***. See, e.g., CR at CTL-IV-47; PR at CTL-IV-25. They further note that ***. See, e.g., CR at CTL-IV-68; PR at CTL-IV-30.

³⁶⁶ See, e.g., CR at CTL-IV-55; PR at CTL-IV-27.

³⁶⁷ See, e.g., CR at CTL-IV-58; PR at CTL-IV-28 (indicating that HSC reported plans ***. By 2010, the firm plans to ***, and ***. According to HSC, ***.

³⁶⁸ See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57. Reported capacity utilization levels for *** were already quite high at the time of the original investigations. See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57.

³⁶⁹ See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57 (derived from data on seven of the nine subject countries because data were not available for Spain and Sweden). We note that producers in several subject countries reported capacity utilization rates above 100 percent. See, e.g., *id.* Commissioner Koplan and Commissioner Lane note that including Mexico and Romania in the overall capacity utilization calculation also yields a high capacity utilization level of *** percent in 2005, or well above the *** percent level in 1992. See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-30, CTL-IV-36, CTL-IV-42, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57 (derived from data on nine of the eleven subject countries because data were not available for Spain and Sweden).

³⁷⁰ Derived from CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57, Table C-2. Vice Chairman Aranoff notes that the combined excess capacity was equivalent to *** percent of apparent U.S. consumption of non-alloy CTL plate. (derived from CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57, Table C-1). Commissioner Koplan and Commissioner Lane note that the combined excess capacity of the eleven subject countries was equivalent to *** percent of apparent U.S. consumption of non-alloy CTL plate. (derived from CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-30, CTL-IV-36, CTL-IV-42, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57, Table C-1).

³⁷¹ See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57 (indicating the following capacity utilization levels: Belgium (*** percent); Brazil (*** percent); Finland (*** percent); Germany (*** percent); Poland (*** percent); Taiwan (*** percent); and the United Kingdom (*** percent). Information was not available on capacity utilization levels for Spain and Sweden in 2005, but their respective levels in 1999 were *** and *** percent, respectively.

³⁷² See, e.g., CR/PR at Tables CTL-IV-67, CTL-IV-69; CR at CTL-II-21 n.29; PR at II-13 n.29.

shipping costs to the United States. As a result, these producers likewise have no price motivation to increase sales to the United States. We note also the *** short tons of excess capacity for these nine subject countries is considerably smaller than the 1.1 million short tons of excess capacity that existed among the eleven subject countries in the first reviews.³⁷³

Some of the producers in the nine subject countries do produce non-subject products using the same production facilities and employees as subject merchandise.³⁷⁴ As domestic producers recognize, however, shifting from other products to produce CTL plate, while sometimes possible, can be costly.³⁷⁵ We do not find that subject producers are likely to engage in much, if any, product shifting at the risk of abandoning existing customers and producing lower-value products than the micro-alloy, specialty, bar, and X-70 non-subject products currently being produced in these facilities.³⁷⁶

End-of-period inventories held by foreign producers in the nine subject countries in 2005 were a combined *** short tons.³⁷⁷ This amount was equivalent to approximately *** percent of apparent U.S. consumption that year.³⁷⁸ These inventories are largely committed to existing orders.³⁷⁹ In any event, this level of inventories was not excessive in relation to subject producers' production or shipments so as to

³⁷³ See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-13, CTL-IV-18, CTL-IV-24, CTL-IV-36, CTL-IV-48, CTL-IV-50, CTL-IV-52, CTL-IV-57.

³⁷⁴ See, e.g., CR at CTL-IV-13; PR at CTL-IV-12 (suggesting that Industeel's product mix is heavily weighted toward stainless steel and other alloy steel plate); CR at CTL-IV-14; PR at CTL-IV-12 (indicating that about *** percent of Duferco's sales are of alloy plate, floor plate, and sheet); CR at CTL-IV-25; PR at CTL-IV-15; CR/PR at Table CTL-IV-17 (indicating that both Brazilian producers produce non-subject plate such as X-70 plate and alloy plate); CR at CTL-IV-32; PR at CTL-IV-17; CR/PR at Table CTL-IV-22 (indicating that approximately *** percent of Finnish producer Rautaruukki's production is of non-subject CTL plate. Rautaruukki produces ***, uses its sheeting line to produce sheets with thicknesses less than 4.75 mm, and produces micro-alloy plate); CR at CTL-IV-42 to CTL-IV-43; PR at CTL-IV-23; CR/PR at Table CTL-IV-28 (indicating that German producers produce X-70 plate, micro-alloy plate, and other non-subject plate (e.g., alloy plate)); CR at CTL-IV-60 to CTL-IV-61; PR at CTL-IV-29; CR/PR at Table CTL-IV-40 (indicating that HSC produces X-70 plate, micro-alloy plate, and alloy plate); CR at CTL-IV-75; PR at CTL-IV-33 (indicating that Swedish producer SSAB has been focusing on increasing production of high-strength steel and other niche products such as quenched steel); CR at CTL-IV-82; PR at CTL-IV-36 (indicating that Taiwan producer China Steel does not produce any non-subject CTL plate); CR at CTL-IV-90; PR at CTL-IV-39; CR/PR at Table CTL-IV-61 (indicating that U.K. producers produce micro-alloy CTL plate, alloy plate, and non-subject bars)). Commissioner Koplan and Commissioner Lane note that Mexico does not produce any non-subject plate on its production facilities, and Romania *** of micro-alloy CTL plate. See, e.g., CR at CTL-IV-51, CTL-IV-70; PR at CTL-IV-26, CTL-IV-31.

³⁷⁵ See, e.g., CR at CTL-III-9; PR at CTL-III-3; see also, e.g., CTL Plate Hearing Tr. at 249-51 (Prusa).

³⁷⁶ In fact, even where a higher-value product was excluded from the scope of the orders (Belgian producer Duferco's floor plate), the volume of imports of that product from Belgium did not increase subsequent to the revocation of the order as to that product. See, e.g., Duferco's Prehearing CTL Plate Br. at 17 & Exh. 6.

³⁷⁷ See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-36, CTL-IV-53, CTL-IV-58. Data for Spain and Sweden were not available.

³⁷⁸ Derived from CR/PR at Tables CTL-IV-8, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-36, CTL-IV-53, CTL-IV-58, C-2. Vice Chairman Aranoff notes that this amount was equivalent to *** percent of apparent U.S. consumption of non-alloy CTL plate in that year. (derived from CR/PR at Tables CTL-IV-8, CTL-IV-14; CTL-IV-19; CTL-IV-25; CTL-IV-36; CTL-IV-53; CTL-IV-58; C-1). Commissioner Koplan and Commissioner Lane note that the combined end-of-period inventories for all subject countries for which there were data of *** short tons was equivalent to *** percent of apparent U.S. consumption of non-alloy CTL plate in 2005. (derived from CR/PR at Tables CTL-IV-8, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-31, CTL-IV-36, CTL-IV-43, CTL-IV-53, CTL-IV-58, C-1).

³⁷⁹ See, e.g., German Respondents' Posthearing CTL Plate Br. at 7; Joint Respondents' Prehearing CTL Plate Br. at 23-24; CR at CTL-IV-30; PR at CTL-IV-16; CTL Plate Hearing Tr. at 264-65 (Malashevich), 287-88 (Cunningham), 371 (Montalbaine).

create an incentive to offload a significant quantity of product.³⁸⁰ Nor is this level excessively high vis-a-vis the typical inventory level maintained by subject producers during the entire period of review.³⁸¹

We have also examined the level and composition of exports from the nine subject countries to markets other than the United States. The nine subject countries collectively exported *** short tons of subject CTL plate in 2005.³⁸² Of the seven for which there is information on total shipments, their exports of *** short tons represented only *** percent of total shipments because an important share of their shipments were consumed internally and/or sold in their home market.³⁸³ Moreover, a substantial majority (*** percent) of these export shipments³⁸⁴ were to markets in the subject producers' own geographic regions.³⁸⁵ Only approximately *** percent of subject producers' total shipments were exported to markets outside their local regions.³⁸⁶ We find that subject producers have a significant incentive to continue to ship to markets that are in relatively close proximity to them, and in the case of the European Union and Mercosur, that provide some logistical and tariff advantages.³⁸⁷ Given the

³⁸⁰ On a cumulated basis, subject producers' end-of-period inventories in 2005 were equivalent to approximately *** percent of subject producers' production and *** percent of subject producers' shipments in 2005. Data on end-of-period inventories for Spain and Sweden were not available. See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-14; CTL-IV-19; CTL-IV-25; CTL-IV-36; CTL-IV-53; CTL-IV-58.

³⁸¹ See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-14; CTL-IV-19; CTL-IV-25; CTL-IV-36; CTL-IV-53; CTL-IV-58. Commissioner Koplan and Commissioner Lane also note that end-of-period inventories for Mexico and Romania were much smaller in 2005 than at the beginning of the period of review. See, e.g., CR/PR at Tables CTL-IV-31, CTL-IV-43.

³⁸² Derived from CR/PR at Tables CTL-IV-8, CTL-IV-14; CTL-IV-19; CTL-IV-25; CTL-IV-36; CTL-IV-48; CTL-IV-50; CTL-IV-53; CTL-IV-58.

³⁸³ Derived from CR/PR at Tables CTL-IV-8, CTL-IV-14; CTL-IV-19; CTL-IV-25; CTL-IV-36; CTL-IV-53; CTL-IV-58. Data were not available for Spain and Sweden.

³⁸⁴ Derived from CR/PR at Tables CTL-IV-8, CTL-IV-14; CTL-IV-19; CTL-IV-25; CTL-IV-36; CTL-IV-53; CTL-IV-58. Data were not available for Spain and Sweden. Figure does not include data for Brazil. In 2005, *** percent of Brazil's shipments were to the home market. In questionnaire responses, Brazilian respondents reported *** Latin America as their primary export market. See, e.g., CR at CTL-IV-21; PR at CTL-IV-14; CR/PR at Table CTL-IV-14.

³⁸⁵ We considered the European Union to be the geographic region of subject producers in Europe, Asia to be the geographic region for Taiwan, and Latin America to be the geographic region for Brazil. In 2005, *** percent of Belgian export shipments were to the European Union; *** percent of Finland's exports were to the European Union; *** percent of German exports were to the European Union; *** percent of Poland's exports were to the European Union; *** percent of Taiwan's exports were to Asia; and *** percent of the United Kingdom's exports were to the European Union. According to publicly available information, in 2005, 81.2 percent of Spain's exports were to the European Union; 85.3 percent of Swedish exports were to the European Union, and Sweden also exported to other non-EU neighbors such as Norway. Commissioner Koplan and Commissioner Lane join this footnote and do not consider "geographic regions" in their analysis. See, e.g., CR/PR at Tables CTL-IV-8, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-36, CTL-IV-53, CTL-IV-58.

³⁸⁶ Belgian producers, which accounted for *** of these extra-region shipments, reported that these shipments were for specific projects, such as oil and gas projects in the Middle East. See, e.g., CR at CTL-IV-15; PR at CTL-IV-12. With the impending accession of Romania to the European Union, Commissioner Koplan and Commissioner Lane find it is likely that this figure will be lower in the reasonably foreseeable future. See, e.g., CR at CTL-IV-114 & n.199; PR at CTL-IV-47 & n.199.

³⁸⁷ The European Union has eliminated customs duties between Member States, removed internal border restrictions, and otherwise facilitated access to a market of some 450 million consumers with a total gross domestic product of more than \$11 trillion. See, e.g., CR at CTL-IV-113 to CTL-IV-114; PR at CTL-IV-46 to CTL-IV-47. Similar to the European Union, Mercosur has eliminated most trade barriers in goods and services, achieved a common external tariff, and permitted more than 90 percent of intra-Mercosur trade to be duty-free (with remaining
(continued...)

geographic proximity of subject producers and purchasers in regional markets, transportation costs are generally lower than they would be in the case of shipments from those producers to the United States.³⁸⁸ For these reasons and others, foreign producers, including Mittal, produce according to a model in which production facilities largely serve the regional markets in which they are located.³⁸⁹ Moreover, having invested efforts in cultivating customers within regional markets (customers with whom foreign producers may expect to enjoy certain natural advantages (such as those mentioned above)), foreign producers are not likely to abandon those existing regional customers in favor of more speculative and short-lived prospects with customers in the United States. For these reasons, we do not consider subject producers' within-region exports to indicate that increased exports to the United States are likely if the finding and orders under review are revoked. We also note that producers in these nine countries did not report facing any tariff or non-tariff barriers to the importation of the subject merchandise into countries other than the United States.³⁹⁰

Domestic interested parties assert that due to the likely decline in demand, or decline in the rate of demand growth in the reasonably foreseeable future, the U.S. market will not be able to absorb the likely increase in imports from the subject countries (as well as the already increasing volumes from non-subject countries).³⁹¹ This argument overlooks the relative strength of current and projected demand in the U.S. market. In the 1979 original investigation, apparent U.S. consumption declined overall between 1974 and 1978, reaching its lowest point in 1976 before increasing to levels that were not as high as in the beginning of the period.³⁹² A similar scenario was present in the 1993 original investigations to the extent that apparent U.S. consumption declined between 1990 and 1991 and was still well below the 1990 levels in 1992.³⁹³ During the first reviews of these orders, the record reflected a sharp increase in apparent U.S. consumption between 1997 and 1998 but then a sharp decline in 1999 to levels well below those in 1997.³⁹⁴ In contrast, during the current period of review, demand for carbon CTL plate declined from 7.7 million short tons in 2000 to 7.1 million short tons in 2001, increased to 7.5 million short tons in 2002, declined to 7.3 million short tons in 2003 and then increased sharply to 8.3 million short tons in 2004 and

³⁸⁷ (...continued)

goods to be phased in as well). See, e.g., CR at CTL-IV-112 to CTL-IV-113; PR at CTL-IV-46.

³⁸⁸ See, e.g., CR at CTL-V-3 to CTL-V-4; PR at CTL-V-2 to CTL-V-3.

³⁸⁹ The stated strategy of both Arcelor and Mittal, even before their merger, for example, was to acquire or build plants to serve clients within a region, rather than having to export product from one region to another region. See, e.g., French Respondents' Posthearing CORE Br. at 1-4, Exh. 6; Auto Producers' Prehearing CORE Br. at 47-48, Exh. 2 at slides 16-17.

³⁹⁰ See, e.g., Joint Respondents' Prehearing CTL Plate Br. at 64-65; CR at CTL-IV-15, CTL-IV-24, CTL-IV-31, CTL-IV-41, CTL-IV-59, CTL-IV-78, CTL-IV-85; PR at CTL-IV-12, CTL-IV-14, CTL-IV-16, CTL-IV-22, CTL-IV-28, CTL-IV-35 to CTL-IV-36, CTL-IV-38. Commissioner Koplan and Commissioner Lane also note that *** of Mexico's shipments were to the home market and that Mexico does not face any tariff or non-tariff barriers in markets other than the United States. Although Romania does face tariff barriers in some third-country markets, they find that Romania is more likely to direct any further exports to the European Union in light of Romania's impending accession to the European Union. See, e.g., CR at CTL-IV-49, CTL-IV-68, CTL-IV-114; PR at CTL-IV-25, CTL-IV-30.

³⁹¹ See, e.g., IPSCO/Oregon's Posthearing CTL Plate Br. at 2-3; Mittal's Posthearing CTL Plate Br. at 1-5.

³⁹² Apparent U.S. consumption declined from 10.0 million short tons in 1974 to 7.7 million short tons in 1975 and to 6.8 million short tons in 1976 before increasing to 7.4 million short tons in 1977 and 8.6 million short tons in 1978. See, e.g., USITC Pub. 970.

³⁹³ Apparent U.S. consumption declined from 5.6 million short tons in 1990 to 4.8 million short tons in 1991 before increasing to 5.0 million short tons in 1992. See, e.g., CR/PR at Table CTL-I-1.

³⁹⁴ Apparent U.S. consumption increased from 6.6 million short tons in 1997 to 8.2 million short tons in 1998 before declining to 6.0 million short tons in 1999. See, e.g., CR/PR at Table CTL-I-1.

to 8.6 million short tons in 2005, well above the level at the beginning of the period; demand in the first six months of 2006 (“interim 2006”) (5,184,837 short tons) was also much higher than in interim 2005 (4,309,826 short tons).³⁹⁵ Indeed, the domestic industry’s condition continued to improve toward the end of the period of review despite an increase in the volume of non-subject imports, indicating that the expanding U.S. market was able to absorb these additional imports.³⁹⁶

As discussed more fully above, demand in the U.S. and global markets will likely remain strong and increase in the reasonably foreseeable future. Despite declines during the beginning of the period of review, apparent U.S. consumption increased sharply in more recent periods and *** data on reversing mill plate consumption in North America project further increases through 2010, consistent with many industry forecasts for CTL plate demand in the United States.³⁹⁷ As to global demand, *** data on reversing mill plate consumption outside of the North American market showed increases year after year throughout the period of review and show continuing increases through 2010.³⁹⁸ Demand is also expected to continue to be strong in the regional markets that subject producers currently serve.³⁹⁹ Consistent with other commentators,⁴⁰⁰ *** forecasts continued increases in CTL plate demand in Europe as compared to the current level.⁴⁰¹ *** also forecasts continued demand growth in China, East and South East Asia (excluding China), Eastern Europe, and Latin America in 2007.⁴⁰²

We have considered price levels in the markets of subject country producers vis-a-vis U.S. market prices. Prices in EU markets have fluctuated, but have frequently been at levels comparable to U.S. prices.⁴⁰³ Asian market prices have typically been lower than U.S. prices.⁴⁰⁴ Thus there appears to be no

³⁹⁵ See, e.g., CR/PR at Table C-2. These data include shipments of micro-alloy CTL plate; although the Commission did not expand the domestic like product to include micro-alloy CTL plate in the first reviews, it acknowledged that some of the data it relied upon in those reviews contained micro-alloy shipments to the extent that some domestic producers were unable to segregate their micro-alloy data from their non-alloy CTL plate data. See, e.g., USITC Pub. 3364 at 23 n.126. During the period of review, apparent U.S. consumption of non-alloy CTL plate declined from 6,814,613 short tons in 2000 to 6,234,474 short tons in 2001, increased to 6,539,570 short tons in 2002, declined to 6,354,810 short tons in 2003 and then increased to 6,978,552 short tons in 2004 and to 7,281,971 short tons in 2005; demand in the first six months of 2006 (4,434,283 short tons) was also higher than in interim 2005 (3,646,154 short tons). See, e.g., CR/PR at Table CTL-I-1.

³⁹⁶ Non-subject imports’ market share increased from 5.4 percent to 8.1 percent between 2004 and 2005 and was higher at 11.2 percent in interim 2006 than it was at 8.6 percent in interim 2005. See, e.g., CR/PR at Table C-2. The U.S. industry’s operating income increased from \$901 million to \$1.3 billion between 2004 and 2005, and was \$794.1 million in interim 2006 as compared to \$698.4 million in interim 2005. See, e.g., CR/PR at Table C-2. In terms of the non-alloy market, non-subject imports’ market share increased from 5.6 percent to 8.2 percent between 2004 and 2005 and was higher at 12.3 percent in interim 2006 than it was at 9.1 percent in interim 2005, and the U.S. industry’s operating income increased from \$734.2 million to \$982.3 million between 2004 and 2005 and was \$598.1 million in interim 2006 as compared to \$545.5 million in interim 2005. See, e.g., CR/PR at Table C-1.

³⁹⁷ See, e.g., CR/PR at Tables CTL-IV-68 and CTL-IV-69.

³⁹⁸ See, e.g., CR/PR at Tables CTL-IV-68, CTL-IV-69.

³⁹⁹ See, e.g., Joint Respondents’ Prehearing CTL Plate Br. at 45-60. Joint respondent interested parties report that subject producers have full order books through the end of 2006 and in the transportation and oil sectors some end-users have backlogs extending well into 2007. See, e.g., Joint Respondents’ Prehearing CTL Plate Br. at 52-53.

⁴⁰⁰ See, e.g., German Respondents’ Prehearing CTL Plate Br. at 14-18, App. 10 citing MEPS (Int’l) Ltd., MEPS International Steel Review, North American Edition, 5 (Jan. 2005), (March 2005), (Apr. 2005), (Oct. 2005), (Apr. 2006); Doc Id. 262359; Steel Business Briefing, SBB Global Market Outlook, 7 (Sept. 2006).

⁴⁰¹ See, e.g., CR/PR at Table CTL-IV-69.

⁴⁰² See, e.g., CR/PR at Table CTL-IV-69.

⁴⁰³ See, e.g., CR at CTL-IV-99 to CTL-IV-100, CTL-V-3; PR at CTL-IV-40 to CTL-IV-41, CTL-V-2; CR/PR at Table CTL-IV-70 (indicating that EU-wide prices and prices in Germany, Poland, Spain, and the United Kingdom

(continued...)

price incentive for subject producers to shift sales from EU markets to the U.S. market, but there may be some incentive to shift sales from Asia to the United States.

Most of the subject producers service mainly countries within the European Union,⁴⁰⁵ where prices are not substantially below U.S. prices, with limited sales to Asia. The sole exceptions are Taiwan and Brazil.⁴⁰⁶ The Taiwan CTL plate industry, however, is *** the least export-oriented of the nine cumulated subject countries, with over *** percent of its shipments destined for its home market.⁴⁰⁷ We find no basis to conclude that revocation of the finding on Taiwan would significantly change the Taiwan industry's domestic market focus. In the case of Brazil, the home market accounted for over *** percent of the CTL plate industry's shipments in 2005.⁴⁰⁸ *** of the exports by the Brazilian CTL plate industry are directed to ***.⁴⁰⁹ We do not find it likely that the Brazilian CTL plate industry would turn its focus away from the home market and ***.

Consistent with projected strong global demand for CTL plate, prices in the foreign markets primarily served by these subject producers are projected to remain firm.⁴¹⁰ Accordingly, we conclude that prices in other markets relative to U.S. prices do not support a conclusion that revocation of the orders and finding will induce subject producers to shift sales away from other markets and into the U.S. market to a significant degree.

Furthermore, we find that the domestic interested parties' arguments that developments in China will likely lead to increased subject imports into the U.S. market are too speculative. Domestic interested parties assert that with China's recent transition from a net importer to a net exporter of CTL plate, subject imports will be displaced from the Chinese market and from their own home and third-country markets. Domestic interested parties assert that, as a result, there will likely be increased subject imports

⁴⁰³ (...continued)

are relatively similar to those in the U.S. market, especially once transportation costs to the United States are included); see also CR at CTL-IV-102, CTL-V-3; PR at CTL-IV-42, CTL-V-2; CR/PR at Table CTL-IV-71 (indicating that prices in Germany and the United Kingdom are relatively similar to those in the U.S. market, especially once transportation costs to the United States are included). In addition to finding that EU prices where any additional exports from Romania are likely to be sent are comparable to those in the U.S. market, Commissioner Koplan and Commissioner Lane also find that prices in Mexico are similar to prices in the U.S. market. See, e.g., AHMSA's Posthearing CTL Plate Br. at 9-10; see also, e.g., CR at CTL-V-3; PR at CTL-V-2 (per-unit transportation costs from Mexico to the United States estimated at 4.76 percent).

⁴⁰⁴ See, e.g., CR/PR at Tables CTL-IV-70, CTL-IV-71.

⁴⁰⁵ See, e.g., CR/PR at Tables CTL-IV-9, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-37, CTL-IV-49, CTL-IV-58 (indicating that in 2005, the percentage of total shipments to China and "Other Asia" by subject producers were low: Belgium (*** to China and *** to Other Asia); Brazil (*** to China and *** to Other Asia); Finland (*** to China and *** to Other Asia); Germany (*** to China and *** to Other Asia); Poland (*** to China and *** to Other Asia); United Kingdom (*** to China and *** to Other Asia)). Data for Spain and Sweden were not available.

⁴⁰⁶ *** of Taiwan's exports were to Asia. See, e.g., CR/PR at Table CTL-IV-53.

⁴⁰⁷ See, e.g., CR/PR at Table CTL-IV-53 (indicating *** percent of its sales were to the home market).

⁴⁰⁸ See, e.g., CR/PR at Table CTL-IV-14.

⁴⁰⁹ See, e.g., CR/PR at Table CTL-IV-14.

⁴¹⁰ See, e.g., *** ("The {EU} plate market also continues to be a bastion of pricing strength."); ***. In addition to finding that EU prices, where any additional exports from Romania are likely to be sent, are likely to remain strong, Commissioner Koplan and Commissioner Lane also find that prices in Mexico, where *** of Mexican shipments are likely to be directed, are also likely to remain strong like the prices in the neighboring U.S. market.

into the U.S. market in the event of revocation.⁴¹¹ In contrast to the producers in the cumulated countries involved in the 2005 CTL plate reviews, which the Commission found *relied* on the Chinese market (except for Italy),^{412 413} producers in these subject countries *do not rely* on the Chinese market.⁴¹⁴ Nor is there evidence that China has displaced subject producers in their home or regional markets.⁴¹⁵ Instead, record data indicates that subject producers have recently shipped larger volumes to their home and regional markets.⁴¹⁶ Moreover, although there has been a large increase in Chinese production over the period of review, future increases in Chinese production and Chinese net CTL plate exports are forecast to be more moderate.⁴¹⁷ In sum, if a displacement effect were likely, we should already have seen it, and we have not. Therefore, we do not expect a displacement effect in the reasonably foreseeable future.

In addition to these demand conditions, there are also likely to be limitations on supply in the U.S. market associated with the existing antidumping duty orders and suspension agreements on CTL plate from eleven countries and the absence of any reported additions to the U.S. industry's production capacity in the reasonably foreseeable future. Notwithstanding increased volumes of non-subject imports in the U.S. market toward the end of the period of review, there continued to be supply shortages in the U.S. market for certain grades, types, or sizes of CTL plate (such as thick plate made on a reversing or quarto mill and heat-treated plate), and, as discussed above, some supply shortages were reported even in

⁴¹¹ See, e.g., Mittal's Prehearing CTL Plate Br. at 29, 33, 36-42, 65-66, Apps. 5-6; Nucor's Prehearing CTL Plate Br. at 8-20; IPSCO/Oregon's Posthearing CTL Plate Br. at 1-2, 4-6, 9, Exh. 1; Mittal's Posthearing CTL Plate Br. at 7-10, Answers to Questions from Commissioner Okun at 5-6; Nucor's Posthearing CTL Plate Br. at 12-14, App. 2.

⁴¹² See, e.g., USITC Pub. 3816 at 30. There are other important differences between the subject imports and subject producers at issue in these reviews and those at issue in the 2005 reviews of CTL plate from France, India, Indonesia, Italy, Japan, and Korea. Imports from the subject countries in the 2005 reviews (except for France) surged in volume in the period leading up to the orders; subject producers continued to ship into the U.S. market; subject producers increased production capacity over the period of review; and subject producers were subject to antidumping duties in third-country markets. See, e.g., USITC Pub. 3816 at 27-31.

⁴¹³ Chairman Pearson and Commissioner Okun dissenting, USITC Pub. 3816 at 52.

⁴¹⁴ See, e.g., CR/PR at Tables CTL-IV-9, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-37, CTL-IV-49, CTL-IV-58 (indicating that in 2005, the percentage of total shipments to China by subject producers were low or non-existent: Belgium (** to China); Brazil (** to China); Finland (** to China); Germany (** to China); Poland (** to China); United Kingdom (** to China)). Data for Spain and Sweden were not available. Commissioner Koplan and Commissioner Lane note that Mexico had ** exports to China during the period of review and that any additional exports from Romania are likely to be sent to the European Union, in light of Romania's impending accession to the European Union. See, e.g., CR/PR at Table CTL-IV-31; CR at CTL-IV-114; PR at CTL-IV-47.

⁴¹⁵ See, e.g., Corus' Posthearing CTL Plate Br. at 7-10; Joint Respondents' Prehearing CTL Plate Br. at 2, 45, 53-58, 60. Joint respondent interested parties also point out that the European Union already maintains quantitative restrictions on steel products (including CTL plate) from Russia, Ukraine, and Kazakhstan that prevent any surge in imports from those countries into the European Union. See, e.g., Corus' Posthearing CTL Plate Br. at App. O at 1, Exhibits; Joint Respondents' Prehearing CTL Plate Br. at 62-63.

⁴¹⁶ See, e.g., CR/PR at Tables CTL-IV-9, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-37, CTL-IV-49, CTL-IV-51, CTL-IV-53, and CTL-IV-58. Commissioner Koplan and Commissioner Lane observe that Mexico's shipments to its home market increased between 2004 and 2005 and were higher in interim 2006 than in interim 2005 and that Romania's shipments to its home market and to the European Union were higher in interim 2006 than in interim 2005. Commissioner Koplan and Commissioner Lane did not consider regional markets in their analysis. See, e.g., CR/PR at Table CTL-IV-31, CTL-IV-43.

⁴¹⁷ According to **, Chinese reversing mill plate production increased from ** tons in 2000 to ** tons in 2006, an increase of ** percent, but is projected to increase from ** in 2006 to ** tons in 2008, an increase of only ** percent. See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2. China's CTL plate production is projected to exceed its consumption by ** metric tons in 2006, compared to estimated excess production ranging from ** to ** metric tons annually during 2007 through 2010. See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2.

2006.⁴¹⁸ The U.S. industry's production increases during the period of review did not keep pace with the growth in demand during this same period, and there are no projected additions to production capacity in the United States for the reasonably foreseeable future. Therefore, although it is likely that the domestic industry will produce more using existing equipment due to technological improvements, we nevertheless find it unlikely that there will be significant excess supply in the U.S. market, further limiting the significance of any increase in subject import volume.

Although we acknowledge that there may be some increase in cumulated subject imports in the reasonably foreseeable future, in light of these findings and our finding below that the domestic industry is not vulnerable, we do not find that the likely volume of cumulated subject imports from these nine subject countries will be significant either in absolute terms or relative to production or consumption in the United States in the event of revocation.⁴¹⁹

4. There Are Not Likely to Be Significant Price Effects from Cumulated Subject Imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom^{420 421}

a. The Commission's Original Investigations and First Reviews

In the 1979 original investigation of subject imports from Taiwan, the Commission found underselling as well as price suppression by subject imports from Taiwan.⁴²² In the 1993 original investigations, the Commission found that subject imports were substitutable for one another and the domestic like product, and that the CTL plate market was price-sensitive. It found there had been significant price underselling by the cumulated subject imports, noting underselling in commercial grades

⁴¹⁸ See, e.g., Caterpillar's Prehearing CTL Plate Br. at 7-8; Joint Respondents' Prehearing CTL Plate Br. at 1, 28-35; Corus' Posthearing CTL Plate Br. at App. K at 8-9; Caterpillar's Posthearing Submission at 1-3; Duferco's Posthearing CTL Plate Br. at Answer to Question 2.

⁴¹⁹ Commissioner Koplan and Commissioner Lane acknowledge that there may be some increase in cumulated volume of subject imports from the eleven subject countries in the reasonably foreseeable future, but, in light of these findings and their finding below that the domestic industry is not vulnerable, they do not find that the likely volume of cumulated subject imports from these eleven subject countries will be significant either in absolute terms or relative to production or consumption in the United States in the event of revocation.

⁴²⁰ We applied the legal standards discussed in section III above.

⁴²¹ Except as otherwise noted, this discussion reflects the views of the entire Commission. Vice Chairman Aranoff considered the likely price effects from cumulated subject imports from the nine subject countries on the non-alloy CTL plate industry. Commissioner Koplan and Commissioner Lane considered the likely price effects from cumulated subject imports from all eleven subject countries on the non-alloy CTL plate industry. They arrived at the same conclusions as their colleagues who examined the likely price effects from cumulated subject imports from the nine subject countries on the carbon CTL plate industry.

⁴²² See, e.g., USITC Pub. 970 at 6-7. The Commission estimated that had imports from Taiwan not been sold at less than fair value (at margins calculated at 34 percent), it is unlikely there would have been underselling (because the margin of underselling was as much as 20 percent). It stated that it was doubtful that CTL plate from Taiwan's new mill would have been competitive in the U.S. market had it been sold at fair value, and it also expressed concern that the Taiwan producer and its counsel failed at the hearing to give assurances that future prices would be at fair value. As evidence of price suppression, the Commission noted that domestic producers had to offer discounts and specials to compete with imports from Taiwan. The Commission also noted a number of confirmed lost sales to subject imports on the basis of lower prices. See, e.g., *id.*

as well as declining unit values for twelve niche products.⁴²³ It also found significant price depression or suppression and evidence of adverse price effects, in that unit production costs had risen steadily while market prices had been declining, resulting in a cost/price squeeze. It also observed that domestic producers met low-priced subject imports only to learn that subject producers had “ratcheted” their prices down again, and that there were a number of confirmed instances of lost sales and lost revenues.⁴²⁴

In the first reviews, the Commission found that domestic prices were falling or, at best, had stabilized at low levels, with the domestic industry unable to capitalize on recent attempts to increase prices. Although there were minimal pricing data due to the limited volume of subject imports during the first period of review, the Commission found that domestic and subject CTL plate were generally interchangeable and competed based largely on price. It concluded that highly competitive prices were essential to obtain sales, which were generally on a spot basis. It found that the likely significant increased volumes of subject imports likely would undersell domestic plate products to a significant degree and have significant price suppressing and depressing effects within a reasonably foreseeable time.⁴²⁵

⁴²³ According to the data collected in the 1993 original investigations, there were eight instances of underselling and 11 instances of overselling by subject imports from Belgium, with margins of underselling ranging from 0.2 to 10.5 percent; there were 18 instances of underselling and 12 instances of overselling for subject imports from Brazil, with margins of underselling ranging from 0.4 to 26.6 percent; there were 25 instances of underselling and nine instances of overselling for subject imports from Finland, with margins of underselling ranging from 1.1 to 25.7 percent; there were 33 instances of underselling and 15 instances of overselling for subject imports from Germany, with margins of underselling ranging from 0.4 to 23.7 percent; there were eight instances of underselling and two instances of overselling by subject imports from Poland, with margins of overselling ranging from 0.1 to 11.5 percent; there were 22 instances of underselling and no instances of overselling for subject imports from Spain, with margins of underselling ranging from 7.7 to 43.1 percent; there were 27 instances of underselling and six instances of overselling for subject imports from Sweden, with margins of underselling ranging from 4.9 to 29.3 percent; and there were 33 instances of underselling and three instances of overselling for subject imports from the United Kingdom, with margins of underselling ranging from 1.1 to 26.5 percent. See, e.g., CR/PR at Table CTL-V-6.

⁴²⁴ See, e.g., USITC Pub. 2664 at 238-43.

⁴²⁵ See, e.g., USITC Pub. 3364 at 29.

b. The Current Proceedings

According to the pricing data collected in these reviews,⁴²⁶ U.S. prices of CTL plate showed relatively little change from 2000 through 2003.⁴²⁷ Substantial price increases for all five products began in the first quarter of 2004, with some leveling off or small decreases in early 2005, with the exception of product 5, which showed additional price increases in 2006.⁴²⁸ According to these data, the U.S. industry's prices for these products doubled or nearly doubled over the period of review reaching what are widely characterized as historic levels.⁴²⁹ These trends are consistent with price trends reflected in data collected by several other sources, including ***.⁴³⁰

⁴²⁶ For five specific products, the Commission requested that U.S. producers and importers of CTL plate provide quarterly data for the total quantity and f.o.b. value of CTL plate that was shipped to unrelated customers in the U.S. market for the period January 2000 to June 2006. During the period of review, there were only three quarters in which there were any imports from any of the nine subject countries of any of the five pricing products. In the fourth quarter of 2004, there were *** short tons of subject imports of product 1 from Germany that undersold the domestic like product by *** percent. In the first quarter of 2002, there were *** short tons of product 2 from Finland that oversold the domestic like product by *** percent. In the fourth quarter of 2004, there were *** short tons of product 2 from Germany that oversold the domestic like product by *** percent. See, e.g., CR/PR at Tables CTL-V-1 to CTL-V-6. We do not find these data to be very probative because they involved isolated transactions and limited volumes.

In the first reviews, the Commission also collected pricing data, but there were only a limited number of comparisons due to the limited volume of subject imports from these nine countries during that time period. According to the data in those reviews, there were ten possible price comparisons between the domestic like product and imports from Belgium, and the Belgian imports oversold the domestic like product in each instance. See, e.g., CR/PR at Table CTL-V-6 at n.2. ***, however, reported that all of its imports from Belgium were of floor plate, a product that was ultimately found to be outside the scope of the orders. See, e.g., CR/PR at Table CTL-V-6 at n.2. Although data from the original investigations showed underselling by subject imports (as well as some overselling), as explained below, we do not find that there is likely to be significant price underselling by subject imports as compared to the domestic like product if the finding and orders are revoked.

⁴²⁷ Commissioner Koplán and Commissioner Lane note that there were no reported pricing data on subject imports from Mexico during the period of review. See, e.g., CR/PR at Tables CTL-V-1 to CTL-V-6. They observe that in the first reviews, there were no pricing comparisons for subject imports from Mexico and in the 1993 original investigations, there were only two pricing comparisons for subject imports from Mexico with margins of underselling that ranged from 2.0 to 3.8 percent. See, e.g., CR/PR at Table CTL-V-6. With respect to Romania, in the original 1993 investigations, they note that there were 12 instances of underselling and 1 instance of overselling, with margins of underselling ranging from 1.9 to 47.6 percent; there were no price comparisons for subject imports from Romania in the first reviews; and in the current reviews, subject imports from Romania undersold the domestic like product in 16 instances with margins ranging from 6.9 to 20.6 percent and oversold the domestic like product in one instance. See, e.g., CR/PR at Table CTL-V-6. Notwithstanding the underselling in the recent periods by some of the subject imports, they do not find it likely that there will be significant underselling by subject imports in the event of revocation in the reasonably foreseeable future because the underselling in the recent part of the period of review was accompanied by large increases in prices in the U.S. market.

⁴²⁸ See, e.g., CR at CTL-V-23; PR at CTL-V-15; CR/PR at Tables CTL-V-1 to CTL-V-5 and Figures V-3 to V-7.

⁴²⁹ See, e.g., CR at CTL-V-23 to CTL-V-24; PR at CTL-V-15; CR/PR at Tables CTL-V-1 to CTL-V-5 (showing an increase between the first quarter of 2000 to the second quarter of 2006 for pricing product 1 from \$328.57 per short ton to \$764.07 per short ton; for pricing product 2 from \$353.64 per short ton to \$779.89 per short ton; for pricing product 3 from \$382.56 per short ton to \$799.35 per short ton; for product 4 from \$417.43 per short ton to \$866.43 per short ton; and for product 5 from \$270.60 per short ton to \$647.41 per short ton); CTL Plate Hearing Tr. at 158-162, 318.

⁴³⁰ See, e.g., CR at CTL-IV-99; PR at CTL-IV-41. We note that the data from these outside sources are collected based on different product categories, timing, and commercial considerations, and so may not be directly

(continued...)

Country-specific monthly transaction prices for hot-rolled plate compiled by MEPS indicate that for January 2005 through November 2006, U.S. negotiated transaction prices for U.S.-produced hot-rolled plate generally decreased over the first three quarters of 2005 before increasing in the fourth quarter of 2005 and in 2006. In the fall of 2006, they reached their highest price levels for the January 2005 through November 2006 period.⁴³¹ According to these data, monthly U.S. negotiated transaction prices for U.S.-produced hot-rolled plate climbed to \$*** per short ton by November 2006.⁴³² According to data compiled by ***, U.S. prices were relatively stable between 2000 and 2003, though clearly “softer” in 2001 than in any other year. Reported U.S. prices rose sharply over the course of 2004, retrenched in 2005, but have shown signs of strengthening further in 2006.⁴³³ According to this source, U.S. monthly prices for steel plate increased from \$*** per short ton in January 2000 to \$*** per short ton in November 2006.⁴³⁴

Dramatic price increases also occurred in the global market over the period of review. As reported by MEPS, world prices for hot-rolled plate declined irregularly between January 2000 and February 2002, decreasing from \$283 per short ton to \$242 per short ton during that time. Thereafter, prices recovered, slowly at first, then more rapidly, surpassing \$300 per short ton in February 2003, \$400 per short ton in March 2004, \$500 per short ton in May 2004, and \$600 per short ton in September 2004. World prices peaked in January 2005 at \$686 per short ton, then declined to as low as \$586 per short ton in February 2006 before rebounding to \$685 per short ton by September 2006.⁴³⁵ According to ***, German, U.K., EU, and Japan export prices were relatively stable between 2000 and 2003, but without the “softness” that characterized the U.S. market in 2001. In contrast, Far East prices proved more volatile, and, like U.S. prices, did fall to lower levels in 2001. In 2004, all reported prices increased over the course of the year, though none as sharply as U.S. prices. Far East prices increased only modestly. In 2005, most non-U.S. prices initially increased or at least maintained newly-established levels, but over the course of the year softened, with the exception of Japan export prices. Through November 2006, however, non-U.S. prices have largely recovered, with the exception of Japan export prices.⁴³⁶

During this time of increasing demand and increasing prices in both the U.S. and global markets, raw material and energy costs increased, as discussed above. During the period of review, all 19 responding U.S. producers reported increased CTL plate selling prices as a direct result of higher raw material prices, and five producers reported implementing raw material surcharges.⁴³⁷ Domestic producers issued successive price increases of \$20, \$30, and \$20 per short ton for August, September, and October 2006 shipments, respectively. The spread between raw materials costs and net unit sales prices grew from \$377 per short ton in 2005 to \$398 per short ton in the first half of 2006.⁴³⁸ During the period of review, the margin between scrap and plate prices was at an all time high to the advantage of mini-mill producers such as Nucor and IPSCO. Even as prices for steel scrap actually plunged by as much as \$80

⁴³⁰ (...continued)
comparable.

⁴³¹ See, e.g., CR at CTL-IV-100; PR at CTL-IV-41; CR/PR at Table CTL-IV-70.

⁴³² See, e.g., CR/PR at Table CTL-IV-70.

⁴³³ See, e.g., CR at CTL-IV-102; PR at CTL-IV-41 to CTL-IV-42; CR/PR at Table CTL-IV-71.

⁴³⁴ See, e.g., CR at CTL-IV-102; PR at CTL-IV-41 to CTL-IV-42; CR/PR at Table CTL-IV-71.

⁴³⁵ See, e.g., CR at CTL-IV-99; PR at CTL-IV-41.

⁴³⁶ See, e.g., CR at CTL-IV-102; PR at CTL-IV-42.

⁴³⁷ See, e.g., CR at CTL-V-2; PR at CTL-V-5.

⁴³⁸ See, e.g., Joint Respondents’ Prehearing CTL Plate Br. at 1, 67-70; IPSCO/Oregon’s Posthearing CTL Plate Br. at A-16, Exh. 13; CR/PR at Table CTL-III-9. The spread between total cost of goods sold (“COGS”) on a unit basis and net unit sales prices was \$194 per short ton in 2005 and \$197 per short ton in interim 2006. See, e.g., CR/PR at Table CTL-III-9.

to \$90 per short ton in August 2006, steelmakers nevertheless raised CTL plate prices.⁴³⁹ Although there is some evidence that the October price increases did not succeed or were not attained in full,⁴⁴⁰ there is also evidence that in recent months, U.S. producers have rolled surcharges into their base prices,⁴⁴¹ and current prices remain well above levels at the beginning of the period of review and even at the beginning of 2004. Notably, these price increases occurred even as total imports of CTL plate increased in 2004.⁴⁴² In light of this evidence as well as evidence about future demand conditions, although the prices of raw materials and energy inputs are likely to remain high, we do not find that subject imports are likely to enter the United States at prices that are likely to have a significant depressing or suppressing effect on the price of domestic like products or that will significantly undersell the domestic like product.

Domestic interested parties insist that the high and increasing prices in the U.S. market are unlikely to continue to the extent that demand growth is slowing or demand is declining in the reasonably foreseeable future. The record indicates otherwise. As we found above, demand in the U.S. market is likely to remain strong and growing in the reasonably foreseeable future. Inventory destocking is a regular phenomenon in this industry, and the more current record in these reviews shows that the most recent inventory destocking that occurred in 2005 had only a temporary effect on prices. Prices continued to be strong thereafter. Notwithstanding statements by the domestic industry about recent softening in prices,^{***443 ***} ⁴⁴⁴

The record also indicates that global demand is likely to remain strong and growing in the reasonably foreseeable future. Because, as described above, prices in the home and regional markets of most subject producers are at least as attractive if not more attractive than prices in the U.S. market, we do not find it likely that any increased volumes from subject countries in the event of revocation (the level of which we do not expect to be significant, as explained above) would be likely to be sold at prices that significantly undersell the domestic like product or that significantly depress prices for the domestic like product. Given their lack of excess capacity and attractive prices in their existing markets, we do not find that subject producers have an incentive to price aggressively in order to move significant volumes into the U.S. market.

As we also discussed above, supply in the U.S. market has been tight, including into 2006, and no new additions to U.S. production capacity are expected in the reasonably foreseeable future, so it is also not likely that there will be negative price effects associated with oversupply in the U.S. market.

Based on these findings as well as our finding that the volume of cumulated subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom is not likely to be significant, we do not find that there is likely to be significant underselling by these subject imports as compared to the domestic like product, or that imports from these subject countries are likely

⁴³⁹ See, e.g., Joint Respondents' Prehearing CTL Plate Br. at 1, 67-70.

⁴⁴⁰ IPSCO reports that its announcement ***. Oregon notes that ***. See, e.g., IPSCO/Oregon's Posthearing CTL Plate Br. at 14 n.8, A-16, Exh. 13. Nucor ***. See, e.g., Nucor's Prehearing CTL Plate Br. at 45-46; Nucor's Posthearing CTL Plate Br. at App. 4 at 1. Mittal ***. See, e.g., Mittal's Posthearing CTL Plate Br. at Responses to Vice Chairman Aranoff's Questions at 5.

⁴⁴¹ See, e.g., CR at CTL-V-2; PR at CTL-V-2.

⁴⁴² Total imports increased in market share from 4.7 percent in 2003 to 7.1 percent in 2004. See, e.g., CR/PR at Table C-2.

⁴⁴³ See, e.g., Joint Respondents' Prehearing CTL Plate Br. at 70-71; Brazilian Respondents' Posthearing CTL Plate Br. at 7 (referring to ***).

⁴⁴⁴ See, e.g., Caterpillar's Posthearing CTL Plate Br. at 5.

to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.⁴⁴⁵

5. Cumulated Subject Imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom Are Not Likely To Have a Significant Adverse Impact in the Event of Revocation⁴⁴⁶

a. The Commission's Original Investigations and First Reviews

In the 1979 original finding, the Commission found that subject imports from Taiwan arrived in escalating volumes at low prices and caused price declines, price suppression, and lost sales to the domestic industry.⁴⁴⁷ In the 1993 original determinations, the Commission found that cumulated subject imports (including those from Canada which are no longer subject to any orders) had significant volume and price effects and caused material injury to the domestic industry. It noted the decline of key industry indicators and the domestic industry's loss of market share during a time of declining apparent domestic consumption, as cumulated subject imports contemporaneously increased their market share.⁴⁴⁸

In the first reviews, the Commission found that the domestic industry's condition improved somewhat after imposition of the subject orders but began to decline following multiple subsequent waves of unfairly traded imports from other countries. Although some of the industry's indicators improved at the beginning of the period of review, they declined toward the end of the period of review. The Commission found the domestic industry to be in a weakened state, due at least in part to the effects of the dumped and subsidized imports from non-subject countries that were put under order during the period of review. Based on its finding that revocation of the orders would likely lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic like product and significantly suppress or depress U.S. prices, the Commission concluded that the domestic industry would likely lose market share and experience lower sales and revenues. In turn, the domestic industry's profitability and ability to raise capital and make and maintain necessary capital investments would also be significantly adversely impacted.⁴⁴⁹

⁴⁴⁵ Based on these findings as well as their finding that the volume of cumulated subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom is not likely to be significant, Commissioner Koplan and Commissioner Lane do not find that there is likely to be significant underselling by these subject imports as compared to the domestic like product, or that imports from these subject countries are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.

⁴⁴⁶ We applied the legal standards discussed in section III above. As instructed by the statute, we have also considered the extent to which any improvement in the state of the domestic industry is related to the antidumping finding, antidumping duty orders, and countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked. The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁴⁴⁷ See, e.g., USITC Pub. 970 at 3-7.

⁴⁴⁸ See, e.g., USITC Pub. 2664 at 243-44.

⁴⁴⁹ See, e.g., USITC Pub. 3364 at 32-33.

b. The Current Proceedings

We find that the domestic industry is not currently vulnerable. Since the beginning of the period of review, the domestic industry, through closures, bankruptcies, consolidation, and expansion, has been significantly restructured and has emerged from this period stronger and fundamentally changed. In 1999, the three largest domestic producers of CTL plate were integrated producers Bethlehem/Lukens, Geneva, and U.S. Steel. In stark contrast to 1999, the three largest domestic producers now are IPSCO, Mittal, and Nucor, two of which are non-integrated “mini-mills,” representing approximately *** percent of domestic non-alloy CTL plate sales in 2005.⁴⁵⁰ Both Nucor and IPSCO became dominant players in the domestic CTL plate market after investing in greenfield facilities during the period of review that were more efficient than the older U.S. facilities and without the burden of legacy costs.⁴⁵¹ The integrated segment of the industry was rationalized and consolidated under one principal producer, Mittal, which, as the successor in interest to assets acquired in 2003, is not subject to some of the legacy costs or labor agreements previously associated with those assets.⁴⁵²

Most industry performance indicators improved dramatically during the current period of review.⁴⁵³ At the start of the period of review, the domestic industry’s production, U.S. shipments, and net sales quantities declined through 2001 with the economic recession, began to recover in 2002 and 2003, showed dramatic improvement in 2004, and reached full-year period highs in 2005.⁴⁵⁴ Consistent with significant increases in demand for CTL plate over the period of review, between 2000 and 2005 U.S. production increased 15.9 percent,⁴⁵⁵ U.S. shipments increased by 12.1 percent,⁴⁵⁶ and net sales increased by 22.0 percent.⁴⁵⁷ Average production capacity increased by 10.2 percent,⁴⁵⁸ while capacity utilization increased by 3.3 percentage points.⁴⁵⁹ Inventories as a share of total shipments declined by 3.4

⁴⁵⁰ See, e.g., CR/PR at Table III-10.

⁴⁵¹ See, e.g., CR at CTL-III-3 to CTL-III-5; PR at III-4 to III-5.

⁴⁵² See, e.g., CR at CTL-III-7; PR at III-5. While one industry forecast predicted rising import levels and service center inventories, it also supports the Commission’s overall outlook for the CTL plate market and the likely market conditions in the reasonably foreseeable future. See IPSCO’s Posthearing Brief at Exh. 5 (***). Indeed, the forecast stated that domestic mills were operating ***, there was ***, ***, ***, and ***.

⁴⁵³ Vice Chairman Aranoff, Commissioner Koplan and Commissioner Lane note that due to their decision not to expand the domestic like product to include micro-alloy products, they reviewed data pertaining to the non-alloy industry, such as that found at CR/PR at Table C-1. Although there are some minor differences in the data, all of the trends in the industry performance indicators for the data set including micro-alloy are equally applicable to the data set they examined. Vice Chairman Aranoff, as noted earlier, examined the likely impact of cumulated subject imports from nine subject countries; Commissioner Koplan and Commissioner Lane examined the likely impact of cumulated subject imports from all eleven subject countries.

⁴⁵⁴ See, e.g., CR/PR at Table C-2, C-1.

⁴⁵⁵ See, e.g., CR/PR at Table C-2. U.S. production was 20.0 percent higher in interim 2006 than in interim 2005. In addition, U.S. exports increased by 71.9 percent over the period of review, and were 87.9 percent higher in interim 2006 than in interim 2005. See, e.g., CR/PR at Table C-2.

⁴⁵⁶ See, e.g., CR/PR at Table C-2. U.S. shipments were 16.5 percent higher in interim 2006 than interim 2005. See, e.g., CR/PR at Table C-2.

⁴⁵⁷ See, e.g., CR/PR at Table C-2. Net sales were 20.0 percent higher in interim 2006 than interim 2005. See, e.g., CR/PR at Table C-2.

⁴⁵⁸ See, e.g., CR/PR at Table C-2. Capacity was 3.4 percent higher in interim 2006 than interim 2005. See, e.g., CR/PR at Table C-2.

⁴⁵⁹ See, e.g., CR/PR at Table C-2. Capacity utilization was 10.6 percentage points higher in interim 2006 than interim 2005. See, e.g., CR/PR at Table C-2. We note that throughout the period of review, U.S. mills operated at

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percentage points, to a full-year period low of 7.0 percent in 2005.⁴⁶⁰ Although domestic employment decreased by 16.4 percent between 2000 and 2005, productivity increased by 42.1 percent.⁴⁶¹ Moreover, unit labor costs have declined by 27.8 percent over the period of review.⁴⁶²

As noted above, by 2004 the domestic industry began to reap fully the benefits of restructuring and increased demand for CTL plate, which led to significant increases in prices. That year, the domestic industry turned operating losses into profits that have continued to increase thereafter. Gross profits increased irregularly from a loss of \$138.0 million in 2000 to a full-year period-high gain of \$1.4 billion in 2005.⁴⁶³ Operating income also increased irregularly from a loss of \$135.3 million in 2000 to a full-year period-high gain of \$1.3 billion in 2005.⁴⁶⁴ Additionally, operating income as a percentage of net sales declined from negative 6.2 percent in 2000 to negative 9.9 percent in 2001, before increasing irregularly to a full-year period high of 24.6 percent in 2005, a 30.8 percentage point increase over the period.⁴⁶⁵ The largest annual increase in operating income margin (25.5 percentage points from 2003 to 2004) occurred when total imports also had their largest year-over-year increase during the period of review (from 4.7 percent to 7.1 percent, or 2.4 percentage points).⁴⁶⁶ In contrast to 2000, when eight of

⁴⁵⁹ (...continued)

higher capacity utilization rates than processors, with mills reaching a period high capacity utilization rate of 82.5 percent in interim 2006. See, e.g., CR/PR at Tables C-2a & C-2b. Moreover, mill capacity includes wide flat bar capacity. Although bar mills account for only a fraction of overall plate capacity, they account for a disproportionate share of available capacity. See, e.g., CR at CTL-III-4 n.8; PR at CTL-III-4 n.8. Notwithstanding the domestic industry's reported capacity utilization figure of 67.0 percent in 2005, see, e.g., CR/PR at Table C-2, as discussed in more detail above, numerous purchasers reported tight supply in 2004 and 2005, with most reporting that domestic mills had placed them on allocation or controlled order entry, and were extending lead times, none of which is indicative of much excess capacity.

⁴⁶⁰ See, e.g., CR/PR at Table C-2. End-of-period inventories as a share of total shipments were 0.7 percentage points lower in interim 2006 than interim 2005.

⁴⁶¹ See, e.g., CR/PR at Table C-2. Productivity was 5.3 percent higher in interim 2006 than interim 2005.

⁴⁶² See, e.g., CR/PR at Table C-2. Unit labor costs were 1.3 percent lower in interim 2006 than interim 2005. With respect to the non-alloy CTL plate market, Vice Chairman Aranoff, Commissioner Koplan, and Commissioner Lane find that between 2000 and 2005 U.S. production increased 12.6 percent, U.S. shipments increased by 8.2 percent, exports increased by 86.6 percent, and net sales increased by 17.4 percent. Average production capacity increased by 7.0 percent, while capacity utilization increased by 3.0 percentage points. End-of-period inventories as a share of total shipments declined by 3.5 percentage points, to a full-year period low of 7.0 percent in 2005. Although domestic employment decreased by 29.2 percent between 2000 and 2005, productivity increased by 53.5 percent. Moreover, unit labor costs have declined by 31.2 percent over the period of review. They also find continued improvements in the industry's performance factors between interim 2005 and interim 2006. See, e.g., CR/PR at Table C-1.

⁴⁶³ See, e.g., CR/PR at Table C-2. Operating income was 13.7 percent higher in interim 2006 than interim 2005.

⁴⁶⁴ See, e.g., CR/PR at Table C-2. Gross profits were 13.6 percent higher in interim 2006 than interim 2005.

⁴⁶⁵ See, e.g., CR/PR at Table C-2. Operating income as a percentage of net sales was 25.7 percent in interim 2006 compared to 25.9 percent in interim 2005. In terms of the non-alloy CTL plate market, Vice Chairman Aranoff, Commissioner Koplan, and Commissioner Lane find that gross profits increased irregularly from a loss of \$41.7 million in 2000 to a full-year period-high gain of \$1.1 billion in 2005, and gross profits increased from \$602.5 million in interim 2005 to \$667.6 million in interim 2006. Operating income also increased irregularly from a loss of \$153.3 million in 2000 to a full-year period-high gain of \$982.3 million in 2005, and increased from \$545.5 million in interim 2005 to \$598.1 million in interim 2006. Additionally, operating income as a percentage of net sales declined from negative 8.7 percent in 2000 to negative 13.5 percent in 2001, before increasing irregularly to a full-year period high of 24.1 percent in 2005, a 32.9 percentage point increase over the period. See, e.g., CR/PR at Table C-1.

⁴⁶⁶ See, e.g., CR/PR at Table C-2.

fourteen U.S. mills and processors reported operating losses, by 2005, all fifteen responding U.S. mills and processors reported operating profits, with ***.⁴⁶⁷

There is also no evidence of a cost/price squeeze. In 2005, U.S. producers sold CTL plate at more than a 30 percent mark-up over COGS.⁴⁶⁸ Per-unit operating income substantially improved over the period of review as the increase in per-unit net sales values (\$363 per short ton) was much greater than the combined effects of an increase in COGS (\$159 per short ton) and a decline in SG&A expenses (\$2 per short ton).⁴⁶⁹ Consequently, COGS as a share of net sales fell irregularly from 100.0 percent in 2000 to 72.5 percent in 2005, a decline of 27.5 percentage points.⁴⁷⁰

Capital expenditures declined significantly over the period of review (from \$*** in 2000 to \$*** in 2001, to a period low \$23.3 million in 2003, before increasing to \$102.7 million in 2005).⁴⁷¹ However, we note that the large spikes in capital expenditures in 2000 and 2001 were associated with the construction of IPSCO's and Nucor's greenfield facilities, which are both modern and efficient.⁴⁷² While it is also true that since 2002 depreciation exceeded the domestic industry's capital expenditures, the domestic industry's cash flows since 2004 (\$2.9 billion) exceeded capital expenditures, depreciation, and repayment of negative cash flows from 2000-2003 (\$1.9 billion) by more than one billion dollars.⁴⁷³ The domestic industry's return on investment also increased dramatically from *** percent in 2000 to 36.0

⁴⁶⁷ See, e.g., CR/PR at Table CTL-III-9; EDIS Document 26590. Eleven of fifteen firms reported higher operating margins in interim 2006 than in interim 2005. See, e.g., CR at CTL-III-20 to CTL-III-21; PR at CTL-III-14.

⁴⁶⁸ See, e.g., CR/PR at Tables C-2, C-1. Markup is defined on a per-unit basis as (AUV-COGS/COGS).

⁴⁶⁹ See, e.g., CR/PR at Table C-2. In terms of the non-alloy CTL plate market, per-unit operating income substantially improved over the period of review as the increase in per-unit sales value (\$353 per short ton) was much greater than the combined effects of an increase in COGS (\$150 per short ton) and a decline in SG&A expenses (\$2 per short ton). See, e.g., CR/PR at Table C-1.

⁴⁷⁰ See, e.g., CR/PR at Table C-2. COGS as a share of net sales were 0.2 percent higher in interim 2006 than interim 2005. In terms of the non-alloy CTL plate market, Vice Chairman Aranoff, Commissioner Koplan, and Commissioner Lane note that per-unit operating income substantially improved over the period of review as the increase in per-unit net sales values (\$353 per short ton) was much greater than the combined effects of an increase in COGS (\$150 per short ton) and a decline in SG&A expenses (\$2 per short ton). Consequently, COGS as a share of net sales fell irregularly from 102.4 percent in 2000 to 72.9 percent in 2005, a decline of 29.5 percentage points. See, e.g., CR/PR at Table C-1.

⁴⁷¹ See, e.g., CR/PR at Table C-2. In terms of the non-alloy CTL plate market, capital expenditures declined from \$*** in 2000 to \$*** in 2001, to a period low \$20.6 million in 2003, before increasing to \$86.1 million in 2005. See, e.g., CR/PR at Table C-1.

⁴⁷² See, e.g., CR at CTL-III-5 to CTL-III-6; PR at CTL-III-4 to CTL-III-5. While we do not discount the costs associated with these non-recurring events, which contributed to the losses earlier in the period of review, the industry is better positioned because of these decisions, as evidenced by its recent profit margins.

⁴⁷³ Derived from CR/PR at Tables C-2, CTL-III-9. A similar result is obtained when data for the non-alloy CTL plate industry are examined. (derived from CR/PR at Tables C-1, CTL-III-9).

percent in 2005.⁴⁷⁴ Moreover, the domestic industry has recently increased its capital expenditures (capital expenditures in interim 2006 were almost double the capital expenditures for full-year 2004).⁴⁷⁵

The conditions that have enabled the industry to become profitable since 2004 are not likely to change in the reasonably foreseeable future.^{476 477} Domestic producers have been able to pass along rising raw material costs and energy costs through the use of surcharges, which recently have been rolled into base prices.⁴⁷⁸ Thus, in 2004 domestic prices rose significantly above their levels from the beginning of the period examined in these reviews.⁴⁷⁹ The demand trends in the United States also do not suggest that

⁴⁷⁴ See, e.g., CR/PR at Table CTL-III-13. Chairman Pearson, Commissioner Hillman, and Commissioner Okun note that the domestic industry's return on investment as shown in the staff report does not include data related to micro-alloy products. They find, however, that since the domestic industry's operating margins are similar and generally somewhat higher with the inclusion of micro-alloy plate, compare, e.g., CR/PR at Table C-2 with CR/PR at Table C-1, it is unlikely that the return on investment for their defined domestic like product would differ much from the return on investment as shown in the staff report.

⁴⁷⁵ See, e.g., CR/PR at Tables C-2, C-1. The increase in capital expenditures in interim 2006 were ***. See, e.g., CR/PR at Table CTL-III-12.

⁴⁷⁶ In reaching our likely impact conclusion, we have considered but have not relied upon, the impact analysis presented by domestic interested parties. See, e.g., Nucor's Prehearing CTL Plate Br. at Exh 1. This analysis is predicated on subject import volumes of 500,000 short tons to two million short tons, and, as indicated above in our views on likely volume, we do not believe that this projected volume of subject imports is likely in the reasonably foreseeable future.

⁴⁷⁷ Our finding that these conditions are not likely to change in the reasonably foreseeable future differs from the finding we made in the 2005 reviews of the orders on Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-388-391 and 731-TA-816-821 (Reviews), USITC Pub. 3816 (Nov. 2005) (Chairman Pearson and Commissioner Okun dissenting). While it did not find the domestic industry vulnerable in the 2005 reviews, the Commission majority did not find it likely that the much higher prices that began in 2004 were likely to continue in the then-reasonably foreseeable future, based on the information available at that time. See, e.g., USITC Pub. 3816 at 31-32. The Commission majority noted that prices appeared to be falling from recent highs and that raw material costs had increased. See, e.g., Pub. 3816 at 32. It noted also that the modest growth in demand then forecast for the U.S. market seemed likely to be insufficient to absorb increased import volumes from the subject countries (the combined capacity and excess capacity of which far exceed the combined capacity and excess capacity of the subject producers in the current reviews). See, e.g., Pub. 3816 at 34. The majority noted in addition that China had recently transitioned to a net exporter of CTL plate, and that many of the producers at issue in those reviews exported considerable volumes to China and markets to which China would likely export. See, e.g., Pub. 3816 at 26-27, 30. In contrast with the prior reviews, the record now shows nearly three years of higher prices, continued growth in apparent U.S. consumption, and additional forecasts for continued demand growth, including by domestic producers participating in these reviews. Moreover, over the past two-and-a-half years, the domestic industry has generated profits that are very high by any measure. While the prior record suggested that this improved financial performance (which at that time had been seen for only one-and-a-half years) was likely transitory, it is now clear that the domestic industry has performed for so long at such a favorable rate that it has more than made up for losses and investments made during the early years of the period of review. In addition, China's transition to a net exporter of CTL plate is now essentially complete, an event that has occurred without apparent adverse effects on world prices. See, e.g., Nucor's Posthearing CTL Plate Br. at App. 2 at 3 (extent to which Chinese CTL plate production exceeds consumption ***). Finally, unlike the situation in the 2005 reviews, the foreign producers at issue in these reviews generally do not export to China or other Asian markets, and there is no evidence that Chinese exports to the foreign producers' home markets have displaced the subject producers in their respective home markets to any significant degree. See, e.g., CR/PR at Tables CTL-IV-9, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-37, CTL-IV-49, CTL-IV-51, CTL-IV-53.

⁴⁷⁸ See, e.g., CR at CTL-V-2; PR at V-2.

⁴⁷⁹ See, e.g., CR/PR at Tables CTL-V-1 to V-5. For all five pricing products, prices have more than doubled from the first quarter of 2000 to the second quarter of 2006. Id. Domestic interested parties argue that plate prices have
(continued...)

the domestic industry is vulnerable to material injury. The domestic industry's financial performance during the period of review occurred during a time of strengthening demand for CTL plate. Apparent U.S. consumption, for example, increased 11.2 percent from 2000 to 2005, with most of the growth occurring since 2003.⁴⁸⁰ Increased demand has continued into 2006, as apparent U.S. consumption was 20.3 percent higher in interim 2006 than in interim 2005. Moreover, as noted in the conditions of competition discussion *supra*, U.S. and global demand for CTL plate are forecast to remain strong and growing in the reasonably foreseeable future.⁴⁸¹

Given that we do not find it likely that there will be a significant volume of subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom or that there will likely be significant price effects, and because the domestic industry is in a healthy, rather than vulnerable, condition, we conclude that revocation of the antidumping duty finding and orders and the countervailing duty orders on subject imports from Belgium, Brazil, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom would not likely have a significant adverse impact on the domestic industry within the reasonably foreseeable future.⁴⁸²

6. No Likelihood of Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time If the Antidumping and Countervailing Duty Orders on Subject Imports from Mexico Are Revoked^{483 484}

a. The Likely Volume of Subject Imports from Mexico Would Not Be Significant in the Event of Revocation⁴⁸⁵

As discussed in our no discernible adverse impact finding, prior to the imposition of the antidumping and countervailing duty orders, the volume of subject imports from Mexico did not rise

⁴⁷⁹ (...continued)

begun to fall due to inventory destocking, and that revocation of the orders would further exacerbate these price declines. As discussed in more detail above, however, inventory destocking is a cyclical event, and even after the inventory destocking period in 2005, U.S. prices for CTL plate in 2006 were generally higher than prices in 2004. Moreover, as also indicated above, we do not find that subject imports from the nine cumulated countries would be likely to enter the U.S. market in significant volumes if the orders are revoked.

⁴⁸⁰ *See, e.g.*, CR/PR at Table C-2. Apparent U.S. consumption was at its period high of 8.6 billion short tons in 2005. *See, e.g.*, CR/PR at Table C-2.

⁴⁸¹ Joint respondent interested parties reported that subject producers have full order books through the end of 2006, and in the transportation and oil sectors some end-users have backlogs extending well into 2007. *See, e.g.*, Joint Respondents' Prehearing CTL Plate Br. at 45-60.

⁴⁸² Given that they do not find it likely that there will be a significant volume of subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan and the United Kingdom or that there will likely be significant price effects from these imports, and because the domestic industry is in a healthy, rather than vulnerable, condition, Commissioner Koplán and Commissioner Lane conclude that revocation of the antidumping duty finding and orders and the countervailing duty orders on subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania Spain, Sweden, Taiwan, and the United Kingdom would not likely have a significant adverse impact on the domestic industry within the reasonably foreseeable future.

⁴⁸³ We applied the legal standards discussed in section III above.

⁴⁸⁴ Commissioner Koplán and Commissioner Lane do not join in the discussion in this section.

⁴⁸⁵ For her examination of the likely volume of CTL imports from Mexico, because she defines the domestic like product differently than Chairman Pearson, Commissioner Hillman, and Commissioner Okun, Vice Chairman Aranoff refers to data for the non-alloy CTL plate industry such as that summarized in Table C-1.

above 1.2 percent of apparent U.S. consumption.⁴⁸⁶ Since the orders were imposed, subject imports from Mexico have appeared in the U.S. market in sporadic and minimal volumes, accounting for less than 0.05 percent of apparent U.S. consumption in each year since 1997.⁴⁸⁷ Subject imports from Mexico have remained minimal whether compared to apparent U.S. consumption or to U.S. production despite an exemption from the Section 201 steel safeguards relief that imposed a 30 percent ad valorem tariff on CTL plate imports effective March 20, 2002, that was reduced to 24 percent on March 20, 2003, and ultimately terminated by the President on December 4, 2003.⁴⁸⁸

While reported production capacity for subject CTL plate from Mexico remained flat over the period of review, capacity utilization rose to *** percent in 2005.⁴⁸⁹ Mexico's capacity utilization was *** percent in interim 2006 as compared to *** percent in interim 2005.⁴⁹⁰ Due to increasing home market demand during the period of review, Mexico has become a net importer of CTL plate. Even operating at full capacity, AHMSA has been able to meet only a little over *** percent of home market demand, with the remainder being supplied by foreign sources.⁴⁹¹

As also discussed supra, AHMSA, the sole Mexican producer of CTL plate, is not export-oriented.⁴⁹² In each year of the period of review, *** of its CTL plate shipments have been made to the home market.⁴⁹³ AHMSA reported minimal CTL plate exports to the *** in 2001, and 2005 marked the only other year it reported exports to any other markets; even then, total exports accounted for only *** percent of its shipments.⁴⁹⁴

⁴⁸⁶ See, e.g., CR/PR at Table CTL-I-1.

⁴⁸⁷ See, e.g., CR/PR at Tables C-2, C-1. AHMSA's posthearing brief contains revised 1998 and 1999 import statistics from the U.S. Census Bureau listing the volume of imports from Mexico as 568 tons and 181 tons in 1998 and 1999, respectively. See, e.g., id. citing AHMSA's Posthearing CTL Plate Br. at Exh. 11.

⁴⁸⁸ See, e.g., CR at OVERVIEW-12 to OVERVIEW-15; PR at OVERVIEW-10 to OVERVIEW-12; CR/PR at Tables CTL-I-8 to CTL-I-9; AHMSA's Prehearing CTL Plate Br. at 8. Romania and Poland were the only other subject countries exempted from the safeguards imposed on CTL plate. See, e.g., CR at OVERVIEW-12 to OVERVIEW-15; PR at OVERVIEW-11 n.30.

⁴⁸⁹ See, e.g., CR/PR at Table CTL-IV-31. Mexico's capacity utilization in 2005 represents a *** increase over its capacity utilization in the original investigations and the first reviews.

⁴⁹⁰ See, e.g., CR/PR at Table CTL-IV-31.

⁴⁹¹ See, e.g., AHMSA's Prehearing CTL Plate Br. at 12.

⁴⁹² Domestic interested parties have argued that Mexico's export trends to Canada following revocation of the Canadian antidumping order on CTL plate from Mexico in 2003 showed the Mexican industry's ability to increase rapidly its exports following revocation. See, e.g., Mittal's Prehearing CTL Plate Br. at 16. In 2003, one of the three major Canadian producers of CTL plate, Stelco, exited the industry, creating a supply deficit that could only be filled by imports. See, e.g., AHMSA's Prehearing CTL Plate Br. at Exhibit 15 citing Certain Hot-Rolled Carbon Steel Plate Original in or Export from Mexico, the People's Republic of China, the Republic of South Africa and the Russian Federation, Expiry Review No. RR-2001-006 (Jan. 10, 2003) at 3, 10, 14-15. However, in 2004, when total CTL plate imports to Canada almost doubled, imports from Mexico declined to ***. In 2005, Canada's CTL plate imports from Mexico increased to *** short tons, but this figure represented less than a *** percent share of total CTL plate imports into Canada. In interim 2006, Mexico's CTL plate exports to Canada were negligible.

⁴⁹³ See, e.g., CR/PR at Table CTL-IV-31.

⁴⁹⁴ See, e.g., CR at CTL-IV-47; PR at CTL-IV-25. To the extent AHMSA may ship CTL plate to the United States following revocation, it has stated that it will be to serve a discrete set of multinational companies operating on both sides of the border that are end-users of CTL plate, as opposed to service centers or distributors. See, e.g., CTL Plate Hearing Tr. at 267-68 (Pierce). Since AHMSA cannot meet Mexican demand, and since the U.S. industry is the largest foreign supplier to the Mexican market, any limited sales by Mexico of CTL plate to these multinational companies, whose Mexican subsidiaries are already served by AHMSA, are likely to be offset by increased sales by the domestic industry to Mexican customers.

The potential for product shifting appears insignificant. AHMSA produces only subject CTL plate on its production-related equipment.⁴⁹⁵ Moreover, the industry's end-of-period inventories as a share of shipments are low (***) percent in 2005), and were only *** percent in interim 2006 as compared to *** percent in interim 2005.⁴⁹⁶

Despite acknowledging these conditions, domestic interested parties have argued that AHMSA is still likely to ship significant volumes of subject merchandise to the United States due to its planned capacity expansion. As discussed in our no discernible adverse impact analysis *supra*, although AHMSA has announced plans for a large capacity expansion, it still must overcome numerous hurdles even to obtain the financing for this expansion, and it will be another three years after AHMSA receives financing before this new capacity can be brought on line. Therefore, this proposed capacity expansion is merely speculative, and outside the time period that we consider the reasonably foreseeable future.

For all of these reasons, and taking into consideration our findings above concerning the conditions of competition that are distinctive to this industry, including the sustained rise in CTL plate prices in the U.S. market described previously, we do not find it likely that the volume of subject CTL imports from Mexico would be significant, in absolute terms or relative to production or consumption in the United States, within a reasonably foreseeable time in the event of revocation.

b. There Are Not Likely to Be Significant Price Effects from Subject Imports from Mexico⁴⁹⁷

In these reviews, as in the first reviews, no pricing data specific to CTL plate from Mexico were available to compare to the domestic like product. In the original investigations, imports from Mexico undersold the domestic like product in two of two comparisons, with margins of underselling of 2.0 and 3.8 percent.⁴⁹⁸ Since AHMSA has *** available capacity, it has no incentive to price aggressively to move large volumes of CTL plate into the U.S. market. Given the likely small volume of subject imports from Mexico in the event of revocation and taking into consideration our findings above concerning the conditions of competition that are distinctive to this industry, we find that revocation of the antidumping and countervailing duty orders on subject imports of CTL plate from Mexico would not be likely to lead to significant underselling or significant price depression or suppression within a reasonably foreseeable time.

c. Subject Imports from Mexico Are Not Likely To Have a Significant Adverse Impact in the Event of Revocation⁴⁹⁹

In evaluating the likely impact on the domestic industry, we note that we have not found that the domestic industry is vulnerable. Rather, as explained in more detail above, the industry has reported large profits in 2004, 2005, and interim 2006. Given that we do not find it likely that there will be a significant volume of subject imports from Mexico or that there will likely be significant price effects from these imports, and taking into consideration our findings above concerning the conditions of competition that

⁴⁹⁵ See, e.g., CR at CTL-IV-51; PR at CTL-IV-26.

⁴⁹⁶ See, e.g., CR/PR at Table CTL-IV-31.

⁴⁹⁷ For her examination of the likely price effects of CTL imports from Mexico, because she defines the domestic like product differently than Chairman Pearson, Commissioner Hillman, and Commissioner Okun, Vice Chairman Aranoff refers to data for the non-alloy CTL plate industry such as that summarized in Table C-1.

⁴⁹⁸ See, e.g., CR/PR at Table CTL-V-6.

⁴⁹⁹ For her examination of the likely impact of CTL imports from Mexico, because she defines the domestic like product differently than Chairman Pearson, Commissioner Hillman, and Commissioner Okun, Vice Chairman Aranoff refers to data for the non-alloy CTL plate industry such as that summarized in Table C-1.

are distinctive to this industry, we find that revocation of the antidumping and countervailing duty orders on subject imports from Mexico is not likely to lead to a significant adverse impact on the domestic industry within a reasonably foreseeable time.

Thus, we conclude that revocation of the antidumping and countervailing duty orders on subject imports from Mexico would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

7. No Likelihood of Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time If the Antidumping Duty Order on Subject Imports from Romania Is Revoked^{500 501}

a. The Likely Volume of Subject Imports from Romania Would Not Be Significant in the Event of Revocation

In the original investigations, even before an order was put into place, the volume of subject imports from Romania declined irregularly from 31,650 short tons in 1990 to 18,078 short tons in 1992.⁵⁰² The share of U.S. apparent consumption of CTL plate held by subject imports from Romania likewise declined in this same period from 0.6 percent to 0.4 percent.⁵⁰³ In the period examined in the first reviews, subject imports from Romania maintained only a minimal presence in the U.S. market of less than 0.05 percent of apparent U.S. consumption.

Romanian export data were reported by Mittal Steel Galati, an affiliate of the Mittal Group, which accounts for substantially all of CTL plate production in Romania.⁵⁰⁴ During the current review period, subject exports from Romania increased from *** short tons in 2000 to *** short tons in 2004, before declining to *** short tons in 2005.⁵⁰⁵ In interim 2006, exports from Romania to the United States were *** short tons compared to *** short tons in interim 2005.⁵⁰⁶ Based on its level of imports into the United States, Romania's share of apparent U.S. consumption peaked at 1.3 percent in 2004, fell to 0.6 percent in 2005, and was 0.1 percent in interim 2005 and zero in interim 2006.⁵⁰⁷

Looking to the reasonably foreseeable future, although several factors suggest that the Romanian industry has the ability to increase its exports to the United States substantially, we conclude that, given the incentives facing the Romanian industry, it is unlikely to do so.

⁵⁰⁰ We applied the legal standards discussed in section III above.

⁵⁰¹ Commissioner Lane and Commissioner Koplan do not join in this section because they have exercised their discretion to cumulate all eleven subject countries.

⁵⁰² See, e.g., CR/PR at Table CTL-I-1.

⁵⁰³ See, e.g., CR/PR at Table CTL-I-1.

⁵⁰⁴ See, e.g., CR at CTL-IV-64; PR at CTL-IV-29.

⁵⁰⁵ See, e.g., CR/PR at Table CTL-IV-43.

⁵⁰⁶ See, e.g., CR/PR at Table CTL-IV-43; CR at CTL-IV-64; PR at CTL-IV-29. In terms of the subject imports from Romania into the U.S. market during this time period, subject imports from Romania increased from 6 short tons in 2000 to 109,969 short tons in 2004, before declining to 49,813 short tons in 2005. Subject imports from Romania were 3,014 short tons in interim 2005 and zero short tons in interim 2006. See, e.g., CR/PR at Table C-2.

⁵⁰⁷ See, e.g., CR/PR at Table C-2. In terms of the non-alloy CTL plate market, Romania's share of apparent U.S. consumption peaked at 1.6 percent in 2004, fell to 0.7 percent in 2005, and was 0.1 percent in interim 2005 and zero in interim 2006. See, e.g., CR/PR at Table C-1.

The Romanian industry's productive capacity and production of CTL plate capacity increased over the period of review. As we found supra, the increase in production capacity in Romania was ***,⁵⁰⁸ Largely as a result of this action, the Romanian industry's rate of capacity utilization declined irregularly from *** percent in 2000 to *** percent in 2005, and it was *** percent in interim 2006 compared to *** percent in interim 2005.⁵⁰⁹ Mittal Steel Galati's excess capacity totaled *** short tons in 2005, an amount equivalent to *** percent of U.S. apparent consumption.⁵¹⁰

Exports from Romania have accounted for more than *** percent of the Romanian industry's total shipments since 2000. They constituted *** percent of its shipments in 2000 and *** percent in 2005.⁵¹¹ In interim 2006, exports accounted for *** percent of shipments as compared to *** percent in interim 2005.⁵¹²

The Romanian industry's largest market during the period of review was ***, which accounted for almost *** percent of its shipments in 2005. The *** was its next largest market, accounting for nearly *** percent of its shipments in 2005.⁵¹³ CTL plate exports from Romania to the European Union grew from *** short tons in 2000 to *** short tons in 2004. While Romanian exports to that market fell to *** short tons in 2005, they jumped to *** short tons during just the first six months of 2006.⁵¹⁴

Exports to the United States accounted for *** percent of the industry's shipments in 2000, increased irregularly to *** percent in 2004, before declining to *** percent in 2005.⁵¹⁵ Exports to the United States accounted for less than *** percent of shipments in interim 2006 as compared to *** percent in interim 2005.⁵¹⁶

The Romanian industry's increased exports to the United States (peaking in 2004), its substantial available capacity, and its general export orientation are indications that the industry possesses the ability to ramp up its exports to the United States in the event of revocation. However, we do not find such an increase to be likely, for the following reasons.

First and foremost, as noted in our cumulation analysis, supra, since April 2005, Mittal Steel Galati has been in the same corporate group as major U.S. producer Mittal Steel USA. This affiliation was the result of the acquisition in 2001 of the only Romanian producer by LNM Holdings, an affiliate of what was eventually to become the Mittal Steel Group, and the April 2005 acquisition of U.S. producer ISG by Mittal Steel Co. NV.⁵¹⁷ This latter acquisition placed Mittal Steel Galati and Mittal Steel U.S.A., one of the largest U.S. CTL plate producers during the period of review, within the same corporate family.

The evidence on the record supports the argument that these corporate realignments largely explain the recent fall in the volume of subject exports from Romania during the period of review. Specifically, prior to Mittal's acquisition of ISG's assets in April 2005, the volume of Romania's exports to the United States increased from 2000 to 2004. Subsequently, the volume of those exports fell by more

⁵⁰⁸ See, e.g., CR at CTL-IV-65; PR at CTL-IV-30. Mittal Steel Galati has reported ***.

⁵⁰⁹ See, e.g., CR/PR at Table CTL-IV-43.

⁵¹⁰ Derived from CR/PR at Tables CTL-IV-43, C-2. In terms of the non-alloy CTL plate market, Mittal Steel Galati's excess capacity in 2005 was equivalent to *** percent of U.S. apparent consumption. (derived from CR/PR at Tables CTL-IV-43, C-1).

⁵¹¹ See, e.g., CR/PR at Table CTL-IV-43.

⁵¹² See, e.g., CR/PR at Table CTL-IV-43.

⁵¹³ See, e.g., CR/PR at Table CTL-IV-43.

⁵¹⁴ See, e.g., CR/CPR at Table CTL-IV-43.

⁵¹⁵ See, e.g., CR/PR at Table CTL-IV-43.

⁵¹⁶ See, e.g., CR/PR at Table CTL-IV-43.

⁵¹⁷ See, e.g., CR/PR at Table CTL-III-1. Prior to this acquisition, Mittal Steel Galati had no affiliate located in the United States.

than *** from 2004 to 2005, and such volumes were sharply lower at *** short tons in interim 2006 than at *** short tons during interim 2005.⁵¹⁸ We find that the close corporate affiliation between the Romanian and U.S. divisions of the Mittal Steel Group makes it unlikely that Mittal Steel Galati will move aggressively to capture U.S. market share or sell its products in a manner that would have a negative effect on the prices that Mittal Steel USA receives.

Domestic producer Nucor argues that Mittal's U.S. and Romanian operations ***. Nucor argues that Mittal will sell domestically-produced plate when it can do so at a profit and will import CTL plate from other Mittal mills when that is profitable. Nucor cautions that the Commission cannot assume that Mittal will control imports from Mittal Steel Galati so as to avoid injury to the U.S. CTL plate industry as a whole.⁵¹⁹

The fact that Mittal Steel U.S.A. has devoted ***⁵²⁰ does present at least the possibility that it will rationalize production to some extent by sourcing more *** from Romania. However, Mittal's importing arm has indicated that it ***.⁵²¹ This is consistent with the *** subject imports from Romania in interim 2006.⁵²² Moreover, the record indicates that Mittal Steel USA manufactures a full range of CTL plate products,⁵²³ thus making it difficult for Mittal Steel NV to avoid harm to its U.S. operations should it choose to import subject merchandise from Romania.

In addition, although Mittal Steel Galati exported significant quantities of CTL plate to diverse markets during the period of review, the European Union is likely to become a more attractive market for Romanian exports in the reasonably foreseeable future, if not in the immediate future. As of the closing of our record, Romania's membership to the European Union was scheduled to be ratified by early 2007.⁵²⁴ As discussed above, accession to EU membership eliminates customs duties between Member States, removes internal border restrictions, and facilitates access to a market of some 450 million consumers with a total gross domestic product of more than \$11 trillion.⁵²⁵ As also noted above, demand in Europe is forecast to continue to increase as compared to the current level.⁵²⁶ Recent EU market prices have been comparable to U.S. prices, and thus, after factoring in the additional transportation costs associated with sales to the United States, the European Union is the more likely destination for any additional Romanian exports.⁵²⁷ As noted above, Mittal Steel Galati's exports to the European Union *** of its total shipments.⁵²⁸ To the extent that Mittal Steel Galati will shift its exports in the coming years, it will be more likely to redirect those exports to markets within the European Union rather than to more distant markets such as the United States.

⁵¹⁸ See, e.g., CR/PR at Table CTL-IV-66.

⁵¹⁹ See, e.g., Nucor's Posthearing CTL Plate Br. at App. 8.

⁵²⁰ See, e.g., CR at CTL-III-3 n.4; PR at CTL-III-4.

⁵²¹ See, e.g., Mittal Steel America's Importer's Questionnaire Response at II-5 (projecting ***).

⁵²² See, e.g., CR/PR at Tables C-2, C-1.

⁵²³ See, e.g., Mittal USA's Producer's Questionnaire Response at II-12 and II-13.

⁵²⁴ See, e.g., CR at CTL-IV-114; PR at CTL-IV-47. The record indicates that only a few procedural hurdles remained before Romania's entry into the European Union. See, e.g., id.

⁵²⁵ See, e.g., CR at CTL-IV-113 to CTL-IV-114; PR at CTL-IV-47.

⁵²⁶ See, e.g., CR/PR at Table CTL-IV-69.

⁵²⁷ See, e.g., CR/PR at Table CTL-IV-70.

⁵²⁸ See, e.g., CR/PR at Table CTL-IV-43.

Mittal Steel Galati reported that CTL plate is not produced on machinery used in the production of other products, and also reported that it is ***.⁵²⁹ Thus the potential for product shifting appears to be limited. Moreover, the Romanian industry's end-of-period inventories as a share of shipments were *** percent in 2005, significantly lower than they were in the original investigations (**% percent) and the first reviews (**% percent).⁵³⁰

For all of these reasons, while some imports of subject CTL plate from Romania are possible if the order on Romania were revoked, we do not find it likely that the volume would be significant, either in absolute terms or relative to U.S. production or consumption, within a reasonably foreseeable time.

b. There Are Not Likely to Be Significant Price Effects from Subject Imports from Romania

In the original investigations, imports from Romania undersold the domestic like product in 12 of 13 comparisons, with margins of underselling ranging from 1.9 to 47.5 percent.⁵³¹ In the first reviews, no price data specific to CTL plate from Romania were available to compare to the domestic like product.

In the current reviews, imports from Romania undersold the domestic like product in 16 of 17 comparisons, with margins of underselling ranging from 6.9 to 35.0 percent.⁵³² We note, however, that notwithstanding this underselling, prices for all five pricing products have more than doubled since 2000.⁵³³ Notably, in 2004, when subject imports from Romania were at their highest levels for the period of review, all five pricing products experienced their greatest increases in price.⁵³⁴ With the expectations for continued increased demand in both the global and U.S. markets, prices for CTL plate in the United States are likely to continue to remain strong. Domestic producers have been able to pass along raw material and energy costs through the use of surcharges, which have recently been rolled into base prices. We note that the domestic industry raised prices even with an increase in total imports in 2004 and 2005.⁵³⁵

As noted above, we do not expect the likely volume of subject imports from Romania to be significant. As a result, although price is an important consideration for purchasers, we do not find it likely that the additional volumes of subject imports from Romania will lead to significant price declines. Nor, in a time of likely increasing apparent U.S. consumption, do we expect subject imports from Romania to significantly suppress or depress U.S. prices. As noted above, Mittal Steel Galati would not have an incentive to drive U.S. prices down since to do so would have negative effects on its U.S. affiliate.

Consequently, although some underselling may continue upon revocation of the order, taking into consideration the conditions of competition distinctive to this industry, we find that the likely modest volumes of lower-priced subject imports from Romania in the event of revocation will not place significant downward pressure on U.S. prices.

⁵²⁹ See, e.g., CR at CTL-IV-68; PR at CTL-IV-30. In its most recent fiscal year, sales of CTL plate accounted for *** percent of Mittal Steel Galati's total sales. See, e.g., CR at CTL-IV-64; PR at CTL-IV-29. Mittal Steel Galati does not produce non-subject steel plate or specifically excluded CTL plate. See, e.g., CR/PR at Table CTL-IV-46.

⁵³⁰ See, e.g., CR/PR at Table CTL-IV-42. Mittal Steel Galati ***.

⁵³¹ See, e.g., CR/PR at Table CTL-V-6.

⁵³² See, e.g., CR/PR at Table CTL-V-6.

⁵³³ See, e.g., CR/PR at Tables V-1 to V-5.

⁵³⁴ See, e.g., CR/PR at Tables CTL-V-1 to V-6.

⁵³⁵ See, e.g., CR/PR at Tables CTL-V-1 to V-5; CTL-I-1. In 2005, U.S. prices for CTL plate represented a *** percent mark-up over cost of goods sold.

Given the likely small volume of subject imports from Romania if the order were revoked, we find that revocation of the antidumping duty order on subject imports of CTL plate from Romania would not be likely to lead to significant underselling by the subject imports as compared to the domestic like product or that subject imports from Romania are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product. Therefore, we conclude that revocation of the order is not likely to lead to any significant adverse price effects.

c. Subject Imports from Romania Are Not Likely To Have a Significant Adverse Impact in the Event of Revocation

In evaluating the potential impact on the domestic industry of revocation of the antidumping duty order on subject imports from Romania, we note that we have not found that the domestic industry is vulnerable. Instead, as explained in more detail above, the industry has reported large profits in 2004, 2005, and interim 2006. Given that we do not find it likely that there will be a significant volume of subject imports from Romania or that there will likely be significant price effects, and taking into consideration the conditions of competition distinctive to this industry, we find that revocation of the antidumping duty order on subject CTL plate imports from Romania is not likely to lead to a significant adverse impact on the domestic industry within a reasonably foreseeable time.

Thus, we conclude that revocation of the antidumping duty order on subject imports of CTL plate from Romania would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we find that revocation of the countervailing duty orders on CTL plate from Belgium, Brazil, Mexico, Spain, and Sweden, the antidumping duty orders on CTL plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom, as well as the antidumping finding on CTL plate from Taiwan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

V. SEPARATE VIEWS OF COMMISSIONER STEPHEN KOPLAN AND COMMISSIONER CHARLOTTE R. LANE ON CUMULATION WITH RESPECT TO CUT-TO-LENGTH PLATE PRODUCTS

Based on the record in these five-year reviews, we concur with the Commission's majority that, under section 751 (c) of the Tariff Act of 1930, as amended, revocation of the antidumping finding, and antidumping and countervailing duty orders on certain imports of flat-rolled carbon steel cut-to-length plate products ("CTL plate") from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would not be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time. We separately present our views on cumulation to explain our decision to exercise our discretion to cumulate subject imports from all eleven countries.⁵³⁶

⁵³⁶ In the first reviews, Commissioner Stephen Koplan noted that in 1999 Corus, the sole producer of plate in the United Kingdom, fully owned Tuscaloosa Steel, a significant U.S. producer of plate. He found that Corus made substantial investments upgrading and expanding Tuscaloosa's steel production facilities, and that any imports from the U.K. would likely enter the East Coast or Gulf Coast, both substantial markets for Tuscaloosa Steel. In exercising his discretion not to cumulate subject imports from the United Kingdom, Commissioner Koplan found
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Except as noted in the majority CTL plate opinion, we join the Commission's determinations with respect to summary, background, legal standards, domestic like product and industry, conditions of competition, likely volume and price effects, and likely impact on the domestic industry in the event of revocation of the subject finding and orders. As noted throughout those discussions, we examined the likely volume, likely price effects, and likely impact of cumulated imports from all eleven subject countries on the domestic industry producing non-alloy CTL plate. We write separately to explain our findings with regard to cumulation.

A. Framework and Background

We applied the legal standards for cumulation discussed in section III of the Views of the Commission.

In the first reviews, the Commission found, based on the available information on capacity, production, product mix, and export orientation,⁵³⁷ as well as the "weakened condition of the U.S. industry," that the subject imports from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom each would be likely to have a discernible adverse impact on the domestic industry if the finding and orders were revoked. The Commission also found that there likely would be a reasonable overlap of competition between subject imports from all of those countries under review and the domestic like product, and among the subject imports from all of those countries, if the finding and orders were revoked. The Commission did not find any significant differences in the conditions of competition among those subject countries, except for Canada, with respect to which the order was revoked during those reviews and is therefore not subject to the current reviews.⁵³⁸ For these reasons, the Commission exercised its discretion to cumulate subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom.⁵³⁹

⁵³⁶ (...continued)

that these "conditions of competition position Corus very differently from all other subject producers given that no other subject producer in any subject country has such a relationship with a domestic producer," and that Corus' "participation in the domestic market is likely to be altered by its relationship with – and significant investment in – Tuscaloosa Steel." USITC Pub. 3364 at 59-61. In 2004, Corus sold its Tuscaloosa plant in Alabama to Nucor and no longer has any production facilities in the United States. CR at CTL-IV-84; PR at CTL-IV-37. In light of this change in conditions of competition, Commissioner Koplan now finds no compelling reason to not cumulate subject imports from the United Kingdom with imports from the other subject countries in the current reviews.

⁵³⁷ Although it noted that Canada and Mexico did not appear to export substantial quantities of subject plate, the Commission found that subject imports from these countries were still likely to have a discernible adverse impact on the domestic industry because "of their geographic proximity to the United States" as well as the fact that Mexican producer AHMSA was under bankruptcy protection, "an indication that it would have an incentive to maximize plate production and sales." USITC Pub. 3364 at 20 n.101.

⁵³⁸ In declining to exercise its discretion to cumulate subject imports from Canada due to differences in conditions of competition, the Commission noted that only one major Canadian plate mill, Stelco, remained subject to the order. The Commission found that Stelco "rarely exported significant quantities of subject plate to any country." USITC Pub. 3364 at 19. Moreover, record evidence showed that Canada was a net importer of plate (with much of its imports originating from the United States), that demand for plate in Canada was strong, and that Canada had antidumping orders in place with respect to several countries. See, e.g., id.

⁵³⁹ Commissioner Koplan and Commissioner Askey dissented with respect to the United Kingdom. For the reasons stated by the majority, Commissioner Koplan found that the likely imports from the United Kingdom would have a discernible adverse impact on the domestic industry, and that there was likely to be a reasonable overlap of competition among the subject imports from the United Kingdom and between those subject imports and the domestic merchandise upon revocation of the order. However, Commissioner Koplan noted that in 1999 Corus, the
(continued...)

The threshold criterion for cumulation in these reviews is satisfied because all of the reviews of CTL plate were initiated on the same day.

We consider three issues in deciding whether to exercise our discretion to cumulate the subject imports: (1) whether imports from any of the subject countries are precluded from cumulation because they are likely to have no discernible adverse impact on the domestic industry; (2) whether imports of CTL plate from the subject countries are likely to compete with each other and with the domestic like product; and (3) differences in the likely conditions of competition of the subject imports with regard to their participation in the U.S. market for CTL plate. In so doing, we take into account the various arguments by the parties. Our focus in a review investigation is not only on present conditions of competition, but also on likely conditions of competition in the reasonably foreseeable future.⁵⁴⁰

We determine that (1) subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, assessed individually, are not likely to have no discernible adverse impact on the domestic industry in the event of revocation; (2) subject imports from these countries are likely to compete with each other and with the domestic like product in the event of revocation; and (3) many of the likely conditions of competition faced by subject imports from each of these subject countries are similar. Therefore, we exercise our discretion to cumulate subject imports from all eleven subject countries.⁵⁴¹

B. Likelihood of No Discernible Adverse Impact

We consider all relevant factors in analyzing “no discernible adverse impact” in these reviews. Based on the record, we do not find that subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, or the United Kingdom are likely to have no discernible adverse impact on the domestic industry if the antidumping finding, antidumping duty orders, and countervailing duty orders on imports from those countries are revoked.⁵⁴²

⁵³⁹ (...continued)

sole producer of plate in the United Kingdom at the time of the first reviews, fully owned Tuscaloosa Steel, a significant U.S. producer of plate. Commissioner Koplan noted that Corus had made substantial investments upgrading and expanding Tuscaloosa’s steel production facilities, and that any imports from the United Kingdom would likely enter the East Coast or Gulf Coast, both substantial markets for Tuscaloosa Steel. In declining to exercise his discretion to cumulate subject imports from the United Kingdom, Commissioner Koplan noted that these “conditions of competition position Corus very differently from all other subject producers given that no other subject producer in any subject country has such a relationship with a domestic producer,” and that Corus’ “participation in the domestic market is likely to be altered by its relationship with – and significant investment in – Tuscaloosa Steel.” See, e.g., USITC Pub. 3364 at 59-61.

⁵⁴⁰ See Allegheny Ludlum Corp. v. United States, Slip Op. 06-188, U.S. Court of International Trade (Dec. 22, 2006).

⁵⁴¹ We find that cross-cumulation of dumped and subsidized subject imports is appropriate as an exercise of our discretion. See, e.g., Sugar from the European Union, and Sugar from Belgium, France, and Germany, Invs. Nos. 104-TAA-7 (Second Review) and AA1921-198-200 (Second Review), USITC Pub. 3793 at 11, n.47 (Aug. 2005).

⁵⁴² In the first reviews, the Commission found, based on the available information on capacity, production, product mix, and export orientation, as well as the “weakened condition of the U.S. industry,” that the subject imports from Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom each would be likely to have a discernible adverse impact on the domestic industry if the orders were revoked. Although it noted that Canada and Mexico did not appear to export substantial quantities of subject plate, the Commission found that subject imports from these countries were still likely to have a discernible adverse impact on the domestic industry because “of their geographic proximity to the United States” as well as the fact that Mexican producer AHMSA was under bankruptcy protection, “an indication that it would have an incentive to maximize plate production and sales.” USITC Pub. 3364 at 20 n.101.

Relative to the U.S. market, the size of the CTL plate industry in each of these countries is significant. In 2005, the capacity in each subject country was equivalent to at least *** percent of apparent U.S. consumption.⁵⁴³ Each country has the capacity to produce a large range of plate products, and the actual production of subject plate is significant in each country. Moreover, the CTL plate industries in all of the subject countries are globally recognized, and all subject countries export subject plate, although to varying degrees.⁵⁴⁴ Prior to the imposition of the antidumping finding, antidumping duty orders, and countervailing duty orders, subject imports from each country were present in the U.S. market, and we find that upon revocation of the orders, subject imports from each country are likely to have at least some presence in the U.S. market.

With respect to product mix, the types of plate products manufactured and exported in each of the subject countries do not differ dramatically from the types of plate produced in the United States.⁵⁴⁵ Imports from each of the subject countries are likely to be substitutable for, and competitive with, domestically produced plate.⁵⁴⁶ Such competition is likely to be based, at least in part, on price, in light of the importance of price in purchasing decisions.⁵⁴⁷ Producers in each country undersold U.S. producers at times during the original investigation period, and, in the case of Germany and Romania, during this review period as well.⁵⁴⁸ Accordingly, we cannot conclude that subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would be likely to have no discernible adverse impact on the domestic industry in the event of revocation of orders covering those imports.

C. Likelihood of a Reasonable Overlap of Competition

In assessing likely competition for purposes of cumulation in original investigations, the Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product: (1) fungibility; (2) sales or offers in the same geographic markets; (3) common or similar channels of distribution; and

⁵⁴³ See, e.g., CR/PR at Tables CTL-C-1, CTL-IV-9 (*** percent for Belgium), CTL-IV-14 (*** percent for Brazil), CTL-IV-19 (*** percent for Finland), CTL-IV-25 (*** percent for Germany), CTL-IV-31 (*** percent for Mexico), CTL-IV-37 (*** percent for Poland), CTL-IV-43 (*** percent for Romania), CTL-IV-48 (*** percent for Spain), CTL-IV-50 (*** percent for Sweden), CTL-IV-53 (*** percent for Taiwan), and CTL-IV-58 (*** percent for the United Kingdom).

⁵⁴⁴ In 2005, total exports of CTL plate as a percentage of total shipments for subject industries ranged from a low of *** percent for the *** industry to a high of *** percent for the *** industry. See, e.g., CR/PR at Tables CTL-IV-9, CTL-IV-14, CTL-IV-19, CTL-IV-25, CTL-IV-31, CTL-IV-37, CTL-IV-43, CTL-IV-49, CTL-IV-51, CTL-IV-53, and CTL-IV-58.

⁵⁴⁵ See, e.g., Domestic Interested Parties' Questionnaire Responses at II-13, II-14; CR/PR Tables CTL-IV-10, CTL-IV-11 (Belgium), CTL-IV-15, CTL-IV-16 (Brazil), CTL-IV-20, CTL-IV-21 (Finland), CTL-IV-26, CTL-IV-27 (Germany), CTL-IV-32, CTL-IV-33 (Mexico), CTL-IV-38, CTL-IV-39 (Poland), CTL-IV-44, CTL-IV-45 (Romania), CTL-IV-54, CTL-IV-55 (Taiwan), and CTL-IV-59, CTL-IV-60 (United Kingdom). Publicly available data from Sweden indicates that "heavy plate" constituted the majority of SSAB's plate production during the period of review, although the company has stated that it plans on reducing the volume of heavy plate production in favor of high-strength steel and other niche products. See, e.g., CR at CTL-IV-75; PR at CTL-IV-33. The record contains no information regarding the product mix from Spain.

⁵⁴⁶ See, e.g., CR at CTL-II-21, PR at II-19.

⁵⁴⁷ See, e.g., CR/PR at Table CTL-II-5.

⁵⁴⁸ See, e.g., CR/PR at Table CTL-V-6. In these reviews, subject imports from Germany and Romania undersold the domestic like product. See Commission's Views on Cut-to-Length Plate, for a discussion of pricing comparisons for the other subject countries in the original investigations.

(4) simultaneous presence.⁵⁴⁹ In five-year reviews, the relevant inquiry is whether there likely would be a reasonable overlap of competition even if none currently exists because the subject imports are absent from the U.S. market. We consider these four factors in addition to those discretionary factors discussed below with respect to subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom.

In these reviews, the record indicates that domestically produced and imported CTL plate are fungible products. Consistent with the Commission's findings in the original investigations and the first reviews, the record in the current reviews indicates that the domestic like product and subject imports from all eleven subject countries are generally substitutable.⁵⁵⁰ For example, out of 113 responses from purchasers expressing familiarity with imports from subject countries, 45 reported CTL plate from these eleven subject countries to be "always" interchangeable with U.S. produced CTL plate, 33 reported CTL plate from these eleven subject countries to be "frequently" interchangeable with U.S.-produced CTL plate, 34 reported CTL plate from these eleven subject countries to be "sometimes" interchangeable with U.S. produced CTL plate, and only one reported CTL plate from these eleven subject countries to be "never" interchangeable with U.S.-produced CTL plate.⁵⁵¹ A vast majority of importers expressing familiarity with subject imports, 55 of 60, reported CTL plate from these subject countries to be "always" or "frequently" interchangeable with U.S.-produced CTL plate.⁵⁵² Moreover, a vast majority of importers and purchasers expressing familiarity with subject imports reported that imports from subject countries were used interchangeably. A majority of purchasers reported that country of origin was rarely or never a factor in purchasing decisions.⁵⁵³ Purchasers were asked to compare domestic and subject CTL plate products on the basis of 20 ranking factors, and, although responses were limited, purchasers found that the U.S. product was generally comparable to, and sometimes superior to, subject imports.⁵⁵⁴

German and U.K. producers were the only respondent interested parties to present arguments regarding the likelihood of a reasonable overlap of competition. They both argued that their exports are not substitutable for the domestic product because they currently export specialty CTL plate, and ***. However, the record refutes their contentions. Eleven of 14 importers and purchasers expressing familiarity with imports from the United Kingdom reported that such imports were "always" or "frequently" interchangeable with U.S.-produced CTL plate, while 16 of 20 importers and purchasers expressing familiarity with imports from Germany reported that such imports were "always" or

⁵⁴⁹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988); Mukand Ltd. v. United States, 937 F. Supp. 910, 915 (Ct. Int'l Trade 1996)).

⁵⁵⁰ In the original investigations and the first reviews the Commission stated that specialized or "niche" products constituted only a small percentage of imports from any one country, and that subject countries continue to produce substantial volumes of commodity CTL plate that accounted for a large share of the U.S. market. See, e.g., USITC Pub. 2664 at 20; USITC Pub. 3364 at 21; USITC Pub. 3587 at 9 (Remand Determination).

⁵⁵¹ See, e.g., CR/PR at Table CTL-II-8. Large numbers of purchasers and importers reported that they had no familiarity with imports from all or most of the subject countries. A majority of purchasers also stated that imported and U.S. produced CTL plate are generally used in the same applications.

⁵⁵² See, e.g., CR/PR at Table CTL-II-8.

⁵⁵³ See, e.g., CR at CTL-II-29 to CTL-II-30; PR at CTL-II-19 to CTL-II-20. Twelve purchasers reported that certain grades, types, or sizes of CTL plate are available from only a single source. *** reported that abrasion-resistant material is only available from Sweden, Germany, and Canada, while *** reported that Germany has a patented material with a unique composition. See, e.g., CR at CTL-II-25; PR at CTL-II-16.

⁵⁵⁴ See, e.g., CR/PR at Table CTL-II-7. No purchaser completed the comparison between the United States and Belgium, Brazil, Finland, Spain, Taiwan, or the United Kingdom, although five purchasers completed the comparison between the United States and "all foreign countries."

“frequently” interchangeable with U.S.-produced CTL plate.⁵⁵⁵ Moreover, the record shows that both U.K. and German producers produce and export to non-U.S. markets significant quantities of carbon structural steel plate less than four inches thick, which are directly substitutable for U.S. produced CTL plate. Although U.K. and German producers do not currently compete in the U.S. market to any significant degree, the focus of the Commission’s inquiry here is on “likely,” not current, competition.⁵⁵⁶

We, therefore, conclude that subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom are sufficiently fungible with one another and with the domestic like product.

With respect to geographic overlap and simultaneous presence, in the first reviews, the Commission found that the record was “mixed” concerning simultaneous market presence and geographic overlap, but found that, “in light of the importance of sales to steel service centers, which are dispersed throughout the United States and hold sizeable plate inventories, we find it likely that subject imports from each subject country would be simultaneously present in the U.S. market as a whole and in the same geographical markets as other subject imports and the domestic like product.”⁵⁵⁷

Similar to the record in the first reviews, the record in the current reviews is mixed regarding geographic overlap and simultaneous presence in the market. The record continues to reflect that current producers and importers as a whole reported nationwide sales. Subject imports were also generally available in multiple regions of the country during the review period.⁵⁵⁸

Subject imports from some subject countries were not present during some of the current review period. Imports of subject merchandise from all subject countries have declined substantially since the orders were imposed. There were reportedly no imports of subject CTL plate from Belgium (except in 2005), Brazil, Finland, Poland, Taiwan, and the United Kingdom (except in 2003).⁵⁵⁹ According to official import statistics, there were no imports of subject CTL plate from Spain in 2001, and from 2003 through 2005, and from Sweden in 2003. Prior to the imposition of the orders, subject imports from each country were present in the U.S. market, and we find that upon revocation of the orders, subject imports from each country are likely to have at least some presence in the U.S. market.

The record also indicates that there is sufficient overlap in the channels of distribution for domestic and imported CTL plate. In the first reviews, the Commission found that “domestic producers and importers ship plate to end users, distributors, and service centers.”⁵⁶⁰ This is generally consistent

⁵⁵⁵ See, e.g., CR/PR at CTL-Table II-8. German producers reported that *** See, e.g., CR at CTL-II-11 n.16; PR at CTL-II-7 n.16.

⁵⁵⁶ See generally, Chefline Corp. v. United States, 219 F. Supp. 2d 1313, 1314 (Ct. Int’l Trade 2002) (“The statute and legislative history are clear: the Commission is not required to find that subject imports currently compete in the U.S. market.”); cf. SAA at 888 (regional industry); see also, e.g., Granular Polytetrafluoroethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 to 386 (Second Review), USITC Pub. 3823 at 13-14 (Dec. 2005). (“While subject imports from Japan currently consist of niche products, the current composition of subject imports is affected by the discipline of the antidumping duty orders and thus not necessarily indicative of likely post-revocation behavior.”) (finding a likely reasonable overlap of competition).

⁵⁵⁷ USITC Pub. 3364 at 22.

⁵⁵⁸ See, e.g., CR at CTL-II-3; PR at CTL-II-3; CR/PR at Table CTL-II-2. Seven of nineteen producers and seven of fifteen importers reported selling nationwide during the review period.

⁵⁵⁹ We note that there have been only limited imports of subject merchandise from Mexico during the period of review. With respect to Romania, we note that there have been imports of subject merchandise throughout the period of review. See, e.g., CR/PR at Table C-1.

⁵⁶⁰ USITC Pub. 3364 at 21.

with the record in the current reviews, although there were too little data reported to comment specifically on imports from subject countries.⁵⁶¹

On balance, we find that subject imports from all eleven subject countries would be sufficiently fungible, move in the same channels of distribution, and compete in the same geographic markets during the same periods. We, therefore, conclude that there would likely be a reasonable overlap of competition among subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom and between these subject imports and the domestic like product in the event of revocation.⁵⁶²

D. Other Considerations

In determining whether to exercise our discretion to cumulate subject imports from all eleven subject countries, we assess whether the subject imports from each country are likely to compete under similar conditions of competition in the U.S. market.

In the first reviews, the Commission cumulated subject imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan and the United Kingdom, noting that it did not find “any significant differences in the conditions of competition” among those countries.⁵⁶³ The Commission noted that relative to the U.S. market, the size of the CTL plate industry in each cumulated subject country was significant and each industry maintained substantial production capacity.⁵⁶⁴ The Commission also indicated that the “majority of the countries export a substantial percentage of their production.”⁵⁶⁵

The record in these reviews continues to show that there are no significant differences in the conditions of competition among subject imports. We conclude, consistent with the Commission’s determinations in the first reviews, that subject imports from each of the eleven subject countries remain likely to compete under similar conditions of competition in the U.S. market. We discuss additional other considerations specifically regarding Mexico and Romania below.

Mexico. Consistent with the Commission’s findings in the first reviews, we find that subject imports from Mexico and other subject countries are likely to compete under similar conditions of competition in the U.S. market. In the original investigations, the sole Mexican CTL plate producer, AHMSA, clearly demonstrated both the ability and economic incentive to ship to the U.S. market in high volumes. Subject plate imports from Mexico increased from 19,343 short tons in 1991 to 59,993 short tons in 1992, the final year of the period of investigation.⁵⁶⁶ Additional volumes of subject imports from Mexico also entered the U.S. market during the first review.⁵⁶⁷

AHMSA maintains the ability to ship subject product to the U.S. market upon revocation. Mexican CTL plate capacity has increased since the original investigations, rising from *** short tons in 1992 to *** short tons in 2005. Although AHMSA has primarily served the Mexican market in recent years, this trend may not continue. Domestic interested parties contend that Mexico’s home market is becoming saturated with low-priced Chinese exports, which could shift at least some of the Mexican

⁵⁶¹ See, e.g., CR at CTL-II-1; PR at CTL-II-1.

⁵⁶² See *Siderca S.A.I.C. v. United States*, 391 F. Supp. 2d 1353, 1364-65 (Ct. Int’l Trade 2005) (For cumulation in reviews, “[t]here is no requirement that the ITC find that all four subfactors are independently supported by a ‘likeliness’ determination.”), citing *Wieland Werke*, 718 F. Supp. at 50.

⁵⁶³ USITC Publication 3364 at 33 (Nov. 2000).

⁵⁶⁴ *Id.* at 30.

⁵⁶⁵ *Id.*

⁵⁶⁶ CR/PR at Table CTL-I-1.

⁵⁶⁷ *Id.*

producer's shipments away from its home market and to the neighboring U.S. market.⁵⁶⁸ We find this argument supported by the record. Import volumes of Chinese CTL plate into Mexico were greater than import volumes from any other source during interim 2006.⁵⁶⁹ Furthermore, AHMSA began exporting CTL plate again in 2005, shipping *** to third country (non-U.S.) markets in 2005, demonstrating some export orientation on the part of the Mexican industry.⁵⁷⁰

On November 30, 2006, the Mexican CTL plate industry filed an antidumping duty petition against subject imports from China, providing further evidence that the Mexican home market is becoming further saturated with low-priced Chinese imports.⁵⁷¹ Coupled with Mexican exports late in the period of review, these factors demonstrate some export orientation on the part of AHMSA, and competition from third-country plate producers in the Mexican home market. Inasmuch as other subject countries also export, Mexico's recent exporting activities increase the likelihood that subject imports from Mexico and other subject countries will compete in the U.S. market under similar conditions of competition.

In light of these factors, we conclude that subject imports from Mexico and other subject countries are likely to compete under similar conditions of competition in the U.S. market upon revocation. We therefore exercise our discretion to cumulate Mexico with the other ten subject countries.

Romania. Similarly, we find that subject imports from Romania are also likely to compete under similar conditions of competition in the U.S. market with other subject countries upon revocation. Romania, as well as the majority of other subject countries, produced and exported subject product throughout the current period of review. Romania's exports as a percentage of total shipments were large, increasing irregularly from *** percent of shipments in 2000 to *** percent in 2005.⁵⁷² In interim 2005, exports accounted for *** percent of shipments before declining to a *** percent in interim 2006.⁵⁷³ Record data also indicate that the sole Romanian producer Mittal Steel Galati and the majority of subject producers exported to similar markets over the current period of review, with the majority of export volumes being shipped throughout the European Union and ***.

Mittal Steel Galati, as well as subject producers from other countries, maintained more than minimal volumes of available capacity over this period of review. Commission data indicate that EU members Belgium, Poland and the United Kingdom maintained sizeable volumes of available capacity in 2005.⁵⁷⁴ Brazil also maintained large volumes of available capacity throughout the majority of the current period of review, and importantly in 2005, the last full year of this period.⁵⁷⁵ Each of these countries therefore maintained the ability to increase production of CTL plate for export markets, if needed. We do not find that the existence of excess capacity in Romania is a condition of competition which distinguishes Romania from other subject countries. We find the availability of Romanian excess capacity to be a condition of competition similar to other countries subject to these orders.

The record indicates that subject imports from Romania will likely continue to be substitutable for and competitive with other subject imports in the reasonably foreseeable future, which increases the likelihood that these imports will compete under similar conditions of competition in the U.S. market. Carbon structural steel plate constituted the largest volume of total CTL plate shipments from Romania,

⁵⁶⁸ See, e.g., Mittal's Posthearing CTL Plate Br., at Answers to Commissioner Hillman's Questions at 7.

⁵⁶⁹ See, e.g., AHMSA's Prehearing CTL Plate Brief at Exh. 28.

⁵⁷⁰ See e.g., CR/PR at Table CTL-IV-31.

⁵⁷¹ See e.g., Letter from Juan Castillo Ramirez, Legal Representative of AHMSA, Dec. 4, 2006, pp. 1-2.

⁵⁷² See e.g., CR/PR at Table CTL-IV-43. Exports accounted for *** percent of the Romanian industry's shipments in 1992, and *** percent of its shipments in 1999. See e.g., CR/PR at Table CTL-IV-42.

⁵⁷³ See e.g., CR/PR at Table CTL-IV-43.

⁵⁷⁴ See e.g., CR/PR at Tables CTL-IV-9, CTL-IV-37, and CTL-IV-58.

⁵⁷⁵ See e.g., CR/PR at Table CTL-IV-14.

including *** of Romania's CTL plate exports.⁵⁷⁶ The record demonstrates that other subject countries also concentrated the majority of their plate production on carbon structural steel plate, thus revealing an important competitive overlap in the type of plate produced and shipped by most subject countries.

Unlike other subject countries, Romania ***. But in 2005, Mittal Steel Co., NV was formed as the result of a merger between Ispat International and LMN Holdings. Due to the merger, Mittal Steel Co., NV now owns Mittal Steel Galati, while maintaining significant CTL plate production assets in the United States through its subsidiary, Mittal Steel USA.⁵⁷⁷ Following this merger, Romania's shipments of subject merchandise to the U.S. market declined substantially, and Mittal Steel Galati reported only minimal exports of subject plate to the U.S. market in interim 2006.⁵⁷⁸ Since the formation of Mittal Steel Co., NV, the Romanian CTL plate industry has focused on non-U.S. markets, specifically ***. This is consistent with other countries subject to these orders, particularly Belgium, Finland, Germany, Poland, Spain, Sweden, Taiwan, and the United Kingdom.

Romania's pending membership in the European Union is another important similarity to other subject countries that are also EU members. Romania was scheduled to become a member of the EU on January 1, 2007, and the Treaty of Accession for Romania has been ratified by a great majority of EU Member States since April 2005.⁵⁷⁹ Upon its accession to the EU, Romania will be able to compete throughout the relatively high-priced EU CTL plate market without being subject to customs duties.⁵⁸⁰ Romania's ability to ship product throughout the EU without these duties increases the attractiveness of that market to the Romanian industry.

In light of the above factors, we find that subject imports from Romania and other subject countries are likely to compete under similar conditions of competition in the U.S. market upon revocation, and we exercise our discretion to cumulate Romania with the other subject countries under review.

E. Conclusion

With respect to all eleven subject countries, we find that the no discernible adverse impact exception to cumulation does not apply and that there would likely be a reasonable overlap of competition between subject imports from each country and the domestic like product as well as among subject imports from each country. We further find that the record in these reviews does not indicate that there are likely to be any significant differences in conditions of competition between subject CTL plate imports from any of the eleven subject countries. Accordingly, for the reasons discussed above, we exercise our discretion to cumulate subject imports from all eleven subject countries (Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom).

⁵⁷⁶ See e.g., CR/PR at Table CTL-IV-45.

⁵⁷⁷ See e.g., CR/PR at Table CTL-III-1; CR at CTL-III-6 to CTL-III-7; PR at CTL-III-5.

⁵⁷⁸ See e.g., CR/PR at Table CTL-IV-43.

⁵⁷⁹ See e.g., "EU Accessions Bill", BBC News; (Jan. 27, 2006), cited at CR at CTL-IV-114 n.199; PR at CTL-IV-47 n.199.

⁵⁸⁰ See e.g., "The Customs Policy of the European Union" at http://ec.europa.eu/publications/booklets/move/19/txt_en.htm, retrieved on Sept. 22, 2006, cited at CR at CTL-IV-114 n.198; PR at CTL-IV-47 n.198.

VI. CORROSION-RESISTANT STEEL

A. Domestic Like Product

1. In General

We applied the domestic like product legal standards discussed in section III above.

Commerce in its reviews defined the scope of merchandise covered by the orders on corrosion-resistant steel as:

Flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. Included in these orders are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been “worked after rolling”)—for example, products which have been beveled or rounded at the edges.^{581 582}

The scope in these reviews varies slightly from the scope in the original determinations. As a result of a 1998 scope ruling, Commerce included steel coils in thicknesses of 0.8 mm and a width of 2,000 mm, electrolytically coated with zinc, within the scope of the order.⁵⁸³ There also have been several scope rulings with respect to the subject merchandise from Germany and Japan which resulted in minor variations from the scope language of the orders on Germany and Japan from the other subject countries.⁵⁸⁴ In general, however, the scope of Commerce’s reviews of the orders on Germany and Japan is essentially the same as the scope of its reviews with respect to Australia, Canada, France, and Korea.

Corrosion-resistant steel is steel sheet that has been coated or plated with a corrosion- or heat-resistant metal coating to prevent corrosion and thereby extend the service life of products produced from the steel. It is used in the manufacture of automobiles and trucks, in appliances, industrial equipment,

⁵⁸¹ Commerce excluded from these reviews “flat rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (‘terne plate’), or both chromium and chromium oxides (‘tin-free steel’), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating; clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice in thickness; and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.” CR at CORE-I-15, PR at CORE-I-14.

⁵⁸² The subject merchandise is imported under the following HTS numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. CR at CORE-I-16, PR at CORE-I-15.

⁵⁸³ CR at CORE-I-15, PR at CORE-I-14, n.16. Annealed nickel plate is also within Commerce’s scope, based on a 2005 ruling. CR at CORE-I-15, PR at CORE-I-14, n.16.

⁵⁸⁴ See generally CR/PR at App. E.

agricultural equipment, and in many construction applications. The two widely used processes for manufacturing corrosion-resistant steel are the hot-dip process and the electrolytic process.⁵⁸⁵

In its 1993 determination on corrosion-resistant steel, the Commission found two separate like products, corrosion-resistant steel and clad steel plate, a specialized corrosion-resistant steel product engineered to achieve specific performance requirements. The Commission made a negative determination with respect to clad steel plate.⁵⁸⁶

2. Whether to Expand the Domestic Like Product to Include Micro-alloys

No party has argued that the Commission should determine that various forms of corrosion-resistant steel constitute separate domestic like products. While U.S. Steel indicated at the hearing that it favored the inclusion of micro-alloy corrosion-resistant steel in the domestic like product,⁵⁸⁷ it did not address the issue in its briefs. Mittal USA stated that the inclusion of micro-alloy was not an issue in these second reviews in that it supported the definition of the like product from the first reviews, which did not include micro-alloy product.⁵⁸⁸ Nucor stated in its posthearing brief that it did not object to defining the domestic like product consistent with the scope, as the Commission did in the first reviews.⁵⁸⁹

With respect to micro-alloy product, only two domestic producers produce any micro-alloy corrosion-resistant steel, U.S. Steel and Nucor.⁵⁹⁰ *** was able to provide separate data to the Commission on its production and shipments of micro-alloy corrosion-resistant steel.⁵⁹¹ The data show minuscule levels of micro-alloy corrosion-resistant steel production – only *** short tons for the period January 2005 through June 2006.⁵⁹² Thus, inclusion or exclusion of micro-alloy steel in the domestic like product definition will produce almost no change in the data we considered.⁵⁹³

In the first reviews, the Commission considered the micro-alloy issue but did not expand the like product to include micro-alloy.⁵⁹⁴ We reach the same conclusion in these reviews.

In terms of the factors generally considered by the Commission in analyzing like product issues, micro-alloy corrosion-resistant steel has limited interchangeability with non-alloy corrosion-resistant steel. Micro-alloy product generally has higher levels of alloying elements in the steel and is also stronger and tougher. Thus it has somewhat different uses. It is made in the same production facilities,

⁵⁸⁵ CR at CORE-I-17-18, PR at CORE-I-15-16. In the hot-dip process, steel sheet is passed through a bath of molten zinc or aluminum. In the electrolytic process, steel sheet is passed through a series of electrolytic cells and zinc or other metal is electrolytically plated onto the surface of the steel. Both processes start with cold-rolled steel sheet.

⁵⁸⁶ Certain Flat-rolled Carbon Steel Products from Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Inv. Nos. 701-TA-319-322, 334, 336-342, 344, and 347-353 and 731-TA-573-579, 581-592, 594-597, 599-609 and 612-619 (Final), USITC Pub. 2664 (Aug. 1993) at 1-5.

⁵⁸⁷ Tr. at 260-261 (Hecht).

⁵⁸⁸ Mittal USA's Prehearing Brief at 7.

⁵⁸⁹ Nucor/SDI's Posthearing Brief, Answers to Commissioners' Questions at 27.

⁵⁹⁰ CR at CORE-I-22, PR at CORE-I-18-19.

⁵⁹¹ CR at CORE-III-8, PR at CORE-III-5, n.18 and CR/PR at Tables CORE-III-4, C-7, and C-8.

⁵⁹² CR/PR at Table CORE-III-4.

⁵⁹³ Compare CR/PR at Table C-7 with Table C-8.

⁵⁹⁴ Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom (Review), Inv. Nos. AA1921-197, 701-TA-231, 319-320, 322, 325-328, 340, 342, 348-350, and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, 614-618, USITC Pub. 3364 (Nov. 2000) at 6-7.

using the same employees and processes, as non-alloy product, but only by two out of 23 U.S. producers of corrosion-resistant steel. Its price may vary because of its different physical characteristics and uses. Certain importers and purchasers described micro-alloy product as higher quality and preferred for certain end uses. The two products tend to move in similar channels of distribution.⁵⁹⁵

An additional consideration is that there are other forms of corrosion-resistant steel, both alloy and non-alloy, produced in greater quantities than micro-alloy corrosion-resistant steel, that are likewise not included in the scope.⁵⁹⁶ The record does not indicate that the similarities between domestically produced micro-alloy and in-scope non-alloy corrosion-resistant steel warrant expansion of the like product definition to include the micro-alloy product but not other types of out-of-scope product.

Accordingly, we define the domestic like product as consistent with Commerce's scope definition for corrosion-resistant steel and do not expand the like product to include micro-alloy corrosion-resistant steel.⁵⁹⁷

B. Domestic Industry

1. In General

We applied the domestic industry legal standards discussed in section III above.

In light of our domestic like product finding, we determine that there is one domestic industry consisting of all domestic producers of corrosion-resistant steel as defined in Commerce's scope determination.⁵⁹⁸

2. Related Parties

We applied the related party legal standards discussed in section III above.

The only issue that arises in this second sunset review with respect to the Commission's definition of the domestic industry is whether any producers should be excluded under the related parties provision, 19 U.S.C. § 1677(4)(B). The domestic interested parties view the domestic industry as encompassing all domestic producers of corrosion-resistant steel, and no party advocated the exclusion of any domestic producer as a related party.

Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject

⁵⁹⁵ See generally, CR at CORE I-19-23, PR at CORE-I-16-19.

⁵⁹⁶ CR/PR at Table CORE-III-4.

⁵⁹⁷ Chairman Pearson and Commissioners Hillman and Okun conclude, based on the record evidence, that the appropriate domestic like product for corrosion-resistant steel does not include micro-alloy product, notwithstanding their finding, discussed above, that the appropriate domestic like product for cut-to-length plate does include micro-alloy product. Cut-to-length plate is produced from micro-alloy steel in large and growing volumes by many of the same mills that produce non-alloy steel plate. On balance, such plate is part of a product line continuum that is sold through the same channels of distribution for many of the same applications as non-alloy plate, generally with no more than moderate price premiums as a result of additional alloying elements. Corrosion-resistant micro-alloy steel, in contrast, is produced by a very limited number of mills in very small volumes, suggesting specialty status. Record evidence indicates as well that customers perceive corrosion-resistant micro-alloy steel to be distinct from corrosion-resistant steel produced from a non-alloy substrate. Accordingly, they do not expand the domestic like product for corrosion-resistant steel to include micro-alloy steel.

⁵⁹⁸ We note that the aggregate industry data compiled by the Commission include data for several toll producers. CR/PR at CORE-III-1, n.1. However, because the information provided by ***, a toll producer, was not entirely comparable with the other industry data, its data are included only in CR/PR at Tables C-9 and C-10. CR/PR at CORE-III-I, n.1.

merchandise, or which are themselves importers.⁵⁹⁹ The Commission has also concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer or foreign producer or exporter, may nonetheless be deemed a related party if it controls large volumes of imports.⁶⁰⁰

In the original 1993 investigations of corrosion-resistant steel, the Commission did not exclude any U.S. producer of corrosion-resistant steel under the related parties provision.⁶⁰¹ Likewise, in the first reviews of corrosion-resistant steel, no party argued for the exclusion of any related parties from the domestic industry, and the Commission found that appropriate circumstances did not exist to exclude any related parties, given the related parties' investments in U.S. facilities since the orders were imposed, the significant share of U.S. production they represented, and the absence of any indication that their domestic operations were shielded from the effects of subject imports.⁶⁰²

In these reviews, a number of U.S. producers are affiliated with subject country producers of corrosion-resistant steel, or import or purchase subject imports.⁶⁰³ In addition to these affiliations with

⁵⁹⁹ 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 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993).

⁶⁰⁰ The Commission has found such control to exist where the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial. See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (September 2001) at 8-9.

⁶⁰¹ According to the Commission, a substantial percentage of domestic producers had "some financial relationship with foreign steel companies, either through equity ownership or joint ventures, and to a much lesser extent through importation of subject products." However, the Commission observed that exclusion of these companies, and in particular any of the petitioning parties, would skew the domestic industry's data because they made up a substantial portion of the industry. Furthermore, the Commission pointed out that the fact that most of the "related parties" were actively seeking to impose antidumping or countervailing duties on the very parties with which they were affiliated undercut any argument that they were somehow "shielded" from injury from the dumped imports. Finally, given the sporadic and low level of importation by the domestic industry, the Commission found that the interests of all the domestic producers were primarily in domestic production rather than importation. Consequently, the Commission found that there was an insufficient basis to exclude any of the related domestic producers from the corrosion-resistant industry. USITC Pub. 2664 at 97-99.

⁶⁰² USITC Pub. 3364 at 14.

⁶⁰³ *AK-ISG Steel Coating*, *Double G Coatings*, and *I/N Kote* are all owned in part by *Mittal Steel USA*, whose parent company, *Mittal Steel N.V.*, recently announced plans to merge with *Arcelor*, which has subsidiaries that produce corrosion-resistant steel in Canada, France, and Germany. CR/PR at Table CORE-I-12. The merger is scheduled to be completed in the first half of 2007. CR at CORE-III-5, PR at CORE-III-4. *I/N Kote* is also owned in part by Japanese producer *Nippon Steel*. Both *Apollo* and *Thomas Steel* have a sister company, *Hille & Mueller USA*, which imports subject product, and a sister company in Germany, *Hille & Mueller*, that produces corrosion-resistant steel. *Canfield* has a sister company, *OMG*, that imports subject product. *CSI* is related to *JFE Steel*, which produces subject product in Japan and exports it to the United States. *Pro-Tec* is 50 percent owned by *Kobe Steel*, which produces subject product in Japan. *USS-POSCO* is 50 percent owned by *POSCO California*, which is an indirect wholly owned subsidiary of *Pohang Iron and Steel Co., Ltd.* ("POSCO"), which produces subject product in Korea; the other 50 percent owner of *USS-POSCO* is *Pitcal*, a direct wholly owned subsidiary of *U.S. Steel*, a U.S. producer. *Wheeling-Nisshin* is partly owned by *Nisshin* (Japan), which produces subject product in Japan and

(continued...)

subject country producers and importers of corrosion-resistant steel, two U.S. producers imported subject product during the review period.⁶⁰⁴ The quantity of imports during the period, however, was a relatively small proportion of these firms' U.S. production of corrosion-resistant steel.⁶⁰⁵

The only U.S. producers to fall within the related parties provision that *** continuation of the orders are ***, with respect to ***.⁶⁰⁶ These producers, however, represent a very small percentage of U.S. production. Moreover, 19 of the 23 U.S. producers providing information to the Commission, including all the related parties, reported capital expenditures during the period, indicating a commitment to their U.S. production, with no firm accounting for the majority of capital expenditures. Total capital expenditures by U.S. producers with related-party affiliations exceeded \$250 million in 2005.⁶⁰⁷ The financial condition of these U.S. producers does not indicate that any of them are shielded from the effects of subject imports.⁶⁰⁸ The related parties account for a significant share of U.S. production -- more than *** of U.S. corrosion-resistant steel production in 2005.⁶⁰⁹ No party has argued for the exclusion of any related parties from the domestic corrosion-resistant steel industry.

Based on these facts, we find that appropriate circumstances do not exist to exclude any of the related parties from the corrosion-resistant steel industry.

C. Cumulation⁶¹⁰

1. Framework and Parties' Arguments

We applied the cumulation legal standards discussed in section III above. The threshold criterion for cumulation in these reviews is satisfied because all of the reviews of corrosion-resistant steel were initiated on the same day.

We consider three issues in deciding whether to cumulate the subject imports: (1) whether imports from any of the subject countries are precluded from cumulation because they are likely to have no discernible adverse impact on the domestic industry; (2) whether imports of corrosion-resistant steel from the subject countries are likely to compete with each other and with the domestic like product according to the traditional four-factor test; and (3) other considerations, such as similarities and differences in the conditions of competition of the subject countries with regard to their participation in

⁶⁰³ (...continued)

exports it to the United States, and by *WPS*, a U.S. producer. CR/PR at Table CORE-I-12.

⁶⁰⁴ CR/PR at Tables CORE-I-14, III-7.

⁶⁰⁵ *** imports were less than *** percent of its production in the one year, 2003, it imported subject product, and it reportedly imported to complete an obligation ***. ***'s imports represented *** percent of its production in 2002, but were not above *** percent of its production during the rest of the period, and this producer represented only *** percent of U.S. production in 2005. CR/PR at Table CORE-I-12.

⁶⁰⁶ CR/PR at Table CORE-I-13.

⁶⁰⁷ U.S. Producers' Questionnaire Responses; CR at CORE-III-24, PR at CORE-III-15, CR/PR at Table CORE-III-12.

⁶⁰⁸ CR/PR at Table CORE-III-10.

⁶⁰⁹ CR/PR at Table CORE-I-12.

⁶¹⁰ Commissioner Koplán and Commissioner Lane do not join the remainder of this opinion. For their views, see Separate and Dissenting Views of Commissioner Stephen Koplán and Commissioner Charlotte R. Lane with respect to Certain Carbon Corrosion-Resistant Steel.

the U.S. market.^{611 612} In so doing, we take into account the various arguments by the parties in favor of and against cumulation. Our focus in a five-year review investigation is not merely on present conditions of competition, but also on likely conditions of competition in the reasonably foreseeable future.

The domestic interested parties argue that all subject imports of corrosion-resistant steel should be cumulated. They argue that the likelihood of “no discernible adverse impact” is a limited exception to cumulation that is not satisfied in this case for any subject country.⁶¹³ They claim that it is likely that subject imports from each country will exhibit a reasonable overlap of competition with imports from other subject countries and with domestically produced corrosion-resistant steel.⁶¹⁴ Finally, U.S. producers argue that there are no significant differences in conditions of competition among the subject countries that would not warrant the Commission exercising its discretion to cumulate any of them.⁶¹⁵

⁶¹¹ See Allegheny Ludlum Corp. and AK Steel Corp. v. United States, Slip Op. 06-188 (Ct. Int’l Trade, Dec. 22, 2006).

⁶¹² Chairman Pearson and Commissioner Okun note that while they consider the same issues discussed in this section in determining whether to exercise their discretion to cumulate the subject imports, their analytical framework begins with whether imports from the subject countries are likely to face similar conditions of competition. For those subject imports which are likely to compete under similar conditions of competition, they next proceed to consider whether those imports are likely to compete with each other and with the domestic like product. Finally, if based on that analysis they intend to exercise their discretion to cumulate one or more subject countries, they analyze whether they are precluded from cumulating such imports because the imports from one or more subject countries, assessed individually, are likely to have no discernible adverse impact on the domestic industry. See Additional and Dissenting Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun, found in Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Second Review), USITC Pub. 3895 (Dec. 2006).

They join Vice Chairman Aranoff and Commissioner Hillman’s discussion of the issues in this section, and reach the same conclusion. That is, Chairman Pearson and Commissioner Okun determine that certain factors indicate that subject imports from Canada will likely compete under different conditions of competition than other subject imports and, therefore, they do not exercise their discretion to cumulate subject imports from Canada for purposes of their analysis of likely volume, likely price effects, and likely injury. They also determine that (1) many of the likely conditions of competition faced by subject imports from Germany and Korea are similar; (2) subject imports from these countries are likely to compete with each other and with the domestic like product in the event of revocation; and (3) subject imports from these countries assessed individually, are not likely to have no discernible adverse impact on the domestic industry in the event of revocation. Therefore, they exercise their discretion to cumulate subject imports from Germany and Korea. Finally, Chairman Pearson and Commissioner Okun determine that (1) many of the likely conditions of competition faced by subject imports from Australia, France, and Japan are similar; (2) subject imports from these countries are likely to compete with each other and with the domestic like product in the event of revocation; and (3) subject imports from these countries assessed individually, are not likely to have no discernible adverse impact on the domestic industry in the event of revocation. Therefore, they exercise their discretion to cumulate subject imports from Australia, France, and Japan.

⁶¹³ Given the pre-order levels of subject imports, sufficient excess capacity in each of the subject countries, their export-orientation, and the level of imports into the United States during the review period from certain countries, particularly *** and ***, they urge the Commission to find that the exception does not apply to any country. U.S. Steel’s Prehearing Brief at 13-45.

⁶¹⁴ U.S. Steel’s Prehearing Brief at 46-51. They note that producers, importers and purchasers reported that imports from each country were “always” or “frequently” interchangeable with each other and the domestic like product, with similar channels of distribution and presence in the market.

⁶¹⁵ U.S. Steel’s Prehearing Brief at 52-53 (All six countries have large corrosion-resistant steel industries. Producers in all countries are export-oriented and make steel that can be used in the most demanding applications. All six countries have excess capacity, make products that are sold on the basis of price, and will be impacted by changing conditions in China. With the exception of ***, all subject country producers have U.S. affiliates and such relationships could enhance their ability to penetrate the U.S. market.).

Corrosion-resistant steel producers in each subject country, except Korea,⁶¹⁶ argue that their country's imports should not be cumulated with those from the other subject countries on the following bases: Australia, no discernible adverse impact;⁶¹⁷ Canada, different conditions of competition;⁶¹⁸ France, no discernible adverse impact, lack of overlap of competition, and differences in conditions of competition, based mainly on the Arcelor-Mittal relationship;⁶¹⁹ Germany, no discernible adverse impact;⁶²⁰ and Japan, no discernible adverse impact and different conditions of competition.⁶²¹

Because we have not determined that subject imports from any country would be likely to have no discernible adverse impact on the U.S. industry, and that there is a reasonable overlap in competition among imports from all six countries and the U.S. industry, we have discretion to cumulate imports. We have determined that certain factors, discussed below, indicate that subject imports from Canada will likely compete under different conditions of competition and, therefore, we do not exercise our discretion to cumulate subject imports from Canada for purposes of our injury analysis. We determine that many of the conditions of competition faced by subject imports from Germany and Korea are similar. Therefore, we exercise our discretion to cumulate subject imports from Germany and Korea. We determine that many of the conditions of competition faced by subject imports from Australia, France, and Japan are similar. Therefore, we exercise our discretion to cumulate subject imports from Australia, France, and Japan. Finally, we find that the likely conditions of competition faced by subject imports from Germany and Korea will differ from the likely conditions of competition faced by subject imports from Australia, France, and Japan, and therefore we do not exercise our discretion to cumulate these groups of countries.

2. Likelihood of No Discernible Adverse Impact

We consider all relevant factors in analyzing “no discernible adverse impact” in these reviews. Based on the record, we do not find that subject imports from Australia, France, Germany, Japan, or Korea are likely to have no discernible adverse impact in the event of revocation. Because we decline to cumulate subject imports from Canada with those from any other subject countries on the basis of differences in likely conditions of competition, we find it unnecessary to decide the issue of no discernible adverse impact with respect to Canada.⁶²²

⁶¹⁶ The Korean respondents do not present specific arguments as to why subject imports from Korea should not be cumulated. They argue instead that, due to changes in the overall conditions of competition, all of the orders should be revoked. Korean Respondents' Prehearing Brief at 1.

⁶¹⁷ Australian Respondents' Posthearing Brief at 10.

⁶¹⁸ Canadian Respondents' Posthearing Brief at 1-8, Answers to Commissioners' Questions at 31-41.

⁶¹⁹ French Respondents' Posthearing Brief at 8-10.

⁶²⁰ German Respondents' Posthearing Brief at 5-9.

⁶²¹ Japanese Respondents' Posthearing Brief at 15.

⁶²² Cf. Top-of-the-Stove Stainless Steel Cooking Ware from Korea, INV Nos. 701-TA-267 and 731-TA-304 (Review) (Remand), USITC Pub. 3485 (Jan. 2002) at 5 (declining to address criterion of no discernible adverse impact in the absence of evidence of a reasonable overlap of competition).

In the first reviews, the Commission found that there was no likelihood of no discernible adverse impact in the event of revocation with respect to imports from all the subject countries, based on: their continuing presence in the U.S. market, indicating subject producers had the contacts and distribution channels necessary to compete; excess capacity; and the considerable resources devoted to export markets. USITC Pub. 3364 at 47.

On remand with respect to Canada, France, and Germany, the Commission cited factors similar to those it considers in analyzing likelihood of material injury, but noting that the threshold for finding likelihood of a discernible or “noticeable” adverse impact is lower than the threshold for finding likelihood of material injury, or of a “significant” adverse impact if the order is revoked. USITC Pub. 3539 at 21-22; USITC Pub. 3753 at 3. The

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Australia: The information on the record indicates that the corrosion-resistant steel industry in Australia has significant production capacity and has increased its capacity since the original investigation period. The Australian producer's excess capacity was *** short tons in 2005, and its capacity for January-June 2006 was *** short tons, as compared to *** short tons for January-June 2005.⁶²³ There were some imports into the U.S. market from Australia during the review period, although at minimal levels, reaching a high during the current period of 297 short tons in 2003 and dropping to 16 short tons in 2005.⁶²⁴

France: Similarly, producers in France have significant production capacity and have increased their capacity since the original investigation, from *** short tons in 1992 to *** short tons in 2005.⁶²⁵ The French producers' excess capacity was *** short tons in 2005, and their capacity for January-June 2006 was *** short tons, as compared to *** short tons for January-June 2005.⁶²⁶ Even with the orders in place, subject imports from France were present in the U.S. market, although at a declining rate. Subject imports from France were at their highest level during the instant review period in 2002, at 15,753 short tons, and were 1,778 short tons in 2005.⁶²⁷

Germany: German producers report increased capacity and production, from *** short tons of capacity in 1992 to *** short tons in 2005, and from *** short tons of production in 1992 to *** short tons in 2005. While capacity utilization in 2005, at *** percent, was above that of the original investigation period, it had dropped from *** percent in 1999 during the first review period.⁶²⁸ German producers' excess capacity was *** short tons in 2005, which was equivalent to almost *** percent of apparent U.S. consumption and U.S. production in that year.⁶²⁹

⁶²² (...continued)

factors considered on remand for each of the subject countries included: production capacity and unused capacity relative to U.S. production and apparent consumption, available inventories, export reliance, substitutability of the subject imports with U.S. product, underselling in the original investigation, ability to product shift, and trade patterns during the original investigations. USITC Pub. 3539 at 27-28, 32. The Commission's findings on remand of no likelihood of no discernible adverse impact and of a likelihood of continuation or recurrence of material injury with respect to all three countries were upheld.

⁶²³ CR/PR at Table CORE-IV-12. The Australian industry's capacity increased from *** short tons in 1992 to *** short tons in 2005.

⁶²⁴ CR/PR at Table CORE-I-1. There was some underselling by subject imports from Australia in the original investigation, although no price comparisons were reported during either review period. Subject imports from Australia *** the domestic product in *** out of *** comparisons of sales to manufacturers and end users and *** the domestic product in *** out of *** purchaser price comparisons reported by distributors and service centers during the original investigation. Original Confidential Staff Report at Tables 110-112.

⁶²⁵ CR/PR at Table CORE-IV-27.

⁶²⁶ CR/PR at Table CORE-IV-29.

⁶²⁷ CR/PR at Table CORE-I-1. There were no price comparisons for subject imports from France in either review, but some underselling in the original investigation. Subject imports from France *** the domestic product in *** of *** comparisons of sales to distributors and service centers and *** the domestic product in *** of *** comparisons of sales to manufacturers and end users and in *** out of *** purchaser price comparisons reported by manufacturers and end users in the original investigation. Original Confidential Staff Report at Tables 110-112.

⁶²⁸ CR/PR at Table CORE-IV-36.

⁶²⁹ CR/PR at Tables C-7, CORE-IV-38. We acknowledge that German producers reported *** capacity utilization in January to June 2006 and that this indicates a limited ability to increase exports via greater production. The German industry, however, reported *** in every other full-year and partial-year period since 2000, as well as some significant year-to-year fluctuations. As recently as 2005 German producers reported nearly *** short tons of available capacity. Given these facts, we do not conclude that the German industry will lack any available capacity in the foreseeable future based on the experience of a single partial year.

Imports from Germany to the United States of corrosion-resistant steel were 189,192 short tons in 1992.⁶³⁰ While subject imports from Germany were lower during this review period, they increased by 63.5 percent from 2000 to 2005, from 46,453 short tons in 2000 to 75,941 short tons in 2005.⁶³¹

The German industry is export-oriented. Exports accounted for over *** percent of German shipments during each year since 2000. Although most exports remained in Europe, *** percent of its shipments in 2005 (over *** tons) were directed to overseas markets, including the United States.⁶³²

As discussed below, producers accounting for the vast majority of German production lack any production affiliate in the United States. These unaffiliated producers are ThyssenKrupp, the *** German producer and exporter to the United States, and the *** German producers, Salzgitter and Corus, which together represent *** percent of German production.⁶³³ ThyssenKrupp has an established customer base in the United States and owns a large U.S. service center chain.⁶³⁴ Thus, ThyssenKrupp has the need to supply corrosion-resistant steel to its customers in the United States and it has the logistical means to do so.⁶³⁵

ThyssenKrupp, however, has yet to establish a production facility in North America, and, as we discuss below, we cannot determine that it is more likely than not that ThyssenKrupp will acquire such a facility in the reasonably foreseeable future. Even if ThyssenKrupp were to construct a U.S. facility, this would take some years. In the meantime, ThyssenKrupp will need to supply its U.S. customers with imports from Germany so that it can maintain and likely build its customer base to support such a facility.⁶³⁶

Japan: Japanese producers also reported significant production capacity and increased capacity since the original investigation. The Japanese industry's capacity increased from *** short tons in 1992 to *** short tons in 2005.⁶³⁷ The Japanese producers' excess capacity was *** short tons in 2005, and their capacity for January-June 2006 was *** short tons, as compared to *** short tons for January-June

⁶³⁰ CR/PR at Table CORE-I-1.

⁶³¹ CR/PR at Table C-7.

⁶³² CR/PR at Table CORE-IV-38. German respondent interested parties argue that demand in their home market and the EU is sufficiently strong that they would not have an incentive to ship product to the United States. They point out that over *** percent of their shipments are to the German market or other EU markets. German Respondents' Posthearing Brief at 3. We note below that prices for corrosion-resistant steel in EU markets have not been sufficiently below U.S. prices so as to create a price incentive to shift sales to the U.S. market. However, prices in certain Asian markets have typically been lower than U.S. prices, as has the "EU export" price. CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006). Thus, there would appear to be some price incentive for German producers to direct to the United States sales currently made to markets outside the EU. The record also reflects that exports from Germany to markets outside the European Union increased in 2005, much of which was to the United States.

⁶³³ CR/PR at Table CORE-IV-35.

⁶³⁴ Tr. at 521 (Gruenhagen); Tr. at 264 (Gant); CR at CORE-IV-53, PR at CORE-IV-20.

⁶³⁵ The U.S. service center firm owned by ThyssenKrupp is TKSS. Corrosion-resistant steel is among the products distributed by TKSS. TKSS presents one ready avenue for subject imports from ThyssenKrupp or other producers in Germany to reach the U.S. market. German respondents claim that this is not likely because TKSS currently handles very little imported product, and because the sales of ThyssenKrupp Germany have been to auto-related end-users and not service centers. German Respondents' Posthearing Brief at 8-9. The fact that TKSS does not currently distribute much imported product with the orders in place does not diminish its availability as a channel for imports if the orders were revoked.

⁶³⁶ With respect to pricing, in both the original investigation and current reviews, subject imports from Germany mostly *** the domestic product. Original Confidential Staff Report at Tables 110-112; CR/PR at Table CORE-V-17. Notwithstanding the ***, we find that the likely volume of subject imports from Germany would be sufficient to have a noticeable impact on the domestic industry.

⁶³⁷ CR/PR at Table CORE-IV-45.

2005.⁶³⁸ Subject imports from Japan were present in the U.S. market during the review period, ranging from a high of 27,543 short tons in 2000 to a low of 16,762 short tons in 2005.⁶³⁹

Korea. Imports from Korea to the United States of corrosion-resistant steel were 193,513 short tons in 1992.⁶⁴⁰ Despite the discipline imposed by the orders, Korea's subject imports to the United States increased substantially during the review period, reaching a high of 330,858 short tons in 2005, or 1.5 percent of apparent U.S. consumption.⁶⁴¹ Korean producers, representing *** percent of corrosion-resistant steel capacity in Korea, reported steady increases in their capacity, from 3.1 million short tons in 1992 to 8.4 million short tons in 2005, and in their production, from 2.9 million short tons in 1992 to 7.3 million short tons in 2005, but a drop in capacity utilization to 87.0 percent in 2005, from 93.8 percent in 1992.⁶⁴² Korean producers' excess capacity was 1.1 million short tons in 2005.⁶⁴³

In addition to current substantial volumes of imports from Korea despite the orders, Korean producers exported 28.8 percent of their total shipments in 2005 to countries other than the United States, amounting to 2.1 million short tons of corrosion-resistant steel.⁶⁴⁴ Of these exports, Korean producers exported approximately 900,000 short tons to markets outside Asia, indicating a willingness to seek out markets that are distant from Korea.⁶⁴⁵

In sum, with respect to Australia, France, Germany, Japan, and Korea, the information on the record indicates that the corrosion-resistant steel industry in each of these subject countries has significant production capacity and has increased its capacity since the original investigation period. Producers in each of the subject countries have unused capacity. Producers in each country have maintained at least some level of exports to the U.S. market during the review period, and undersold U.S. producers at times during the original investigation period, and, in some cases, during the review period as well. Finally, corrosion-resistant steel from domestic producers and the subject countries is generally substitutable.⁶⁴⁶ Accordingly, we do not conclude that the subject imports from Australia, France, Germany, Japan, or Korea would not have a discernible or noticeable adverse impact on the U.S. market if the orders were

⁶³⁸ CR/PR at Table CORE-IV-47.

⁶³⁹ CR/PR at Table CORE-I-1. The Commission's pricing data in this review show underselling by Japanese product in 5 out of 20 comparisons and overselling in the remaining 15 comparisons. CR/PR at Table CORE-V-17. In the original investigation, subject imports from Japan *** the domestic product in *** of *** comparisons of sales to manufacturers and end users, in *** of *** comparisons of sales to distributors and service centers, and in *** of *** purchaser price comparisons reported by manufacturers and end users. Original Confidential Staff Report at Tables 110-112.

⁶⁴⁰ CR/PR at Table CORE-I-1.

⁶⁴¹ CR/PR at Table CORE-I-1.

⁶⁴² CR/PR at Table CORE-IV-54.

⁶⁴³ The Korean industry also produces non-subject product on the same equipment, including *** short tons of micro-alloy corrosion-resistant steel, *** percent of which was exported to the United States in 2005. Korean producers, however, did not indicate how readily equipment used to produce non-subject product could be modified to produce subject merchandise.

⁶⁴⁴ CR/PR at Table CORE-IV-56.

⁶⁴⁵ With respect to U.S. prices of imports from Korea, in the original investigation, subject imports from Korea *** the domestic product in *** of *** comparisons of sales to manufacturers and end users, in *** of *** comparisons of sales to distributors and service centers, and in *** of *** purchaser price comparisons reported by distributors and service centers. Original Confidential Staff Report at Tables 110-111, 113. The Korean product undersold the U.S. product in 13 of 53 comparisons during the current review period, with the orders in place. CR/PR at Table CORE-V-17.

⁶⁴⁶ CR at CORE-II-20, PR at CORE-II-13; CR at CORE-II-30, PR at CORE-II-23; CR at CORE-II-21, PR at CORE-II-14.

lifted. We, therefore, are not precluded from exercising our discretion to cumulate subject imports from any of these countries.

3. Likelihood of a Reasonable Overlap of Competition

Because we have not found that the “no discernible adverse impact” exception to cumulation applies to any of the subject countries, we next consider the issue of likely reasonable overlap of competition.⁶⁴⁷ The Commission generally has considered whether subject imports compete with each other and with the domestic like product with reference to four factors: 1) fungibility; 2) sales or offers in the same geographic markets; 3) common or similar channels of distribution; and 4) simultaneous presence.⁶⁴⁸ In five-year reviews, the relevant inquiry is whether there likely would be a reasonable overlap of competition even if none currently exists because the subject imports are absent from the U.S. market.

In the original investigations and in the first reviews, the majority of the Commission cumulated subject imports from all subject countries, based on a reasonable overlap of competition.⁶⁴⁹

In these reviews, the record indicates that domestically produced and imported corrosion-resistant steel are fungible products. Subject imports and the domestic product share the same essential chemical and physical properties, and there is a moderate to high degree of substitution between them.⁶⁵⁰ Generally, producers, importers and purchasers reported that corrosion-resistant steel from the United States and from other countries is always or frequently interchangeable.⁶⁵¹ Twenty-nine of 35 responding purchasers indicated that imported and domestically produced corrosion-resistant steel are generally used in the same applications, as long as the steel conforms to the purchaser’s specifications or the supplier has been approved.⁶⁵²

In addition, the types of corrosion-resistant steel that the subject producers either exported to the United States or produced during the review period reveal a sufficient degree of fungibility among the subject imports and with the domestic product.⁶⁵³ For example, while *** exported minimal quantities to the United States and produces only hot-dip corrosion-resistant steel, all the other subject countries produce and in some cases exported to the United States during the review period significant quantities of hot-dip product. In addition, while Canadian respondents argued that imports from Canada are focused on specialty automotive products to a much greater extent than other subject imports,⁶⁵⁴ the record shows a reasonable overlap. All the subject countries produce corrosion-resistant steel for exposed automotive applications, and there is sufficient overlap in the other types of corrosion-resistant steel they produce, as

⁶⁴⁷ Chairman Pearson and Commissioner Okun examine the likelihood of a reasonable overlap of competition only after first determining whether subject imports are likely to face similar conditions of competition. Because they determine that certain factors indicate that subject imports from Canada will likely compete under different conditions of competition than other subject imports, they do not include subject imports from Canada in their analysis of the likelihood of a reasonable overlap of competition.

⁶⁴⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988); Mukand Ltd. v. United States, 937 F. Supp. 910, 915 (Ct. Int’l Trade 1996)).

⁶⁴⁹ USITC Pub. 2664 at 173; USITC Pub. 3364 at 47-48.

⁶⁵⁰ CR at CORE-II-20, PR at CORE-II-13.

⁶⁵¹ CR at CORE-II-30, PR at CORE-II-23.

⁶⁵² CR at CORE-II-21, PR at CORE-II-14.

⁶⁵³ CR/PR at Tables CORE-IV-4-6, IV-11, IV-13-16, IV-19, IV-21-24, IV-28, IV-30-33, IV-37, IV-39-42, IV-46, IV-48-51, IV-55, IV-57-60.

⁶⁵⁴ Canadian Respondents’ Posthearing Brief, Answers to Commissioners’ Questions at 38.

well as export to the United States.⁶⁵⁵ While ***'s production of corrosion-resistant steel for automotive applications is a relatively *** percentage of its total production, it shipped significant quantities for non-automotive applications during the review period (2005), as did all the subject countries: Australia, *** short tons; Canada, *** short tons; France, *** short tons; Germany, *** short tons; Japan, *** short tons; and Korea, *** short tons. Similarly, while the Japanese producers assert a focus on high-value specialty products,⁶⁵⁶ the record shows they produce a full-range of corrosion-resistant products.⁶⁵⁷

The record also indicates that there is sufficient overlap in the channels of distribution for domestic and imported corrosion-resistant steel. U.S. producers and importers ship corrosion-resistant steel to automotive, construction, and other end users, as well as to distributors and service centers, although in different proportions.⁶⁵⁸

With respect to simultaneous presence, imports from each of the subject countries have been present in the U.S. market during at least some portion of the review period.⁶⁵⁹ The record also indicates that, despite low levels of imports from some of the subject countries during the review period, subject imports and the domestic product are sold in the same geographic markets.⁶⁶⁰ In addition, the record shows that U.S. producers and importers, on the whole, reported nationwide sales of corrosion-resistant steel.⁶⁶¹

On balance, we find that there will likely be a reasonable overlap of competition between subject imports from each country and the domestic like product as well as among subject imports from each country should the orders be revoked.

4. Other Considerations

In addition to the issues of no discernible adverse impact and reasonable overlap of competition, we also consider whether other factors, such as likely differing conditions of competition for the subject imports, likely differences in price or volume trends, or transnational ownership of facilities producing the subject product, warrant us not exercising our discretion to cumulate subject imports from certain countries.

In the first reviews of corrosion-resistant steel, the Commission took into account other significant conditions of competition likely to prevail if the orders were revoked but found that the subject imports from each country would compete in the U.S. market under similar conditions of competition and exercised its discretion to cumulate the subject imports from all six countries.⁶⁶²

In this review, we have determined that certain factors, discussed below, indicate that subject imports from Canada will likely compete under significantly different conditions of competition and, therefore, we do not exercise our discretion to cumulate subject imports from Canada for purposes of our injury analysis. We determine that many of the conditions of competition faced by subject imports from Germany and Korea are similar. Therefore, we exercise our discretion to cumulate subject imports from Germany and Korea. We determine that many of the conditions of competition faced by subject imports from Australia, France, and Japan are similar. Therefore, we exercise our discretion to cumulate subject

⁶⁵⁵ CR/PR at Tables CORE-IV-4-6, IV-11, IV-13-16, IV-19, IV-21-24, IV-28, IV-30-33, IV-37, IV-39-42, IV-46, IV-48-51, IV-55, IV-57-60.

⁶⁵⁶ Japanese Respondents' Prehearing Brief at 90.

⁶⁵⁷ CR/PR at Tables CORE-IV-46, IV-48-51.

⁶⁵⁸ CR/PR at Table CORE-II-1.

⁶⁵⁹ CR/PR at Table CORE-IV-8.

⁶⁶⁰ CR/PR at Table CORE-IV-7.

⁶⁶¹ CR/PR at Table CORE-II-2.

⁶⁶² USITC Pub. 3364 at 48.

imports from Australia, France and Japan. Finally, we find that the likely conditions of competition faced by subject imports from Germany and Korea will differ from the likely conditions of competition faced by subject imports from Australia, France and Japan, and therefore we do not exercise our discretion to cumulate these groups of countries.

Canada: The following factors indicate significant differences in the conditions of competition as pertains to Canadian producers as compared to producers in the other subject countries.

Approximately *** percent of exports to the United States from Canada by Dofasco (the *** exporter) over the review period were to the automotive sector.⁶⁶³ That sector dominated the U.S. market, accounting for 47.6 percent of U.S. market shipments in 2005.⁶⁶⁴ Auto producers and auto parts suppliers perceive the United States and Canada as a unified market for production and sourcing decisions, while they view other subject producers as “offshore.”⁶⁶⁵ North American mills, including those located in Canada, are significantly better positioned than the other subject country producers to economically satisfy the just-in-time delivery requirements of the auto and auto parts companies.⁶⁶⁶ Thus, with or without the order in place, U.S. auto companies have economic incentives to continue to purchase the majority of their corrosion-resistant requirements from North American mills. Automakers are also sensitive to rules of origin under the North American Free Trade Agreement, which provide for preferential tariff treatment for goods that meet North American content requirements.⁶⁶⁷

In part due to these connections in the auto market, Canada is a net importer of corrosion-resistant steel, both globally and especially with regard to the United States. While imports of corrosion-resistant steel from Canada to the United States rose during the review period, exports of corrosion-resistant steel from the United States to Canada increased by a greater amount. In 2005, for example, U.S. producers exported 592,578 short tons of corrosion-resistant steel to Canada, up from 382,305 short tons in 2004, while exports from Canada to the United States in 2005 were *** short tons, up from *** short tons in 2004. In each year of the review period except 2003, U.S. exports to Canada exceeded exports from Canada to the United States.⁶⁶⁸ The fact that Canada is a net importer of corrosion-resistant steel demonstrates that the market for corrosion-resistant steel in Canada is healthy, and attractive to both Canadian and U.S. steel producers, and the two-way nature of the market further corroborates Canadian respondents’ arguments that auto makers operate as if there is an integrated North American auto market.⁶⁶⁹

⁶⁶³ CR at CORE-IV-28-29, PR at CORE-IV-13.

⁶⁶⁴ CR/PR at Table CORE-II-3, as revised by Memorandum INV-DD-164 (Dec. 13, 2006).

⁶⁶⁵ Canadian Respondents’ Posthearing Brief at 2; Auto Producers’ Prehearing Brief at 48-50; Tr. at 163-164 (Scherrbaum), 266(DiMicco), 274-278, 386 (Malashevich). We note that our recognition of this perception of major purchasers is limited to auto producers and does not necessarily apply to other products or sectors, which accounted for *** percent of U.S. shipments of subject Canadian steel in 2005. CR/PR at Table CORE-IV-4.

⁶⁶⁶ The majority of subject imports from Canada are shipped to auto producer customers. Canadian Respondents’ Posthearing Brief at 2-5. We note that ***. Because Toyota is opening a new factory at Ontario, near Dofasco’s mill, Dofasco’s business plan calls for a ***. CR at CORE-IV-29, PR at CORE-IV-13.

⁶⁶⁷ CR at CORE-IV-105, PR at CORE-IV-39. For the United States, the rules for determining NAFTA eligibility are set forth in the HTS in general note 12(t); the pertinent rule is that for the tariff classification of the imported good. Third-country content in the good must change tariff classification in the prescribed manner, and any other requirements of the particular rule and GN 12 must be met.

⁶⁶⁸ CR at CORE-III-11, PR at CORE-III-9, CR/PR at Table CORE-IV-20. Exports from the United States to Canada and Mexico were between 88 and 98 percent of U.S. exports during the review period, with exports to Canada the dominant share. For example, in 2005, U.S. exports to Canada were 592,578 short tons; to Mexico, 276,911 shorts tons; and to all others, 40,981 short tons. CR at CORE-III-11, PR at CORE-III-9.

⁶⁶⁹ Canadian Respondents’ Prehearing Brief at 2.

Unlike the other subject imports, which either decreased after the orders were imposed or, in the case of Korea, increased dramatically, imports from Canada have maintained a steady presence in the U.S. market despite the orders.⁶⁷⁰ Dofasco, which represents *** percent of Canadian production and is the *** Canadian exporter to the United States, increased its exports to the United States during the review period. We find, however, that these imports were not due to price competition with U.S. suppliers, but instead resulted from several factors: ***.⁶⁷¹

Moreover, imports from Canada during the review period were focused on specialty automotive products to a much greater extent than other subject imports – *i.e.*, *** percent of imports from Canada were for critical exposed automotive applications, as opposed to *** such imports from Australia, France, and Japan, *** percent of imports from Korea, and *** percent of imports from Germany.⁶⁷² In addition, unlike all the other subject countries, Canadian producers do not export to China and would not be vulnerable to any potential loss of China as an export market due to any build-up in Chinese capacity.

We have considered the domestic producers' arguments that subject imports from Canada should be cumulated. They reject the Canadian producers' assertion that their exports do not really compete with U.S. product because their exports are determined by the production and sourcing decisions of their customers.⁶⁷³ They note that, at the hearing, Dofasco testified it was in competition with a U.S. supplier for an existing OEM contract. They assert that the experience of U.S. exports in the Canadian market has no bearing on the Commission's analysis here and further note that, despite claims that Canadian producer Stelco is focused exclusively on the Canadian market, recent public statements by its CEO indicate otherwise.⁶⁷⁴

These arguments do not themselves establish that Canada does not face conditions of competition different than those under which imports from the other subject countries are likely to compete in the U.S. market. The way in which shipments from Canada compete in the U.S. market distinguishes them from other subject imports, as described above. Although we recognize that there is and will be some price competition between Canadian and U.S. producers, Canadian producers do not compete for sales in much of the market, and their dedicated sales into the auto segment are generally based more on demand for a specific auto part than on price.

On balance, we find that the conditions of competition with respect to Canada are sufficiently different so as to provide a reasonable basis for us not to exercise our discretion to cumulate subject imports from Canada with those from the other subject countries.

Korea and Germany: We find similarities in the conditions of competition in the U.S. market with respect to Korea and Germany such that it is appropriate to cumulate subject imports from these countries with each other, but not with subject imports from Australia, France, and Japan.

Unlike imports from Australia, France, and Japan, corrosion-resistant steel from Korea and Germany had an increasing presence in the U.S. market over the review period. Subject imports from Korea increased by 30.5 percent, from 253,528 short tons in 2000 to 330,858 short tons in 2005, while subject imports from Germany increased by 63.5 percent from 2000 to 2005, from 46,453 short tons in 2000 to 75,941 short tons in 2005. This is in sharp contrast to subject imports from Australia, France, and Japan which decreased, respectively, by 92.6 percent, 50.7 percent, and 39.1 percent, from 2000 to 2005.⁶⁷⁵

⁶⁷⁰ CR/PR at Table CORE-I-1.

⁶⁷¹ CR at CORE-IV-29, PR at CORE-IV-13.

⁶⁷² CR/PR at Table CORE-IV-4.

⁶⁷³ Nucor/SDI's Posthearing Brief at 10-13.

⁶⁷⁴ Nucor/SDI's Posthearing Brief at 10-13.

⁶⁷⁵ CR/PR at Table C-7.

Subject imports from Korea rose to a substantially higher level at the end of the review period than at any point during the original or first review periods, reaching a high of 330,858 short tons in 2005, as compared to their highest level during the original investigation of 193,513 short tons.⁶⁷⁶ Subject imports from Germany were higher in 2005, at 75,941 short tons, than at any time during the first or second review periods, although they were lower with the order in place than they were during the original investigations.⁶⁷⁷

In addition to their exports to the United States, Korean producers and German producers have both evidenced a strong interest in exporting to the North American market generally, confirming the attractiveness of the North American region to these producers. Korea's exports to Canada and Mexico fluctuated, and increased overall from *** short tons in 2000 to *** short tons in 2005.⁶⁷⁸ Germany's exports to Canada and Mexico during the period also fluctuated at significant levels, and increased overall from *** short tons in 2000 to *** short tons in 2005.⁶⁷⁹

German producers' interest in the North American market is also evident in the level of their exports to the United States of micro-alloy corrosion-resistant steel. German micro-alloy exports to the United States were *** during the entire review period (*** short tons in 2005), which further suggests an interest by German producers in having a substantial presence in the U.S. market.⁶⁸⁰ Although Korea's micro-alloy exports to the United States were ***, they steadily increased from 2003 to 2005, and were higher in interim 2006 than in interim 2005.

Although the Korean and German industries have demonstrated a strong interest in the U.S. market, neither has a sufficient presence to supply the U.S. market from within the United States or elsewhere in North America. Korean producer POSCO has 50 percent ownership of U.S. producer USS-POSCO. While POSCO and its related Korean producer Pohang Coated Steel Co., Ltd. ("POCOS") represent a substantial share of Korean production (**% percent in 2005),⁶⁸¹ USS-POSCO represented only *** percent of 2005 production in the United States.⁶⁸² Moreover, the presence of USS-POSCO has not stopped POSCO from shipping appreciable quantities of subject product to the U.S. market.⁶⁸³ ThyssenKrupp, representing *** percent of German production and *** German exports of subject corrosion-resistant steel to the United States since 2000,⁶⁸⁴ does not have a U.S. production affiliate.⁶⁸⁵ Nor do German producers Salzgitter and Corus, which together account for *** percent of German

⁶⁷⁶ CR/PR at Table CORE-I-1.

⁶⁷⁷ CR/PR at Table CORE-I-1.

⁶⁷⁸ CR at CORE IV-81, PR at CORE-IV-29.

⁶⁷⁹ CR at CORE-IV-54, PR at CORE-IV-20.

⁶⁸⁰ CR/PR at Table CORE-IV-43. The presence in the U.S. market of non-subject German micro-alloy steel shows that an economic incentive exists in shipping to the U.S. market, as well as the existence of established marketing channels.

⁶⁸¹ CR/PR at Table CORE-IV-53.

⁶⁸² CR/PR at Table CORE-I-12.

⁶⁸³ POSCO's Questionnaire Response at 9 (exports to the United States of *** tons in 2005). USS-POSCO's net sales in 2005 were *** short tons. CR/PR at Table CORE-III-10.

⁶⁸⁴ Thyssen's share of exports of subject merchandise to the United States was *** percent in 2000, *** in 2001, *** percent in 2002, *** percent in 2003, *** percent in 2004, *** percent in 2005, *** percent in January to June 2005, and *** percent in January to June 2006. Arcelor Germany and Salzgitter ***. Corus **. German Producers' Questionnaire Responses at II-18a, II-18b.

⁶⁸⁵ As noted below, we do not believe we can determine that ThyssenKrupp's efforts to obtain production facilities in North America are likely in the reasonably foreseeable future.

production.⁶⁸⁶ Arcelor Germany, which will soon be affiliated with a U.S. producer (Mittal Steel USA), represents only *** percent of German production.⁶⁸⁷

Thus, for Korea and Germany, the affiliations of their producers with U.S. producers represent either a relatively small share of U.S. production (in the case of Korea) or a relatively small share of foreign industry production (in the case of Germany). This is in direct contrast with the French and Japanese producers, for which producers accounting for the vast majority of production of corrosion-resistant steel are affiliated with major U.S. producers of corrosion-resistant steel. Arcelor in France, which also will soon be affiliated with Mittal Steel USA, accounts for *** percent of French corrosion-resistant production.⁶⁸⁸ Its U.S. affiliate Mittal Steel USA accounted for *** percent of U.S. production in 2005.⁶⁸⁹ Five Japanese producers representing *** percent of Japanese production are related to U.S. producers of corrosion-resistant steel.⁶⁹⁰ Collectively these U.S. producers related to Japanese producers accounted for *** percent of domestic production in 2005,⁶⁹¹ not counting the production of I/N Kote.⁶⁹²

These distinctions are important because they show that, notwithstanding any interest French and Japanese producers may have in the U.S. market, they will likely exercise it largely through their U.S. affiliates.⁶⁹³ The Korean and German producers, by contrast, have an interest, as indicated by the level of their exports of both subject and non-subject corrosion-resistant steel to the United States and to North America generally, but lack a significant presence through transnational affiliations. While POSCO has indicated plans to construct a production facility in Mexico, such a facility would not be completed until 2009.⁶⁹⁴ Similarly, while ThyssenKrupp has indicated an interest in establishing a production facility in North America, by purchasing the assets of Dofasco in Canada, or constructing or acquiring a production facility in the United States,⁶⁹⁵ the record does not indicate that it is more likely than not that this will happen in the reasonably foreseeable future.⁶⁹⁶

⁶⁸⁶ CR/PR at Table CORE-IV-35.

⁶⁸⁷ CR at CORE-IV-46, PR at CORE-IV-18, CR/PR at Table CORE-IV-35.

⁶⁸⁸ CR/PR at Table CORE-IV-26.

⁶⁸⁹ CR/PR at Table CORE-I-12.

⁶⁹⁰ CR at CORE-IV-59, PR at CORE-IV-21-22, CR/PR at Table CORE-IV-44. JFE is affiliated with U.S. producer CSI; Kobe, with U.S. producer Pro-Tec; Nippon and Nittetsu, with U.S. producer I/N Kote; and Nisshin, with U.S. producer Wheeling-Nisshin.

⁶⁹¹ CR/PR at Table CORE-I-12.

⁶⁹² I/N Kote's production was reported in part in the questionnaire response of Mittal, which owns I/N Kote together with Nippon Steel.

⁶⁹³ While the Australian producer has no U.S. affiliates that produce corrosion-resistant steel, no record evidence demonstrates that Australia has an interest in the U.S. market.

⁶⁹⁴ CR at CORE-IV-74-75, PR at CORE-IV-26, n.134.

⁶⁹⁵ CR at CORE-III-7, CORE-IV-24, n.28, PR at CORE-III-5, CORE-IV-12, n.28.

⁶⁹⁶ Representatives from ThyssenKrupp testified that as a global player, it has to supply its customers, some of which have moved to North America. Thus, ThyssenKrupp has a strategy to be present in the NAFTA market. Tr. at 521 (Gruenhagen). While ThyssenKrupp has indicated an interest in establishing a production facility in North America, by purchasing the assets of Dofasco in Canada, or constructing or acquiring a production facility in the United States (CR at CORE-III-7, CORE-IV-24, n.28, PR at CORE-III-5, CORE-IV-12, n.28), it testified that this is "a period of uncertainty." Tr. at 521 (Gruenhagen). The uncertainty lies in the fact that its ability to purchase Dofasco is outside of its control in the regulatory process. The U.S. Department of Justice has required, as part of its antitrust review, that Arcelor-Mittal divest itself of Dofasco, or some other specified Mittal facility, and it is unknown at this time whether Dofasco will be sold or remain part of the Mittal group. CR at CORE-IV-24, PR at CORE-IV-12, n.28. Thus, we cannot determine that it is more likely than not that it will acquire Dofasco in the reasonably foreseeable future. Moreover, ThyssenKrupp's ability to either construct or acquire a production facility

(continued...)

An additional point that distinguishes producers in Korea, and to a lesser extent Germany, from producers in the other subject countries is their level of shipments outside their own geographic region. Exports from Korea to destinations outside Asia (such as to the European Union, United States, and other markets) were nearly 900,000 tons in 2005, accounting for 12.4 percent of total Korean industry shipments in 2005.⁶⁹⁷ Similarly, during the review period, German producers shipped significant quantities of corrosion-resistant steel outside their geographic region (the European Union), representing *** percent of the German industry's total shipments in 2005.⁶⁹⁸ This is in contrast to producers in Australia, France, and Japan, whose extra-region shipments accounted for less than *** percent of their total industry shipments in 2005.⁶⁹⁹ These differences indicate a greater willingness of Korean producers, and to a lesser extent German producers, to ship corrosion-resistant steel products to overseas markets, including the United States, as compared to producers in Australia, France, and Japan.

We recognize that there are some important differences in the conditions of competition pertinent to Korea and Germany. For example, the German industry is more heavily focused on production for automotive uses (*** percent of total production in 2005) as compared to the Korean industry (*** percent of total production in 2005).⁷⁰⁰ Despite some differences, we find that the similarities outlined above indicate that cumulation of subject imports from Korea and Germany is warranted, but that imports from these two countries should be considered separately from imports from Australia, France, and Japan.

Australia, France, Japan: Unlike the subject industries in Korea and Germany, subject producers in Australia, France, and Japan have demonstrated a lack of interest in supplying the U.S. market to any significant degree. Indeed, subject imports from these three countries have dropped to very low levels since the original investigation period.⁷⁰¹ Rather, the industries in all three countries are focused to a significant extent on markets in their respective regions, including their home markets.⁷⁰² With respect to Australia, a large percentage of its shipments have been to its home market, reaching *** percent in 2005. The next largest destination generally has been to Asia.⁷⁰³ With respect to Japan, a large percentage of its shipments consistently have been to its home market, roughly *** percent throughout the period of review. Likewise, the next largest destination consistently has been to Asia, remaining above *** percent for several years.⁷⁰⁴ With respect to France, the largest percentage of its shipments consistently have been to either its home market or used for internal consumption/transfers, roughly *** percent. The next

⁶⁹⁶ (...continued)

in the United States is even more distant than its ability to purchase Dofasco. Construction of a new facility takes years and any planning appears to be at a relatively early stage. In 2006 ThyssenKrupp began construction of a mill in Brazil with the announced intention that it would be a source of slabs for, among other things, its North American coated steel operations. This Brazilian mill would only be a factor once there was a ThyssenKrupp production facility in North America.

⁶⁹⁷ CR/PR at Table CORE-IV-56. In the first half of 2006, shipments by Korean producers outside the Asian region were *** short tons, markedly higher than in the first half of 2005, when they were *** short tons.

⁶⁹⁸ CR/PR at Table CORE-IV-38. German non-EU shipments were *** short tons in 2005, which was higher than in 2004 (*** short tons), even though German producers' total exports were higher in 2004 than in 2005. German producers shipped approximately *** short tons to export markets outside Europe in first-half 2006. CR/PR at Table CORE-IV-38.

⁶⁹⁹ We note that, while the proportion of Australia's shipments to China and other Asian markets decreased from 2000 through 2005, its shipments to its home market increased, from *** percent of total shipments in 2000 to *** percent of total shipments in 2005. CR/PR at Table CORE-IV-12.

⁷⁰⁰ CR/PR at Tables CORE-IV-39, CORE-IV-57.

⁷⁰¹ CR/PR at Table CORE-I-1.

⁷⁰² CR/PR at Tables CORE-IV-12, IV-29, IV-47.

⁷⁰³ CR/PR at Table CORE-IV-12. We recognize that these percentages have fluctuated over the period of review.

⁷⁰⁴ CR/PR at Table CORE-IV-47.

largest destination has been to the European Union, which has been the destination of more than *** percent of French shipments throughout the period of review.⁷⁰⁵

Importantly, as noted above, French and Japanese producers, accounting for the vast majority of production of corrosion-resistant steel in their respective countries, are affiliated with major U.S. producers of corrosion-resistant steel, thereby making it more likely that they would supply the U.S. market from their affiliates' U.S. production.

Thus, while we recognize that there are some differences in the conditions of competition for these three countries, for example with respect to the markets they primarily serve and the fact that the Australian industry does not have a production platform in the United States, we find that the similarities outweigh these differences. On balance, then, we do not find any distinctions that provide a sufficient basis for us not to exercise our discretion to cumulate subject imports from Australia, France, and Japan.

5. Conclusion

In conclusion, we do not find that the no discernible adverse impact exception to cumulation applies to any of the subject countries. In addition, the record indicates that there would likely be a reasonable overlap of competition between subject imports from each country and the domestic like product as well as among subject imports from each country, based on the traditional four factors – the fungibility of the product, the simultaneous presence and geographic overlap of subject imports and the domestic like product, at least during portions of the review period, and the existence of common channels of distribution. However, based on important differences with respect to other factors, we do not exercise our discretion to cumulate subject imports from Canada with those from any other country. Based on similar conditions of competition for imports from Korea and Germany, we exercise our discretion to cumulate imports from those two countries, but given their differences in conditions of competition with imports from Australia, France, and Japan, we do not cumulate Korean and German imports with those from Australia, France, and Japan. We do exercise our discretion to cumulate subject imports from Australia, France, and Japan, and consider them on a cumulated basis.

⁷⁰⁵ CR/PR at Table CORE-IV-29.

D. Likelihood of Continuation or Recurrence of Material Injury If the Antidumping Duty and Countervailing Duty Orders Are Revoked

1. In General

We applied the legal standards discussed in section III above.⁷⁰⁶ As a preliminary matter, for purposes of the reviews of these corrosion-resistant steel orders and based on the facts on this record, we have given significantly greater weight to developments likely to occur in the next two years than to those pertaining to later dates, although we cite other information as appropriate. No party argued for a different time period as constituting the “reasonably foreseeable” future.⁷⁰⁷

2. Conditions of Competition and the Business Cycle⁷⁰⁸

The statute directs the Commission to analyze the impact of subject imports on the domestic industry “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁰⁹

In the first five-year reviews, the Commission found that supply and demand conditions as well as the business cycle for corrosion-resistant steel had not changed significantly since the original investigations. The Commission noted the two processes for making corrosion-resistant steel, hot-dipping and electrolytic galvanizing, and observed that demand for corrosion-resistant steel depended on the level of demand in the principal end use markets, automotive and construction. It described demand for hot-dip corrosion-resistant steel as having grown significantly faster since the original investigations

⁷⁰⁶ Section 752(a)(6) of the act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the magnitude of dumping to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). In Commerce’s final five-year review determinations with respect to all subject countries, it assigned five-year review margins as follows: Australia, 24.96 percent; Canada, 11.71 to 22.70 percent; France, 29.41 percent; Germany, 10.02 percent; Japan, 36.41 percent; and Korea, 17.70 percent. CR/PR at Table CORE-I-7.

Although the statute does not expressly define the “magnitude of the net countervailable subsidy” to be used by the Commission in five-year reviews, it states that “[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated.” 19 U.S.C. § 1675a(b)(3). Commerce found likely subsidy rates as follows: France, 0.16 percent; and Korea, 1.15 percent. It revoked the countervailing duty order against corrosion-resistant steel from Germany. CR/PR at Table CORE-I-8.

In five-year reviews concerning countervailing duty orders the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(b)(6). In its final determinations, Commerce described the various subsidy programs as follows:

France. In its final determination in the review of the countervailing duty order, Commerce identified 9 programs which provided countervailable subsidies to French subject producers, none of which fell within the meaning of Article 3 the Subsidies Agreement.

Korea. In its final determination in the review of the countervailing duty order, Commerce identified 11 programs which provided countervailable subsidies to Korean subject producers, 5 of which were found to be export subsidies as described in Article 3 of the Subsidies Agreement. CR at OVERVIEW-16-17, PR at OVERVIEW-14, nn.41 and 42.

⁷⁰⁷ The German respondents urged the Commission to consider a period not to exceed 24 months. German Respondents’ Posthearing Brief at 2.

⁷⁰⁸ We applied the legal standards discussed in section III above.

⁷⁰⁹ 19 U.S.C. § 1675a(a)(4).

than demand for electrogalvanized product. It also found that apparent U.S. consumption had increased since the original investigations.

The Commission in the first reviews found subject imports and the domestic like product to be broadly interchangeable and price therefore an important factor in purchasing decisions. It further found that price competition had increased since the original investigations with the consolidation of purchasing power in the automobile industry, the reduced number of service centers, and the adoption and application of international standards. It found that pricing patterns had not changed significantly during the review periods, with many purchasers reporting that they changed suppliers only infrequently. Domestic producers reportedly sold their product both by contract and on the spot market and indicated that contracts gave them little protection given that purchasers requested price concessions when spot prices fell.

As in the original investigations, domestic producers dominated the U.S. market for corrosion-resistant steel during the first review period and had made significant investments since 1992 to add capacity and improve existing capacity. The Commission noted that corrosion-resistant steel production was technologically complex and capital intensive, with high fixed costs, requiring high capacity utilization rates for domestic producers to stay profitable. It further noted the affiliations of the major Japanese producers with U.S. producers.⁷¹⁰

We find the following conditions of competition relevant to our determinations in these reviews.

a. Demand

The demand for corrosion-resistant steel depends on the demand in its end-use sectors, primarily automotive manufacturing and construction, although it is also used in home appliances, HVAC components, and battery cans and components.⁷¹¹ There are different cycles for the different end user industries, and the evidence is mixed on whether there is a distinctive business cycle for corrosion-resistant steel, with the majority of importers and purchasers reporting that there is not a distinctive business cycle and the majority of producers reporting that there is one.⁷¹² Apparent U.S. consumption of corrosion-resistant steel showed some fluctuations from 2000 through 2005, but was higher in 2005, at 22.7 million short tons, as compared to 21.9 million short tons in 2000.⁷¹³ Apparent U.S. consumption has increased by two-thirds since 1992, the final year examined in the original investigations, when it was 13.6 million short tons.⁷¹⁴

In the United States, hot-dip galvanized demand appears to be increasing, while electrogalvanized demand may be declining, a trend that is continuing from the first reviews. The shift can be attributed to recent technological changes that have encouraged automakers to use the less costly hot-dip steel for exposed auto parts.⁷¹⁵ In the United States, electrogalvanized corrosion-resistant steel goes almost exclusively to automotive end users, who also receive about 40 percent of shipments of hot-dip corrosion-resistant steel. Overall, the automotive sector accounts for 47.6 percent of corrosion-resistant steel shipments to the U.S. market.⁷¹⁶ The growth in U.S. demand for hot-dip corrosion-resistant steel is reflected in the fact that all the capacity increases by the domestic industry over the review period were

⁷¹⁰ USITC Pub. 3364 at 49-51.

⁷¹¹ CR at CORE-II-15, PR at CORE-II-10.

⁷¹² CR at CORE-II-17, PR at CORE-II-12.

⁷¹³ CR at CORE-II-13, PR at CORE-II-9.

⁷¹⁴ CR/PR at Table CORE-I-1.

⁷¹⁵ CR at CORE-II-6, III-4-6, PR at CORE-II-5, III-3-5.

⁷¹⁶ CR/PR at Table CORE-II-3.

for hot-dip steel.⁷¹⁷ U.S. producers' hot-dip capacity grew from 19.1 million short tons in 2000 to 20.1 million short tons in 2005, whereas electrogalvanized capacity decreased from 4.4 million short tons to 3.4 million short tons, and other capacity also decreased from 2.9 million short tons to 2.7 million short tons over the same period.⁷¹⁸

U.S. demand has been robust through the first half of 2006, and demand growth is expected to continue for the reasonably foreseeable future, albeit at a slower rate. While demand in the residential construction sector showed signs of weakening at the end of the period and into 2007, which may reduce demand for HVAC components and appliances, non-residential construction is expected to remain strong into 2007 and is an increasingly more important market for corrosion-resistant steel producers than residential construction as appliance production in the United States declines.⁷¹⁹ North American auto production, which has been high over the review period by historical standards, is expected to decline somewhat in 2006, based on announced cuts in auto production by GM, Ford, and DaimlerChrysler, but is expected to recover in 2007 and grow at a slow rate through 2008, although heavy truck production is expected to decline in 2007.⁷²⁰ Production in 2005 by Japanese transplant auto producers increased, 12.6 percent; production by German transplant companies increased by 1.4 percent; and a Korean manufacturer began U.S. production. North American vehicle production by Honda, Nissan, and Toyota is projected to increase for the foreseeable future.⁷²¹

The cost share of corrosion-resistant steel varies greatly by end-use. In autos and light trucks it is 1.4 to 5 percent of the total cost of the vehicle, but in individual vehicle parts it can be 50 to 85 percent, and an even higher percentage in certain construction components such as steel decks and roofs.⁷²² While some domestic producers argue that a shift in demand from SUVs and light trucks to smaller passenger cars will result in less corrosion-resistant steel per car, even if auto demand does not decline, the record evidence on this issue is mixed. Some smaller cars and mid-sized SUV/CUVs use proportionately more corrosion-resistant steel because of their unibody construction rather than a hot-rolled truck frame.⁷²³

Demand for corrosion-resistant steel outside the United States increased during the review period. Producers, importers, and purchasers attributed this increase in global demand to such factors as rapidly increasing demand in China and other industrializing countries in Asia, Latin America, and Eastern Europe; global economic growth; and increased auto production and construction activity worldwide.⁷²⁴ Forecasts by *** predict a significant increase in global vehicle production in the foreseeable future, driven by developing countries such as China, India, and Brazil. Dofasco reported that Canadian auto production will increase through 2008 and that its shipments to the Canadian non-residential construction industry are expected to increase.⁷²⁵ Worldwide consumption of coated steel sheet increased by *** percent between 2000 and 2005, paced by substantial growth in consumption in East and Southeast Asia, and despite more modest growth in Europe and North America. Global consumption of coated steel sheet

⁷¹⁷ CR/PR at Table CORE-III-3. We discuss additions to capacity by the domestic industry in more detail in our discussion of supply conditions.

⁷¹⁸ CR/PR at Table CORE-III-3.

⁷¹⁹ CR at CORE-II-14, PR at CORE-II-9-10, n.24.

⁷²⁰ CR at CORE-II-13-15, PR at CORE-II-9-10.

⁷²¹ Joint Respondents' Prehearing Brief at 13; Auto Producers' Posthearing Brief, Appendix at 8, 11.

⁷²² CR at CORE-II-19, PR at CORE-II-13.

⁷²³ Tr. at 479-481 (Cover); Canadian Respondents' Posthearing Brief, Answers to Commissioners' Questions at 44.

⁷²⁴ CR at CORE-II-19, PR at CORE-II-13.

⁷²⁵ CR at CORE-II-19, PR at CORE-II-13, n.32.

is forecast to continue to grow in the reasonably foreseeable future, with the growth relatively evenly distributed in all major markets.⁷²⁶

b. Supply

The review period was a time of significant consolidation and restructuring by U.S. producers, a process that was facilitated in part by global safeguards on a variety of steel products, including corrosion-resistant steel, from March 20, 2002, through December 4, 2003.⁷²⁷ The domestic industry, after experiencing bankruptcies from 2000 to 2002, underwent consolidation between 2003 and 2006. ISG acquired all of LTV's assets in 2002, the assets of Bethlehem Steel in 2003, and Weirton Steel's assets in 2004. In 2003, U.S. Steel bought the steel-making assets of National Steel. In 2004, Severstal purchased the assets of Rouge Steel. In 2005, Mittal acquired ISG, including corrosion-resistant production facilities previously owned by LTV Steel, Bethlehem Steel, Weirton Steel, and Ispat Inland.⁷²⁸ In June 2006, Mittal Steel USA's parent company, Mittal Steel N.V., announced a merger with Arcelor. Once this merger closes in the first half of 2007, it will form the world's largest steel producer with steelmaking facilities located in regions around the world.⁷²⁹ In 2005, the top four domestic mills, Mittal Steel USA, U.S. Steel, AK Steel, and Nucor, accounted for *** percent of U.S. corrosion-resistant steel production,⁷³⁰ as compared to *** percent in 1999.⁷³¹

During the process of consolidation and restructuring, domestic producers renegotiated labor contracts, shed more than \$7.5 billion in legacy costs, reduced their fixed costs, and increased their productivity. Fixed costs, approximated in our data as the ratio of "other factory costs" to net sales, decreased from 41.4 percent in 2000 to 28.0 percent in 2005.⁷³² Productivity increased by 66.1 percent over the period.⁷³³ Thus, while corrosion-resistant steel production is still capital intensive, the domestic industry, as a result of the consolidations and restructuring, has lowered its fixed costs and is better able to control output and production and maintain price levels in response to changing business cycles than it was during the original investigations and first reviews.

With substantial growth in apparent U.S. consumption since the period examined in the original investigations, domestic producers' share of apparent consumption by quantity has risen slightly and was in the range of 87-93 percent during this review period, as compared to 83-86 percent during the original investigation period.⁷³⁴

⁷²⁶ CR at CORE-IV-88, PR at CORE-IV-32, CR/PR at Tables CORE-IV-66, IV-67.

⁷²⁷ The safeguard tariff was 30 percent *ad valorem* for the first year of relief and 24 percent *ad valorem* starting on March 20, 2003. CR at OVERVIEW-12-15, PR at OVERVIEW-11.

⁷²⁸ CR/PR at Tables CORE-I-12, III-1.

⁷²⁹ CR at CORE-IV-36, PR at CORE-IV-16; French Respondents' Posthearing Brief at 2-3.

⁷³⁰ CR/PR at Table CORE-I-12.

⁷³¹ Joint Respondents' Prehearing Brief at 3.

⁷³² CR/PR at Table CORE-III-9. Much of the reduction in fixed costs as a percentage of total costs was due to the substantial rise in raw material and energy costs. However, unit fixed costs also declined markedly, from \$228 per ton in 2000 to \$200 in 2005. The unit fixed costs were even lower in 2003, 2004, and interim 2006. If inflation were factored in, the decline of unit fixed costs would have been even greater in real terms. CR/PR at Table CORE-III-9.

⁷³³ CR/PR at Table C-7.

⁷³⁴ CR/PR at Table CORE-I-1.

While the domestic industry's overall capacity remained relatively steady during the review period, it did increase its capacity to produce hot-dip product, in response to growing demand.⁷³⁵ Capacity utilization fluctuated over the period, reflecting closures and start-ups. While the industry had excess capacity for both hot-dip and electrogalvanized product, its capacity utilization rate was generally higher for hot-dip production, particularly in the latter part of the period. Hot-dip capacity utilization was at 80.2 percent in 2005 and 86.9 percent in interim 2006, as compared to 74.8 percent in 2005 and 73.4 percent in interim 2006 for electrogalvanized capacity utilization.⁷³⁶

In addition, the domestic industry invested in new facilities during the period and plans to add 1.9 million net tons of corrosion-resistant capacity by 2008. The industry's capital expenditures jumped to \$428 million in 2005, from \$295 million in 2000, with capital expenditures totaling \$1.65 billion through June 2006; research and development expenses increased to \$34 million in 2005, from \$16 million in 2000, and were \$217.7 million through June 2006.⁷³⁷ SeverCorr will start production in 2007 of a new \$880 million facility started in 2005, which will produce 400,000 tons of hot-dip galvanized and galvanized corrosion-resistant steel, along with non-corrosion-resistant steel products. Nucor plans to add 500,000 short tons of hot-dip galvanized capacity in 2006. Mittal plans to bring on line 700,000 tons of hot-dip galvanizing capability in 2006-07 and will shut down about 410,000 tons of other hot-dip and aluminizing capacity. Winner opened a new third hot-dip galvanizing line in interim 2006 for auto and appliance markets.⁷³⁸ CSN was a new entrant during the review period, with *** short tons of capacity in 2001.⁷³⁹ USS-POSCO ***, and Steelscape moved its idled California plant to Louisiana where it was scheduled to be restarted.⁷⁴⁰

U.S. producers sell slightly more than a third of their production directly to automotive end users. They sell about 25 percent directly to construction end users and just under 10 percent directly to other end users, such as appliance manufacturers, and the remaining 30 percent to service centers and distributors.⁷⁴¹ Automotive producers report that they purchase only minimal quantities from service centers, for irregular, small-volume orders of non-standard products.⁷⁴² Most domestic producers do not produce other products on the same equipment or with the same employees.⁷⁴³ Those that do produce micro-alloy and alloy or stainless steel report these other products to be higher margin, but much lower volume.⁷⁴⁴

The vast majority of corrosion-resistant steel sold by both domestic producers and importers is made to order. Twelve of 17 responding producers reported selling at least 95 percent of their corrosion-resistant steel produced to order and 18 of 20 responding importers reported selling 75 percent of their

⁷³⁵ CR/PR at Table C-7.

⁷³⁶ CR/PR at Table CORE-III-3.

⁷³⁷ CR/PR at Table CORE-III-12.

⁷³⁸ In the hot-dip process, as noted earlier, steel sheet is passed through a bath of molten zinc or aluminum, whereas in the electrolytic process, steel sheet is passed through a series of electrolytic cells and zinc or other metal is electrolytically plated onto the surface of the steel. CR at CORE-I-18, PR at CORE-I-16.

⁷³⁹ CSN's Questionnaire Response.

⁷⁴⁰ Also, Thyssen, a German producer, has publicly announced that it is considering either establishing a greenfield plant in the United States, or entering into a joint venture with, or acquiring production facilities from, a U.S. producer, which we see as additional evidence that producers view U.S. capacity as a good investment. As noted above, however, we do not find it more likely than not that a Thyssen facility in the United States will be established within the reasonably foreseeable future. CR at CORE-III-5-7, PR at CORE-III-4-5.

⁷⁴¹ CR/PR at Table CORE-II-1.

⁷⁴² Auto Producers' Posthearing Brief, Appendix at 80-81.

⁷⁴³ CR at CORE-III-7, PR at CORE-III-5.

⁷⁴⁴ CR at CORE-I-22, PR at CORE-I-18-19.

corrosion-resistant steel produced to order.⁷⁴⁵ Moreover, some product being held in inventory, whether by producers, importers, or service centers, may already be committed to a specific customer, particularly in the automotive sector.⁷⁴⁶ Because service centers are always trying to gauge whether prices are likely to rise or fall and plan their purchases accordingly, the market is characterized by periodic inventory corrections that last a few months as service centers stop buying from mills and prices decline temporarily until restocking resumes.⁷⁴⁷ After a correction in 2005, service center inventories began rising again.⁷⁴⁸ By the end of the review period, service center inventories were relatively high, suggesting another correction may be imminent.⁷⁴⁹

The parties disagree about the degree to which there have been supply shortages in the U.S. market during the period of review. The domestic producers maintain that in 2004 their ability to supply corrosion-resistant steel may have been constrained to some extent by raw material shortages but that there is currently no short supply. In addition, they assert that some shortages alleged by purchasers were not real shortages but resulted from consumers wanting quantities in excess of contract volumes at low contract prices, or from automakers switching product grades on very short notice.⁷⁵⁰ Excess domestic capacity, they say, is incompatible with assertions of supply shortages.⁷⁵¹ By contrast, respondents maintain that during the review period domestic supply was extremely tight and U.S. producers were not able to supply additional quantities requested by their customers, including certain required quantities and grades, making imports a necessary part of the market. They noted the questionnaire responses from producers and importers that had refused or been unable to supply corrosion-resistant steel at certain times since 2000.⁷⁵² Purchasers reported periodic shortages during the review period, mostly in 2004 and early 2005, when demand and prices peaked, but continuing in 2006.⁷⁵³

The record provides support for these characterizations of supply shortages. Eleven of 17 producers responding to the Commission's questionnaires and eight of 26 responding importers reported that they had refused orders or been unable to supply corrosion-resistant steel at certain times since 2000.⁷⁵⁴ The reported shortages were in the form of allocations, controlled order entries, and the unwillingness of some domestic mills to supply quantities above those specified in their contracts, all of which forced some purchasers into the spot market. Some of the shortage can be attributed to unplanned outages at certain domestic facilities and labor unrest at AK Steel in 2006.⁷⁵⁵ The record also indicates, however, that domestic producers during the period of review abandoned their prior practice of selling over-contract volumes to automotive customers at contract prices, because they could obtain higher prices in the spot market. While automotive customers described the phenomenon as a type of shortage or allocation, we do not view that as an entirely accurate description. Rather, it appears as if automotive

⁷⁴⁵ CR at CORE-II-29, PR at CORE-II-21.

⁷⁴⁶ German Respondents' Posthearing Brief at 7; Japanese Respondents' Posthearing Brief at 13; Tr. at 229-230 (Goodish), 258-259 (Goodish), 329-330 (Bates).

⁷⁴⁷ Tr. at 187 (Goodish), 213-214 (Platz), 246 (Goodish).

⁷⁴⁸ CR/PR at Figure CORE-III-1. Service center inventory data, however, are for all steel sheet and are not limited to corrosion-resistant product.

⁷⁴⁹ Tr. at 213-214 (Platz).

⁷⁵⁰ U.S. Steel's Posthearing Brief at 4-8.

⁷⁵¹ U.S. Steel's Posthearing Brief at 3-4.

⁷⁵² Joint Respondents' Prehearing Brief at 18-21. For example, auto producers reported that there were shortages on committed tons of corrosion-resistant steel and for additional tons at contract prices. *** stated that it increased spot market purchases due to shortages from U.S. suppliers. CR at CORE-II-5, PR at CORE-II-4, n.7.

⁷⁵³ CR at CORE-II-5, PR at CORE-II-4-5.

⁷⁵⁴ CR/PR at CORE-II-5.

⁷⁵⁵ CR at CORE-II-5, PR at CORE-II-4.

customers generally could obtain the necessary steel, but they had to pay more as they were competing against higher spot market prices. We recognize that this was a new phenomenon.

In addition to domestic supply and subject imports, non-subject imports held a modest share of the U.S. market during the review period. Non-subject imports as a share of apparent U.S. consumption rose irregularly over the review period, and were the highest in 2004 at 9.7 percent, when demand and prices were peaking.⁷⁵⁶ Non-subject imports then declined somewhat in 2005. In 2005, the largest sources of non-subject imports were India, Taiwan, Mexico, Brazil, and China. Imports from China were 147,794 short tons in 2005 (less than one percent of apparent U.S. consumption), but were higher in January-June 2006, at 292,426 short tons.⁷⁵⁷

During the review period, U.S. producers' exports constituted 3 to 5 percent of their total shipments and were almost entirely to Canada and Mexico. In 2004, Canada revoked antidumping duty orders on corrosion-resistant steel from the United States, as well as Australia, Brazil, France, Germany, Japan, Korea, New Zealand, Spain, Sweden, and the United Kingdom. U.S. exports to Canada increased by 210,273 short tons in 2005.⁷⁵⁸

Global production capacity also increased during the review period and is expected to continue increasing in the near future in both the subject countries and non-subject countries, including China, other Asian countries, the EU, Turkey, and Russia. Although China has been and is expected to remain a net importer of corrosion-resistant steel for the foreseeable future, the substantial increase in Chinese capacity will likely slow imports into China of corrosion-resistant steel somewhat.⁷⁵⁹ As virtually all Chinese capacity is for hot-dip product, imports into China of electrogalvanized corrosion-resistant steel will not be affected by any increase in Chinese capacity.⁷⁶⁰

c. Local/Regional versus Global Corrosion-Resistant Steel Markets

Consolidations and mergers among corrosion-resistant steel producers worldwide as well as in the United States have enabled producers to supply their customers from nearby production facilities. The stated strategy of both Arcelor and Mittal, even before their merger, for example, was to acquire or build plants to serve clients within a region, rather than having to export product from one region to another region.⁷⁶¹ U.S. automakers indicate a preference for sourcing their corrosion-resistant steel from suppliers in North America.⁷⁶² Despite the growing local or regional nature of corrosion-resistant steel markets, significant quantities of corrosion-resistant steel continue to be traded internationally, as is evidenced by the level of non-subject imports into the United States during the review period,⁷⁶³ as well as exports into China from non-Asian sources.⁷⁶⁴

⁷⁵⁶ CR/PR at Table C-7.

⁷⁵⁷ CR/PR at Table CORE-IV-2.

⁷⁵⁸ CR at CORE-III-11, PR at CORE-III-8, n.23.

⁷⁵⁹ CR/PR at Tables CORE-IV-64, IV-67.

⁷⁶⁰ Korean Respondents' Posthearing Brief at 7.

⁷⁶¹ French Respondents' Posthearing Brief at 1-3, Exhibit 6.

⁷⁶² Auto Producers' Prehearing Brief at 50; Auto Producers' Posthearing Brief, Appendix at 56-58.

⁷⁶³ CR/PR at Table CORE-I-1.

⁷⁶⁴ Mittal USA's Posthearing Brief, Answers to Chairman Pearson's Questions at 8-15; CR/PR at Tables CORE-IV-29, IV-36.

d. Purchasing Practices

Purchasers buy corrosion-resistant steel frequently, often daily or weekly; some buy the product consistently over the course of a year, while others experience seasonal peaks in their purchasing. Producers generally reported determining prices on a transaction-by-transaction basis, based on market conditions and raw material costs.⁷⁶⁵ As in the original investigations and first reviews, price continues to be an important factor in purchasing decisions, given the broad interchangeability of corrosion-resistant steel from different suppliers.⁷⁶⁶

A majority of the largest domestic producers' sales are by long-term contracts, although several producers make the majority of their sales on the spot market. Six producers (***) , representing a majority of domestic production, reported that 60 percent or more of their sales are on a long-term contract basis, while eight of 20 U.S. producers reported that 85 percent or more of their sales are on a spot basis.⁷⁶⁷ Automotive and appliance end users tend to favor longer-term contracts, whereas the construction industry's purchasing pattern is more short-term and project-based.⁷⁶⁸ Auto producers reported that they generally enter into contracts with individual producers to supply steel for certain auto parts and that the life of the vehicles is multiple years.⁷⁶⁹ Long-term contracts generally fix either price only or both price and quantity and have no meet-or-release provisions.⁷⁷⁰ Both domestic producers and respondent automakers agree that, toward the end of the review period, the duration of contracts was becoming shorter, ***.⁷⁷¹

The parties disagree on why contract practices have changed, with each side describing the other as primarily responsible for the changes. According to domestic producers, even when sales are under contract, if spot prices fall, purchasers do not hesitate to request price concessions under the contracts. Conversely, when prices and costs rise, the domestic producers are locked into below-market prices under the contracts.⁷⁷² Respondent automakers assert that the U.S. industry is unwilling to commit to longer-term contracts because they believe prices will climb even higher than they did during the review period, and they have forced automakers to accept volume limitations in their contracts.⁷⁷³ On balance, we find that the relative balance of market power between domestic corrosion-resistant steel producers and auto producers has led to a stalemate in which multi-year contracts at set prices and volumes are unlikely under current market conditions.

e. Substitutability

Domestic and imported corrosion-resistant steel, both subject and non-subject, generally is used in the same applications, at least for lower end applications. The majority of purchasers reported that the domestic product is comparable or superior to subject imports from each country in every category.⁷⁷⁴ The qualification process for suppliers takes from one week to two years. Purchasers reported that some

⁷⁶⁵ CR at CORE-V-9, PR at CORE-V-8.

⁷⁶⁶ Mittal USA's Prehearing Brief at 39-40.

⁷⁶⁷ CR at CORE-V-10, PR at CORE-V-8-9.

⁷⁶⁸ CR at CORE-V-10, PR at CORE-V-8, n.15.

⁷⁶⁹ CR at CORE-V-9, PR at CORE-V-8, n.14.

⁷⁷⁰ CR at CORE-V-11, PR at CORE-V-9. A meet-or-release clause requires a seller to meet a lower offer to its customer or to release the customer from the contract.

⁷⁷¹ Nucor/SDI's Prehearing Brief at 50-52; Auto Producers' Prehearing Brief at 27-31.

⁷⁷² Nucor/SDI's Prehearing Brief at 50-52.

⁷⁷³ Auto Producers' Prehearing Brief at 27-31.

⁷⁷⁴ CR at CORE-II-24-27, PR at CORE-II-16-19.

domestic and subject producers have failed to qualify on quality grounds, but there is some evidence that the problems tend to be resolved, resulting in the supplier becoming qualified.⁷⁷⁵

f. Raw Material/Energy Costs

Over the review period, particularly in the latter half, the U.S. industry's raw material and energy costs increased significantly and are forecast to remain at high levels for the foreseeable future.⁷⁷⁶ Such increases have affected producers of corrosion-resistant steel on a worldwide basis. Integrated producers that own and control their raw material inputs (mainly cold-rolled sheet) are better able to manage rising raw material costs.⁷⁷⁷ While the domestic industry's variable costs as a percent of total costs increased over the period, due in large part to rising raw material costs, unit fixed costs went down and productivity increased.⁷⁷⁸

3. No Likelihood of Continuation or Recurrence of Material Injury Upon Revocation of the Orders on Cumulated Subject Imports from Australia, France, and Japan

a. Likely Volume⁷⁷⁹

We applied the legal standards discussed in section III above.

In the original determinations, the Commission found that the cumulated subject imports decreased slightly from 1990 to 1991, and then increased sharply to 1.9 million short tons in 1992, along with a significant increase in market share during the same period.⁷⁸⁰ During the original investigation period, the volume of subject imports from the three countries now cumulated – Australia, France, and Japan – was 1.1 million short tons, or 8.1 percent of apparent U.S. consumption, in 1992.

After the orders were imposed, imports from the three countries dropped dramatically and were at minimal levels during both review periods.⁷⁸¹ In 2005, cumulated subject imports from the three countries were 18,556 short tons, or 0.1 percent of apparent U.S. consumption and of U.S. production. Their highest level during the current review period was 40,332 short tons in 2002, or 0.2 percent of apparent U.S. consumption and of U.S. production.⁷⁸² The three cumulated countries currently supply the least amount of corrosion-resistant steel to the U.S. market out of the subject countries.

Quantities held in inventory, both in the United States and in the cumulated subject countries, do not appear to represent significant volumes that could be diverted readily to the U.S. market upon revocation of the orders. First, there were no reported inventories in the United States from either

⁷⁷⁵ CR at CORE-II-27, PR at CORE-II-20. Seven of 35 purchasers reported that one or more suppliers (citing both domestic, suppliers from subject countries, and suppliers from nonsubject countries) had failed to qualify their product or lost their approved status since 2000.

⁷⁷⁶ CR at CORE-V-2, PR at CORE-V-1-2.

⁷⁷⁷ Joint Respondents' Prehearing Brief at 9-11.

⁷⁷⁸ CR/PR at Table CORE-III-9.

⁷⁷⁹ While we considered subject imports from Australia, France, and Japan on a cumulated basis, by necessity we have included some discussion of each of the countries individually, because certain facts are specific only to a particular country.

⁷⁸⁰ USITC Pub. 3364 at 51-52. The Commission in the original investigations cumulated subject imports from Australia, Canada, France, Germany, Japan, and Korea.

⁷⁸¹ CR/PR at Table CORE-I-1.

⁷⁸² CR/PR at Table C-7.

Australia or France during the review period, and inventories of Japanese product were only *** short tons in 2005.⁷⁸³ Second, despite the existence of inventories held by the cumulated subject country producers at the end of the review period, the record indicates that most corrosion-resistant steel, including that held in inventory, is made to order and therefore already committed to specific customers.⁷⁸⁴

Producers in all three countries have increased their capacity and production of corrosion-resistant-steel since the original investigations. However, they have operated at relatively high capacity utilization rates during the review period: the Australian producer's rate was *** percent in 2005 and *** percent in interim 2006; the French industry's rate was *** percent in 2005 and *** percent in interim 2006; and the Japanese industry's rate was *** percent in 2005 and *** percent in interim 2006.⁷⁸⁵ Their combined excess capacity in 2005 was *** short tons.⁷⁸⁶

While these countries do possess some excess capacity and, in the case of France, saw some decline in capacity utilization during the review period, we do not find a likelihood that they will ship significant volumes of subject product to the United States if the orders are revoked. Each of the subject countries has exported corrosion-resistant steel during the review period, but their focus has been predominantly on their home and regional markets. In 2005, the Australian producer's shipments to its home market were *** percent of its production, up from *** percent in 2000.⁷⁸⁷ Only *** percent of Australia's exports were to destinations outside Asia.⁷⁸⁸ In 2005, French producers shipped *** percent of their production to their home market and for internal consumption; during the review period as a whole, less than *** percent of their shipments was exported outside the European Union.⁷⁸⁹ Likewise, Japanese producers' home market shipments were *** percent of total shipments in 2005, and most of their exports were to China and the rest of Asia. Exports outside the Asian region had decreased to less than *** percent of Japan's total shipments by the end of the review period.⁷⁹⁰ These trends contrast to what was observed during the original period of investigation when the European Community was composed of 12 Member States compared to the EU's 25 Member States in 2006. Moreover, demand in Asia, and particularly in China, was not as robust as compared to now.

Producers in the three cumulated countries have not shown a strong interest in the North American market during the review period and, for various reasons discussed below, it does not appear likely that this would change in the reasonably foreseeable future.

⁷⁸³ CR/PR at Table C-7.

⁷⁸⁴ Japanese Respondents' Posthearing Brief at 13; Tr. at 229-230 (Goodish), 258-259 (Goodish), 329-330 (Bates). French producers' inventories, as a share of total shipments, were *** percent in each full year of the period, and were *** short tons in 2005. CR/PR at Table CORE-IV-29. Japanese producers' inventories, as a share of total shipments, decreased from *** percent in 2000 to *** percent in 2005, and were *** short tons in 2005. CR/PR at Table CORE-IV-47. The one exception is Australia. While the Australian producer's inventories, as a share of total shipments, increased irregularly, from *** percent in 2000 to *** percent in 2005, and were *** short tons in 2005, we do not foresee a significant increase in volume as the Australian producer's focus is on its home and Asian markets. CR/PR at Table CORE-IV-12.

⁷⁸⁵ CR/PR at Tables CORE-IV-10, IV-28, IV-46.

⁷⁸⁶ CR/PR at Tables CORE-IV-10, IV-27, IV-45.

⁷⁸⁷ CR/PR at Table CORE-IV-12.

⁷⁸⁸ CR/PR at Table CORE-IV-12.

⁷⁸⁹ CR/PR at Table CORE-IV-29.

⁷⁹⁰ CR/PR at Table CORE-IV-47.

Australia was at the time of the original investigation and remains now the smallest of all the subject country producers, with a total capacity of only *** short tons.⁷⁹¹ BlueScope, the sole Australian producer, is focused on its home and nearby Asian markets. In addition to *** exports to the United States during the review period, BlueScope had *** exports to Canada and *** shipments to Mexico, even when such shipments were not subject to any trade remedies.⁷⁹² The *** majority of BlueScope's production is for non-automotive applications. Its business strategy has been to use much of its production internally, and through affiliates, to manufacture pre-fabricated construction components for its home market and other markets outside the United States. As a result of the subject orders, BlueScope ***.⁷⁹³ Since the original investigation, BlueScope has also set up local corrosion-resistant production facilities in multiple Asian countries to serve regional construction markets.⁷⁹⁴

We note that, in April 2004, BlueScope acquired Butler Manufacturing Company, a market leader for pre-engineered steel building systems, with operations in the United States and China.⁷⁹⁵ The record indicates, however, that Butler's U.S. operations reported *** purchases of corrosion-resistant steel from Australia during the review period; moreover, Butler also operates as an end user for the construction sector in China, a market that historically has been served by, and is a more likely market for, the Australian producer. BlueScope reported only minuscule exports of subject product to the United States since the acquisition of Butler (*** short tons in 2005). Australia does face significant tariffs on corrosion-resistant steel in Argentina and South Africa, but the South African order is only against painted corrosion-resistant steel, which is not a significant product for BlueScope, and Argentina has never been an important market for the Australian product.⁷⁹⁶

Domestic producers argue that, as China's capacity to produce corrosion-resistant steel increases, Australia's exports to China will be displaced, making the United States a more attractive market for BlueScope than it has been in recent years. The record does not support this assertion. Australia's exports to China already showed a decline from 2003 through 2005, as its home market shipments and shipments to other non-U.S. export markets grew, resulting in no diversion outside the region.⁷⁹⁷ Moreover, the Australian producer supplies mostly corrosion-resistant steel for building construction to China and other Asian markets that is of higher quality than what the Asian producers currently produce or likely will be able to produce in the reasonably foreseeable future.⁷⁹⁸

The industries in France and Japan likewise showed an orientation to their home and regional markets during the review period which we do not find likely to change if the orders are revoked.⁷⁹⁹ Producers in each country that account for the majority of corrosion-resistant steel production are affiliated with important U.S. producers of corrosion-resistant steel.

The Arcelor-Mittal merger, which is scheduled to close in the first half of 2007, will establish an affiliation between Mittal USA, which accounts for *** percent of U.S. production,⁸⁰⁰ and Arcelor

⁷⁹¹ CR/PR at Table CORE-IV-12.

⁷⁹² CR at CORE-IV-21, PR at CORE-IV-10.

⁷⁹³ CR at CORE-IV-21, PR at CORE-IV-10, n.21.

⁷⁹⁴ CR at CORE-IV-16, PR at CORE-IV-9, n.8.

⁷⁹⁵ CR at CORE-IV-21, PR at CORE-IV-10, n.22.

⁷⁹⁶ CR at CORE-IV-21, PR at CORE-IV-10, CR/PR at Table CORE-IV-15.

⁷⁹⁷ CR/PR at Table CORE-IV-12.

⁷⁹⁸ Tr. at 412-413 (Furuta).

⁷⁹⁹ CR/PR at Tables CORE-IV-29, IV-47.

⁸⁰⁰ CR/PR at Table CORE-I-12.

France, which accounts for *** percent of French production⁸⁰¹ and most of the French industry's exports of corrosion-resistant steel to the United States during the review period. We find that the French industry, which has essentially been absent from the U.S. market at least since the first review period,⁸⁰² has even less incentive to resume shipments to the United States, given the merger. Arcelor-Mittal's stated strategy is to acquire corrosion-resistant facilities that can serve customers regionally and locally and, in the case of Mittal USA, is committed to serving the U.S. market from its U.S. producer.⁸⁰³ This strategy is consistent with the fact that Arcelor-Mittal will be the world's largest steelmaker with production facilities located throughout the world. We thus find it unlikely that the U.S. market would be served with subject imports from France.

Arcelor France's exports to Canada declined even after the Canadian orders on corrosion-steel were lifted during the review period.⁸⁰⁴ In addition, none of Arcelor France's affiliates in Belgium, Spain, Luxembourg, or Italy have shipped significant quantities of corrosion-resistant steel to the United States, despite the absence of any orders against these countries, including the periods preceding and following the U.S. safeguard action on steel, thus suggesting that Arcelor has made a decision not to rationalize production among manufacturing plants in different countries and the United States.⁸⁰⁵ Duferco, the other French producer, sold corrosion-resistant steel *** within the EU during the period.⁸⁰⁶

With respect to relative market prices, on balance we do not find prices for corrosion-resistant steel in France and other EU markets to be sufficiently below U.S. prices so as to create an incentive to shift sales to the U.S. market.⁸⁰⁷ There is no evidence that U.S. prices are likely to exceed European prices over a sustained period in the reasonably foreseeable future. Thus price would not be a sufficient incentive for the French producers to begin diverting exports to the United States if the orders were revoked.

Similar to the industry in France, Japanese producers representing *** percent of Japanese production are related to U.S. producers of corrosion-resistant steel accounting for at least *** percent of U.S. production, not including I/N Kote's toll production for Mittal, which is included in Mittal's data.⁸⁰⁸ The Japanese industry's entire excess capacity in 2005, of *** short tons, is well below their U.S. affiliates' shipments in 2005 of *** short tons ***.⁸⁰⁹ After the orders were imposed, Japanese producers began to supply transplants Japanese automakers in the United States with corrosion-resistant steel made by the Japanese producers' U.S. affiliates, who have been successful in meeting the automakers' qualification requirements. The minimal quantities of corrosion-resistant steel exported from Japan to the United States during the review period consisted of certain specialty, high-strength automotive grades, such as 780 MPa and 980 MPa,⁸¹⁰ that were not available from U.S. producers, and of product needed when supply was tight. At present, Japanese producer Nippon, which represented almost *** percent of

⁸⁰¹ CR/PR at Table CORE-IV-26.

⁸⁰² CR/PR at Table CORE-I-1.

⁸⁰³ French Respondents' Posthearing Brief at 1-3, Exhibits 3, 6.

⁸⁰⁴ CR at CORE-IV-41, PR at CORE-IV-17.

⁸⁰⁵ CR at CORE-IV-35, PR at CORE-IV-15, n.52, CR/PR at Table CORE-IV-2.

⁸⁰⁶ Duferco's Questionnaire Response.

⁸⁰⁷ CR/PR at Tables CORE-IV-68, IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁸⁰⁸ CR/PR at Tables CORE-I-12, IV-44. Japanese producer Nippon, representing almost *** percent of Japanese production in 2005, has ***. Japanese Respondents' Prehearing Brief at 67.

⁸⁰⁹ CR/PR at Tables CORE-III-10, CORE-IV-45.

⁸¹⁰ CR at CORE-IV-67, PR at CORE-IV-24.

Japanese production in 2005,⁸¹¹ is providing ***, and has ***.⁸¹² These commitments *** further support our conclusion that Japanese producers are committed to serving the U.S. market through U.S. production and would not seek new export customers in the event of revocation.

Domestic producers argue that the Commission should not take into account the affiliated Japanese producers in the United States because it rejected similar arguments in the first review.⁸¹³ However, the conditions of competition in the United States and around the globe have changed significantly and likely will impact the behavior of Japanese producers and their U.S. affiliates going forward differently than they did in the past.⁸¹⁴

The record shows that, during the review period, the Japanese producers' shipments to their home market increased as the Japanese economy strengthened and corrosion-resistant steel demand within Japan is expected to remain robust for the reasonably foreseeable future. During the review period automotive suppliers in Japan reported shortages due to Japanese corrosion-resistant producers' inability to increase their production levels.⁸¹⁵

Japanese producers have been successful, since the orders were imposed, in developing new markets in China and other Asian countries. In 2005, Japan's export shipments represented *** percent of their total shipments and their export shipments to China and Asia accounted for *** percent of their total shipments.⁸¹⁶ Thus, only *** percent of Japanese shipments left the Asian region in 2005, down from *** percent in 2000.⁸¹⁷ More than *** percent of their corrosion-resistant steel exports to China consist of electro-galvanized corrosion-resistant steel for use in the manufacture of appliances. Electro-galvanized steel is not made in China and would thus not be displaced by any increase in Chinese capacity to produce hot-dip corrosion-resistant steel.⁸¹⁸ The other major use for Japanese exports to China is to supply Japanese transplant automakers in China with Japanese corrosion-resistant steel of a quality that Chinese producers have not yet attained and are not expected to be able to make in the reasonably foreseeable future.⁸¹⁹ Consumption in Japan's Asian markets as a whole is projected to remain strong for the reasonably foreseeable future.⁸²⁰

The growth in global demand conditions, particularly in the Japanese home market and regional market, will make it less likely that the Japanese producers will export subject product to the United States in any significant quantities. Rather, the strong global demand will mean that the affiliated Japanese producers in the United States will need to supply U.S. demand from their joint venture U.S. production facilities. Four of the Japanese producers are involved with corrosion-resistant steel

⁸¹¹ CR/PR at Table CORE-IV-44.

⁸¹² CR at CORE-IV-67, PR at CORE-IV-24.

⁸¹³ Nucor/SDI's Posthearing Brief, Answers to Commissioners' Questions at 30-32.

⁸¹⁴ See generally CR at CORE IV-59, PR at CORE-IV-21-22. Chairman Pearson and Vice Chairman Aranoff note that they did not participate in the first reviews. Moreover, the period examined in the first review (1996-2000) included some of the period of the Asian financial crisis when Japanese producers faced limited demand in their home market or other Asian markets. USITC Pub. 3364 at CORROSION-II-4-5.

⁸¹⁵ Japanese Respondents' Prehearing Brief at 26-32.

⁸¹⁶ CR/PR at Table CORE-IV-47.

⁸¹⁷ CR/PR at Table CORE-IV-47.

⁸¹⁸ Japanese Respondents' Posthearing Brief at 1-2.

⁸¹⁹ Tr. at 412-413 (Furuta).

⁸²⁰ Consumption of coated steel sheet in Asia is projected to increase from *** short tons in 2006, to *** short tons in 2007, to *** short tons in 2008. CR/PR at Table CORE-IV-67.

production in the United States and have been for more than a decade.⁸²¹ These four joint ventures account for at least *** percent of U.S. production.⁸²² Moreover, Nippon Steel *** and recently announced that it intends to initiate talks with Mittal Steel on doubling the size of its U.S. affiliate, I/N Kote.⁸²³ The long-term investments of the Japanese producers in U.S. capacity⁸²⁴ and Nippon's *** appear consistent with the general trend toward supplying markets from regional production facilities. These conditions, therefore, limit the likelihood that Japanese producers would significantly increase their exports to the United States with revocation of the order.

Japanese exports to Canada have remained minimal, even after the Canadian antidumping duty order on corrosion-resistant steel from Japan was lifted in 2004. Japan's exports to Mexico fluctuated over the period, and were *** short tons in 2005. While this represents a discernible interest in the Mexican market, the record suggests that Japanese producers are not positioned to expand their sales to Mexico or the United States. ***⁸²⁵ Accordingly, we do not find this level of exports indicative of a likely increase in exports by the Japanese producers to the U.S. market if the order is revoked. Further, *** provides further corroboration of the strong demand for Japanese exports in several markets, including the Japanese home market. Such conditions do not provide strong incentives for Japanese producers to establish new U.S. customers.

Nor is price an incentive for Japanese producers to resume shipments to the U.S. market upon revocation of the order. Spot prices in Asia for certain types of corrosion-resistant steel may have been lower than U.S. prices during certain portions of the review period, but not in a significant, sustained fashion.⁸²⁶ Moreover, between *** and *** percent of the Japanese producers' exports during the review period were under long-term contracts, whose prices were equivalent to U.S. prices, or not sufficiently below U.S. prices so as to serve as an incentive for Japanese producers to abandon existing customers, pay the added transportation and logistical costs, and divert exports to the U.S. market.⁸²⁷ These contracts are also evidence of the Japanese producers' long-term relationships with their regional customers and track record of serving them.

For all the foregoing reasons, we do not find that the volume of cumulated subject imports from Australia, France, and Japan likely would be significant if the orders are revoked.

⁸²¹ JFE Steel owns 50 percent of California Steel Industries. Nippon Steel owns 50 percent of I/N Kote (also related to Nittetsu). Kobe Steel owns 50 percent of Pro-Tec. Nisshin owns *** percent of Wheeling-Nisshin. CR/PR at Table CORE-1-12, CR at CORE-IV-59, PR at CORE-IV-21-22; Japanese Respondents' Prehearing Brief at 65-68.

⁸²² CR/PR at Tables CORE-I-12, IV-44.

⁸²³ Japanese Respondents' Prehearing Brief at 65, 67.

⁸²⁴ Japanese Respondents' Prehearing Brief at 65-68.

⁸²⁵ CR at CORE-IV-67, PR at CORE-IV-25, n.126.

⁸²⁶ Negotiated transaction prices for hot-dip galvanized steel show Japanese home market prices generally higher than U.S. prices in 2005 and lower in 2006. Negotiated transaction prices for electro-galvanized steel show Japanese home market prices higher than U.S. prices from February through June of 2005, generally lower from July 2005 through September 2006, and higher in October and November 2006. CR/PR at Tables CORE-IV-68, CORE-IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006). *** monthly prices for galvanized steel show U.S. prices generally higher than Japanese export prices in 2002, 2004, and 2006, and generally lower during the rest of the review period. CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁸²⁷ Japanese Respondents' Posthearing Brief at 4-9.

b. Likely Price Effects

We applied the legal standards discussed in section III above.

In the original investigations, the Commission found that price was an important factor for purchasers. It also found price suppression and/or depression by the cumulated subject countries based on import prices that were falling at a greater rate than domestic prices, together with increased import volumes and confirmed lost sales and lost revenue allegations.⁸²⁸

In the first reviews, the Commission found that the increased sales of cumulated subject imports would likely be achieved by aggressive pricing, which would result in significant effects on domestic prices. It noted that while contracts provide some measure of insulation from spot market price fluctuations, prices in the spot market could affect prices in the domestic industry's contract business.⁸²⁹

In the original investigations, subject imports from the three countries cumulated here – Australia, France and Japan – showed mixed underselling and overselling.⁸³⁰ There were no price comparisons for imports from Australia and France in these reviews, nor in the first reviews. The Commission's pricing data show underselling by Japanese product in 5 out of 20 comparisons and overselling in the remaining 15 comparisons during the current review period.⁸³¹

We continue to find in these reviews that domestically produced and imported corrosion-resistant steel is generally substitutable, provided suppliers meet qualification requirements, and that price is an important factor in purchasing decisions.⁸³² However, we find that the price effects from the cumulated subject imports from Australia, France, and Japan likely will not be significant both based on our finding that the volume of these cumulated subject imports likely will not be significant and because we find no incentive for producers in these countries to price aggressively any volumes they do sell or offer to sell in the U.S. market.

U.S. prices generally strengthened during the review period. After showing relatively little change from 2000 through 2003, U.S. prices rose across all product categories, except product 8, from 2004 through 2006, and were substantially higher at the end of the period than at the beginning.⁸³³ Indeed, many market participants described prices as reaching historical highs not seen in decades during the review period.⁸³⁴ While prices for some products had fallen from their period highs by mid-2006, a number of U.S. producers announced additional price increases in the middle of 2006.⁸³⁵ The record indicates that a number of contracts recently negotiated for shipments in the second half of 2006 and 2007 are at higher prices for domestic producers than in previous periods.⁸³⁶

⁸²⁸ USITC Pub. 3364 at 54.

⁸²⁹ USITC Pub. 3364 at 54.

⁸³⁰ Data on sales to, and purchases by, manufacturers and end users, showed that in the original investigations subject imports from Australia, France, and Japan mostly oversold domestic prices (overselling in *** comparisons for sales data, *** comparisons for purchase price data). Data on sales to distributors and service centers indicated that subject imports mostly undersold domestic prices (underselling for *** comparison). Purchase price data reported by distributors and service centers generally showed overselling by subject imports (overselling for *** comparisons). Original Confidential Staff Report at Tables 110-113.

⁸³¹ CR/PR at Table CORE-V-17.

⁸³² CR at CORE-II-21-22, PR at CORE-II-15.

⁸³³ CR at CORE-V-35, PR at CORE-V-16, CR/PR at Figures CORE-V-4 to V-11.

⁸³⁴ CR/PR at Tables CORE-IV-68 to IV-70, CORE-V-1 to V-14; Joint Respondents' Prehearing Brief at 54-57.

⁸³⁵ CR at CORE-V-35, PR at CORE-V-16, n.22.

⁸³⁶ Letters to the Commission from U.S. Steel (Nov. 16, 2006); Mittal Steel USA (Nov. 22, 2006); AK Steel (Dec. 5, 2006); Auto Producers' Posthearing Brief at Exhibit 1. *** projects an increase per ton from *** in 2006 to ***

(continued...)

There are several reasons why prices rose and remained high during the period of review. First, this period was marked by rapidly growing demand, both in the United States and globally, for corrosion-resistant steel.⁸³⁷ Second, price increases were driven by substantial increases in raw material and energy costs during the period.⁸³⁸ Finally, because of the restructuring of the domestic industry that took place during the period, the domestic industry had somewhat lower fixed costs and more flexibility than it did in the past to manage output in order to maintain prices in the face of rising costs. Consequently, the domestic industry's ratio of COGS to net sales fluctuated but declined overall during the review period, indicating that prices rose more quickly than costs and the domestic industry has not experienced a cost-price squeeze.⁸³⁹

The domestic producers correctly point out that, although prices generally rose in the second half of the review period, price increases for contract sales (primarily to auto makers and also to some appliance manufacturers) lagged well behind price increases for spot market sales.⁸⁴⁰ As noted above, the historical practice in this industry has been for corrosion-resistant steel producers and their major auto and appliance customers to enter into long-term contracts that fix the price of steel over several years. A number of such contracts were in effect when prices in the spot market began their dramatic climb in 2004, locking the domestic producers into selling steel at prices that were increasingly unprofitable compared to what they could have earned in the spot market.⁸⁴¹ Domestic producers reacted to this situation by declining to sell automakers volumes above those required by the contracts at contract prices, a significant change from past practice.⁸⁴² Nevertheless, the record clearly demonstrates that the domestic producers who focused most heavily on contract sales with the auto industry fared less well than their competitors who sold more heavily in the spot market during 2004 and 2005.⁸⁴³ By 2006, however, many of these long-term contracts came up for renegotiation. The record indicates that domestic producers have managed to achieve *** price increases in contracts for shipments in the second half of 2006 and in 2007, at levels that they concede are likely to be ***.⁸⁴⁴

During these reviews, the auto producers argued that, even though they prefer to buy corrosion-resistant steel from North American suppliers in order to satisfy their just-in-time inventory requirements, the availability of subject imports in the event of revocation of the orders would give them leverage to negotiate more favorable prices.⁸⁴⁵ Although domestic producers urge us to treat this argument as an admission against interest by the auto producers, we decline to do so with respect to subject imports from Australia, France, and Japan, because the record does not support the auto producers' assertion. We have already found that producers in these cumulated subject countries have neither the capacity nor the incentive to ship significant quantities of the subject product to the United States in the event of revocation. Lacking a need or incentive to move substantial volumes into the U.S. market, subject

⁸³⁶ (...continued)

in 2007. *** shows a price increase from *** in 2006 to *** in 2007.

⁸³⁷ CR/PR at CORE-V-1-2.

⁸³⁸ CR at CORE-III-18, III-23, V-3-4, PR at CORE-III-14, V-3.

⁸³⁹ CR at CORE-III-23, PR at CORE-III-14, CR/PR at Table CORE-III-9.

⁸⁴⁰ Tr. at 235-236 (Scherrbaum), 248 (Goodish).

⁸⁴¹ Tr. at 235-236 (Scherrbaum), 248 (Goodish).

⁸⁴² Auto Producers' Prehearing Brief at 27-31.

⁸⁴³ CR/PR at Tables CORE-I-12, III-10; Questionnaire Responses of U.S. Steel, Mittal USA, AK Steel and Pro-Tec.

⁸⁴⁴ Letters to the Commission from U.S. Steel (Nov. 16, 2006); Mittal Steel USA (Nov. 22, 2006); AK Steel (Dec. 5, 2006); Auto Producers' Posthearing Brief at Exhibit 1. *** projects an increase per ton from *** in 2006 to *** in 2007. *** shows a price increase from *** in 2006 to *** in 2007. ***.

⁸⁴⁵ Tr. at 421-422 (Mohatarem), 455-456 (Cover).

producers in Australia, France, and Japan lack any incentive to price aggressively for such limited sales as they may make or offer to make after revocation. Given that the dramatic rise in prices in 2004 and 2005, and continuing into 2006, is a global phenomenon, subject producers have no incentive to partner with U.S. auto producers in an attempt to drive down prices in the U.S. market.

For the foregoing reasons, we do not find that the cumulated subject imports from Australia, France, and Japan will likely have significant adverse price effects if the orders are revoked.

c. Likely Impact

We applied the legal standards discussed in section III above. As instructed by the statute, we have also considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders and countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁸⁴⁶

In the original investigations, the Commission found that the increased volume of lower priced subject imports and their significant market share depressed prices and caused the U.S. industry to suffer lost market share, reduced capacity utilization, and growing financial losses despite increasing apparent consumption. The industry's capital expenditures and research and development expenses also declined, especially during the latter part of the period examined.⁸⁴⁷

In the first reviews, the Commission found that the orders had a positive effect on the domestic industry's performance, its operating margin was higher at the beginning of the review period than during the original investigations, and its capital expenditures and research and development expenses had increased. Nevertheless, it found the industry vulnerable, based on declines in operating income, operating margins, capacity utilization levels, and unit sales values. It found that the likely significant volumes of subject imports upon revocation would likely undersell the domestic product and suppress or depress U.S. prices, cause the domestic industry to lose market share and have a significant adverse impact on the domestic industry.⁸⁴⁸

In these second reviews, we do not find the domestic industry to be vulnerable. The consolidations and restructuring that occurred during the review period have resulted in an industry that is stronger and healthier than in previous periods considered.⁸⁴⁹ The industry's improved condition is evident in a number of its financial and performance indicators. During the process of consolidation and restructuring, domestic producers renegotiated labor contracts, shed more than \$7.5 billion in legacy costs,⁸⁵⁰ reduced their fixed costs, and increased their productivity. Fixed costs, or "other factory costs,"

⁸⁴⁶ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁸⁴⁷ USITC Pub. 3364 at 55.

⁸⁴⁸ USITC Pub. 3364 at 55-57.

⁸⁴⁹ We find that the domestic industry producing corrosion-resistant steel did benefit to some degree from the orders as they allowed U.S. producers time to undergo significant restructuring and rationalization. This restructuring, along with the shedding of the significant legacy costs, has created a more efficient and cost effective industry.

⁸⁵⁰ The Pension Benefit Guaranty Corporation ("PBGC"), a federally created corporation designed to insure private firm pensions, has indicated that primary metal manufacturers have received \$11.2 billion in pension relief through 2005. Four of the ten largest firms presenting claims to the PBGC were steel manufacturers, namely Bethlehem, LTV, National and Weirton. These firms received combined pension relief of over \$7.5 billion. The assets of Bethlehem, LTV and Weirton were acquired by ISG, which then merged with Mittal. The assets of National were acquired by U.S. Steel. Joint Respondents' Prehearing Brief at 5.

as a ratio to net sales, decreased from 41.4 percent in 2000 to 28.0 percent in 2005.⁸⁵¹ Productivity increased by 66.1 percent over the period.⁸⁵² Inventories fell as a ratio of production and shipments. Inventories were 2.1 million short tons in 2000 and 1.7 million tons in 2005.⁸⁵³ Capital expenditures, at \$428 million in 2005, were \$133 million higher than in 2000. Research and development expenditures approximately doubled over the period.⁸⁵⁴ Return on investment, which was negative early in the review period, improved to 16.6 percent in 2004, and was 7.0 percent in 2005.^{855 856}

While the industry's overall capacity level remained relatively constant over the period, the industry was able to increase its capacity to produce hot-dip corrosion-resistant steel, in response to growing demand, and shed some capacity in the less efficient electrogalvanized sector.⁸⁵⁷ In addition, the industry invested in new facilities during the period and, as described above in the section on Conditions of Competition, plans to add 1.9 million net tons of corrosion-resistant capacity by 2008.⁸⁵⁸ These additions to capacity reflect both new investment by existing producers and investment by new entrants to the U.S. market.⁸⁵⁹ The industry's U.S. market share, by volume, was in the range of 87-93 percent during the review period and was higher than during the original period of investigation, when it ranged from 83-86 percent.⁸⁶⁰

Whereas from 2000 through 2003, the industry registered negative operating margins, or was barely breaking even, in 2004 its operating margin rose to 10.8 percent and has remained positive, at 4.9 percent in 2005 and 5.2 percent in 2006.⁸⁶¹ The industry's higher profitability from 2004 through the first half of 2006 can be attributed in large part to the restructuring by many U.S. producers that permitted

⁸⁵¹ CR/PR at Table CORE-III-9.

⁸⁵² CR/PR at Table C-7.

⁸⁵³ CR/PR at Table CORE III-6.

⁸⁵⁴ CR/PR at Table CORE III-12.

⁸⁵⁵ CR/PR at Table CORE III-25.

⁸⁵⁶ We also note that the business plans submitted by domestic producers do not contradict these positive findings. See Mittal USA's Posthearing Brief, Answers to Commissioner Okun's Questions at Exhibit 6; Nucor's September 21, 2006 Submission; Pro-Tec's Questionnaire Response at Question I-10 Attachment; Revisions to SDI's Questionnaire Response (Sept. 7, 2006); Severstal's Questionnaire Response at Attachment 1; U.S. Steel's September 29, 2006 Submission; USS-POSCO's Questionnaire Response at Exhibit I-10. Indeed, several of the business plans detail ***.

⁸⁵⁷ CR/PR at Table CORE-III-3.

⁸⁵⁸ CR at CORE-III-5-6, PR at CORE-III-4-5. Domestic producers have argued that the domestic industry is vulnerable because it cannot cover its costs of capital, and therefore cannot attract investment. Nucor/SDI's Prehearing Brief at 2, 7. To the contrary, the significant investments by the domestic industry in expanding its hot-dip galvanized capacity and the entry of SeverCorr into the domestic industry indicate that the domestic industry has successfully attracted and implemented substantial investments over the review period. With respect to the SeverCorr investment alone, the domestic industry attracted \$220 million in equity investment and was able to finance \$625 million in debt and to obtain \$36.5 million in government grants. CR at CORE-III-5-6, PR at CORE-III-4-5.

⁸⁵⁹ While Mittal has idled two of its 10 blast furnaces during the period, and AK Steel and Mittal idled their jointly owned electrogalvanizing facility in Cleveland, this is not evidence of a vulnerable industry. CR at CORE-III-7, PR at CORE-III-5, CR/PR at Table CORE-III-1. Rather, the industry has announced plans to expand capacity by more than 1.9 million tons in order to serve sectors of the market that are growing such as automotive demand for galvaneal, whereas Mittal has idled facilities, such as its joint venture with AK Steel, because demand for electrogalvanized steel, which is produced at that facility, is declining. Mittal USA's Posthearing Brief, Answers to Commissioner Okun's Questions at 7-8.

⁸⁶⁰ CR/PR at Table CORE-I-1.

⁸⁶¹ CR/PR at Table C-7.

them to terminate pension and healthcare liabilities and secure less costly labor contracts.^{862 863} In part as a result of these changes, starting in 2004, the industry was able to pass the additional costs of soaring raw material and energy prices on to purchasers and earn solid profits. At the end of the period, major U.S. suppliers to the auto industry were able to negotiate higher contract prices for a portion of their second half 2006 and 2007 shipments, a positive sign of *** into the reasonably foreseeable future.⁸⁶⁴

The domestic producers credit the orders with the improvement in the domestic industry's performance during the review period, as evidenced by its higher operating income and operating margin, despite sharply rising raw material costs. They also note that the industry's capital expenditures and research and development expenses rose during the period.⁸⁶⁵ Nevertheless, they contend that the domestic industry is vulnerable and describe its returns as "anemic."⁸⁶⁶

We do not agree with domestic producers' overall characterization of the state of the industry.⁸⁶⁷ We find that the significant restructuring has produced a changed industry. The industry's reduction in fixed costs allows producers to better match their production levels to their demand so as to avoid over-production. In view of the many positive indicators described above, the major restructuring that occurred during the review period, and the ability of the industry to make significant investments in new facilities, we do not find that the industry currently is in a weakened state, as contemplated by the vulnerability criterion of the statute.

⁸⁶² CR/PR at Table CORE-III-10, n.3. A notable exception to this trend was *** which did not undergo restructuring during the period.

⁸⁶³ Chairman Pearson finds that the domestic industry has received significant financial benefits, in the form of pension relief, renegotiated labor contracts, and consolidations, that will continue to benefit it into the reasonably foreseeable future. He finds that four steel manufacturers purchased by Mittal USA, the largest domestic producer, reportedly received combined pension relief of over \$7.5 billion. Most of the domestic producers have renegotiated their labor agreements. He finds that the domestic industry has fewer, larger producers that are better able to control and streamline their production of corrosion-resistant steel due to improved economies of scale. He finds that these conditions have improved the negotiating position of the domestic industry relative to their purchasers. Joint Respondents' Prehearing Brief at 2-8. Chairman Pearson finds that these are relevant economic factors to these reviews that may not be fully reflected in the financial performance data that the Commission considers in these reviews under the pertinent statutory provision, 19 U.S.C. § 1675a(4).

⁸⁶⁴ *** projects an increase per ton from *** in 2006 to *** in 2007. *** shows a price increase from *** in 2006 to *** in 2007. Letters to the Commission from U.S. Steel (Nov. 16, 2006); AK Steel (Dec. 5, 2006); see also Letter to the Commission from Mittal Steel USA (Nov. 22, 2006); Auto Producers' Posthearing Brief at Exhibit 1. ***.

⁸⁶⁵ U.S. Steel's Prehearing Brief at 73-74.

⁸⁶⁶ Nucor/SDI's Posthearing Brief at 1.

⁸⁶⁷ Nucor and SDI argue that the domestic industry is more vulnerable now than it was in the prior reviews. Among other things, they observe that the industry's operating margin over the entire period of review *** in the prior reviews, as compared to *** in these reviews. Nucor/SDI's Prehearing Brief at 1.

Their arguments, however, do not take into account the significant reorganization and consolidation that has taken place by the domestic industry that we discuss in text in this section, nor the downward trend in operating margins in the prior reviews. As Nucor recognizes, the industry's operating margin ***, and further *** in the first three months of 2000. Nucor/SDI's Prehearing Brief at 30.

In contrast, in these reviews, following the onset of the restructuring and consolidation that took place in the industry discussed in the text and in our Conditions of Competition section, the domestic industry's operating margin went from negative 1.6 percent in 2002, and 0.7 percent in 2003, to 10.8 percent in 2004, and 4.9 percent in 2005, even as total import market share increased. CR/PR at Table CORE-I-1. Profitability and productivity increased from 2002 to 2005, and there has recently been significant investment in production capacity. Although Nucor and SDI argue that the domestic industry is fragmented and that its capacity utilization decreased over the review period (Nucor/SDI's Prehearing Brief at 8), as discussed in Conditions of Competition, we find that the domestic industry has recently consolidated, and that lower capacity utilization decisions by the domestic industry reflect greater flexibility in production decisions rather than vulnerability.

Based on our finding that the domestic industry is not vulnerable, and moreover, that the volume of the cumulated subject imports is not likely to be significant nor to have significant adverse price effects, we do not find it likely that the cumulated subject imports will have a significant negative impact on the domestic industry in terms of output, sales, market share, profits, productivity, return on investments, utilization of capacity, cash flow, inventories, employment, wage growth, ability to raise capital, investment, or the industry's development and production efforts if the orders are revoked.

4. No Likelihood of Continuation or Recurrence of Material Injury Upon Revocation of the Order on Subject Imports from Canada

a. Likely Volume

We applied the legal standards discussed in section III above.

During the original investigation, subject imports from Canada increased from 180,030 short tons in 1990 to 451,082 short tons in 1992.⁸⁶⁸ During both review periods, subject imports from Canada did not show a dramatic decrease from pre-order levels, but have remained in the U.S. market at relatively consistent levels. Imports from Canada to the United States were 464,303 short tons in 2005.⁸⁶⁹ Canada's share of the U.S. market was 3.4 percent by volume in 1992, and has fluctuated during both review periods between 1.6 percent and 2.5 percent of the U.S. market. Subject imports from Canada as a share of U.S. production were 2.2 percent in 2005.⁸⁷⁰ Canada was the only subject country that was exempt from Section 201 duties on corrosion-resistant steel during the review period.

The Canadian industry's production capacity, at *** short tons in 2005, was higher than during the original investigation period, at *** short tons in 1992, as was their production, at *** short tons in 2005, as compared to *** short tons in 1992. This increased capacity and production, however, did not result in increased excess capacity. The industry's capacity utilization was high, at *** percent at the end of the period, and its excess capacity was only *** short tons in 2005.⁸⁷¹

During the review period, the Canadian industry shipped between *** and *** percent of its total shipments of corrosion-resistant steel to its home market, and most of the remainder to the U.S. market.⁸⁷² Canadian exports have thus remained in the U.S. market despite the order at levels that have been relatively consistent. During this time, U.S. prices rose and were significantly higher at the end of review period than at the beginning, and the U.S. industry's operating margin improved to 10.8 percent in 2004, before declining somewhat to 4.9 percent in 2005 and 5.2 percent in interim 2006.⁸⁷³

The primary Canadian exporter to the United States during the review period was Dofasco, *** percent of whose exports were to the automotive sector pursuant to long-term contracts. The automakers, as discussed previously, regard the North American market as a unified market for production and sourcing decisions. Moreover, any increases in imports from Canada during the period for the most part did not displace U.S. production, or represent sales lost to Canadian product on the basis of price, but rather, reflected increased U.S. demand, or demand that U.S. producers were unable to supply, either on a

⁸⁶⁸ CR/PR at Table CORE-I-1.

⁸⁶⁹ CR/PR at CORE-IV-4. These are official import statistics that have been adjusted to exclude non-subject lacquered tin-plate. Canadian producers representing *** percent of Canadian capacity and production reported, in line with these import figures, exports to the United States in 2005 of *** short tons. CR/PR at Table CORE-IV-20.

⁸⁷⁰ CR/PR at CORE-IV-4, CR/PR at Table C-7.

⁸⁷¹ CR/PR at Tables CORE-IV-18, IV-20.

⁸⁷² CR/PR at Table CORE-IV-20.

⁸⁷³ CR/PR at Table C-7.

temporary or permanent basis. Dofasco reported that ***.⁸⁷⁴ We find that the information submitted by Dofasco generally supports its contentions.⁸⁷⁵ Accordingly we find that at least *** of the nearly *** of Dofasco's exports to the United States from 2000 to 2005 occurred for the above stated reasons and not because of price competition with the U.S. industry, and no record evidence suggests that the remaining volumes entered based on price competition.⁸⁷⁶

The record does not indicate that imports from Canada would increase significantly above current levels in the event of revocation. Capacity utilization, as noted, was high at the end of the period and excess capacity is not at a significant level. Canadian producers' end-of-period inventories were at *** short tons in 2005, and inventories of Canadian product held by U.S. importers were only *** short tons.⁸⁷⁷ This level of inventories would not be likely to contribute to a significant increase in imports, particularly since, as noted previously, corrosion-resistant steel inventories typically represent supply that has been made to order and already committed to a customer.⁸⁷⁸

Canada is a net importer of corrosion-resistant steel, not only from the United States, but globally. Production and demand in the Canadian automotive and non-residential construction sectors are forecast to remain strong through 2008,⁸⁷⁹ and thus to continue as the major outlet for Canadian corrosion-resistant steel production. We find credible Dofasco's prediction of a ***, based on Toyota's opening of a new factory in Ontario, near Dofasco's mill.⁸⁸⁰ Stelco, which represented *** percent of Canadian production in 2005, was focused *** on its home market during the review period,⁸⁸¹ as was Sorevco, which represented *** percent of Canadian production.⁸⁸² The order has not had a material effect on subject import volumes from Canada, which have remained at relatively consistent levels since 1992. The pattern of the Canadian producers' shipments during the review period and forecasts for continued strong Canadian demand thus do not indicate that shipments from Canada will grow significantly upon revocation.

Price also would not provide an incentive for Canadian producers to shift shipments from their home market to the United States in the event of revocation. During the period, Canadian prices were comparable to U.S. prices, as would be expected in these markets showing significant connections in the

⁸⁷⁴ CR at CORE-IV-29, PR at CORE-IV-13.

⁸⁷⁵ CR at J-26-27, PR at J-3; Canadian Respondents' Prehearing Brief at Exhibit 1.

⁸⁷⁶ CR at J-26-27, PR at J-3. Nucor/SDI argues that subject imports from Canada compete against the domestic like product, and reject Canadian respondents' arguments that whether corrosion-resistant steel is purchased from the United States or from Canada is determined by where vehicles are produced and the longstanding supply contracts and arrangements related to those vehicles, rather than by the existence or revocation of the antidumping duty order. Nucor/SDI's Posthearing Brief at 11-13. The domestic industry has stated that Dofasco testified that it was in competition with a U.S. supplier for an existing OEM account. Nucor/SDI's Posthearing Brief at 12.

We find, however, that the existence of the antidumping duty order does not seem to have been a factor in whether U.S. or Canadian mills are chosen to supply corrosion-resistant steel to U.S. auto makers. The record reflects several instances in which auto makers either switched from U.S. to Canadian mills or vice versa, due to production location changes, and not due to the antidumping duty order. CR at J-26-27, PR at J-3. Subject imports from Canada increased over the review period, apparently due to movements in vehicle production locations, ***, notwithstanding the imposition of the order. CR at J-26-27, PR at J-3; Canadian Respondents' Prehearing Brief at Exhibit 1.

⁸⁷⁷ CR/PR at Tables CORE-IV-20, C-7.

⁸⁷⁸ German Respondents' Posthearing Brief at 7; Japanese Respondents' Posthearing Brief at 13; Tr. at 229-230 (Goodish), 258-259 (Goodish), 329-330 (Bates).

⁸⁷⁹ Canadian Respondents' Prehearing Brief at 24-28.

⁸⁸⁰ CR at CORE-IV-29, PR at CORE-IV-13.

⁸⁸¹ Nucor/SDI argues that Stelco's CEO has indicated that he has an interest in the U.S. market. Nucor/SDI's Posthearing Brief at 12. However, Stelco ***. CR at J-28, 37, 40, 43, PR at J-3-4.

⁸⁸² CR/PR at Table CORE-IV-17.

automotive sector. Negotiated transaction prices for hot-dip galvanized steel show U.S. prices to be higher than Canadian prices in the first half of 2005, lower than Canadian prices from the second half of 2005 through May of 2006, and higher than Canadian prices from June through November of 2006.⁸⁸³

Therefore, we do not find that the likely volume of subject imports from Canada would be significant upon revocation. Canadian subject imports have remained in the U.S. market at consistent levels that for the most part have not displaced U.S. sales. Based on the projected continued strength of the Canadian market, Canadian producers' limited excess capacity, and their long-term volume commitments to a stable customer base that could not be readily diverted to supply new customers, we do not find it likely that subject imports from Canada will increase significantly upon revocation.

b. Likely Price Effects

We applied the legal standards discussed in section III above.

In the original investigation period, as in the instant review period, there was mixed underselling and overselling by subject imports from Canada.⁸⁸⁴ The pricing data collected by the Commission for the current review period show underselling by Canadian product in 31 of 50 comparisons, and overselling in the remaining 19 quarters.⁸⁸⁵

As stated above with respect to the cumulated subject imports from Australia, France, and Japan, we continue to find in this review that domestically produced and imported corrosion-resistant steel is generally substitutable, provided suppliers meet qualification requirements, and that price is an important factor in purchasing decisions.⁸⁸⁶ However, we do not find subject imports from Canada are likely to have significant negative price effects in the event of revocation, given our finding that the volume of subject imports from Canada is not likely to increase significantly if the order is revoked.

During the review period, subject imports from Canada have maintained a steady presence in the U.S. market at levels that were similar to the volume of subject imports from Canada in 1992, the last year of the original period of investigation.⁸⁸⁷ At the same time, U.S. prices generally strengthened during the review period. After showing relatively little change from 2000 through 2003, U.S. prices generally rose across all product categories, except product 8, from 2004 through 2006, and were substantially higher at the end of the period than at the beginning.⁸⁸⁸ While the price increases were largely driven by sharply rising raw material and energy costs, U.S. producers reduced their fixed costs over the period.⁸⁸⁹ They were thus also able to manage output and maintain price levels as raw material and energy costs soared. The domestic industry's ratio of COGS to net sales fluctuated yet declined overall during the review period.⁸⁹⁰ Moreover, as stated above, the record indicates that a number of contracts recently negotiated for shipments in the second half of 2006 and 2007 are at higher prices for domestic producers

⁸⁸³ CR/PR at Table CORE-IV-68, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁸⁸⁴ In the original investigation, subject imports from Canada *** the domestic product in *** of *** comparisons of sales to manufacturers and end users, in *** of *** comparisons of sales to distributors and service centers, in *** of *** purchaser price comparisons reported by manufacturers and end users, and in *** of *** purchaser price comparisons reported by distributors and service centers. Original Confidential Staff Report at Tables 110-113.

⁸⁸⁵ CR/PR at Table CORE-V-17.

⁸⁸⁶ CR at CORE-II-21-22, PR at CORE-II-14-15.

⁸⁸⁷ CR/PR at Table CORE-I-1.

⁸⁸⁸ CR at CORE-V-35, PR at CORE-V-16, CR/PR at Figures CORE-V-4 to V-11. We note that product 8 involved relatively small U.S. volumes.

⁸⁸⁹ CR/PR at Table CORE-III-9.

⁸⁹⁰ CR/PR at Table CORE-III-9.

than in previous periods.⁸⁹¹ These contracts are all for sales to the automotive sector, to which *** percent of sales by the major Canadian exporter, Dofasco, were directed during the review period.⁸⁹²

Moreover, the record does not indicate that increased imports from Canada will likely result in significant sales lost by U.S. producers. As described above, the increase in imports from Canada since 2000 (from Dofasco) was not generally the result of price competition with U.S. producers. We see no basis to conclude that revocation of the order on Canada will cause this situation to change to a significant degree in the foreseeable future.⁸⁹³

Given the consistent level of Canadian product in the U.S. market during a time when U.S. prices rose and were strong relative to rising costs, and our finding that the volume of subject imports from Canada is not likely to increase significantly if the order is revoked, we do not find it likely that subject imports from Canada will have significant adverse price effects upon revocation.

c. Likely Impact

We applied the legal standards discussed in section III above. As instructed by the statute, we have also considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.

For the reasons already discussed, we do not find the domestic industry to be vulnerable. We incorporate herein our entire finding on vulnerability from section VI.D.3.c above.

Based on our finding that the domestic industry is not vulnerable, and moreover, that the volume of subject imports from Canada is not likely to increase significantly nor to have significant adverse price effects, we do not find it likely that the subject imports from Canada will have a significant negative impact on the domestic industry in terms of output, sales, market share, profits, productivity, return on investments, utilization of capacity, cash flow, inventories, employment, wage growth, ability to raise capital, investment, or the industry's development and production efforts if the order is revoked.

5. Likelihood of Continuation or Recurrence of Material Injury Upon Revocation of the Orders on Cumulated Subject Imports from Germany and Korea

a. Likely Volume

We applied the legal standards discussed in section III above.

By the end of the original period of investigation, cumulated subject imports from Korea and Germany had risen to 382,705 short tons and had captured 2.8 percent of the U.S. market.⁸⁹⁴ By the end of the current review period, cumulated subject imports from Korea and Germany had reached their highest level of any prior period, at 406,799 short tons, and represented 1.8 percent of apparent U.S. consumption and 1.9 percent of U.S. production.⁸⁹⁵

Korean and German producers have substantially increased both their production capacity and their production of corrosion-resistant steel since the original investigations. Subject producers from

⁸⁹¹ Letters to the Commission from U.S. Steel (Nov. 16, 2006); Mittal Steel USA (Nov. 22, 2006); AK Steel (Dec. 5, 2006); Auto Producers' Posthearing Brief at Exhibit 1.

⁸⁹² CR at CORE-IV-28-29, PR at CORE-IV-13.

⁸⁹³ CR at J-26-27, PR at J-3.

⁸⁹⁴ Derived from CR/PR at Table CORE-I-1.

⁸⁹⁵ Derived from CR/PR at Table CORE-I-1.

Korea and Germany increased their cumulated capacity from *** short tons in 1992 to *** short tons in 2005.⁸⁹⁶ Further, subject producers from Korea and Germany, in the aggregate, increased their production of corrosion-resistant steel from *** short tons in 1992 to *** tons in 2005.⁸⁹⁷ Korean and German producers had combined excess capacity of *** short tons in 2005.⁸⁹⁸ This excess capacity is equivalent to *** percent of apparent U.S. consumption in 2005.

The corrosion-resistant steel industries in Korea and Germany are export-oriented. Korea exported 28.8 percent of its total shipments in 2005 to countries other than the United States, amounting to 2.1 million short tons of corrosion-resistant steel. Korean producers exported nearly 900,000 short tons outside their home and regional markets in 2005.⁸⁹⁹ Exports accounted for over *** percent of German shipments during each year since 2000. Although most exports remained in Europe, *** percent of its shipments in 2005 (over *** tons) were directed to overseas markets, including the United States.⁹⁰⁰

Subject producers in Korea and Germany have exhibited a strong interest in exporting to the United States. On an aggregated basis, exports from Korea and Germany to the United States increased from *** short tons in 2000 to *** short tons in 2005, an increase of *** percent.⁹⁰¹ Along with their increase in exports to the United States during the review period, Korean and German producers increased their exports to Canada and Mexico substantially over the review period, from *** short tons in 2000 to *** short tons in 2005.⁹⁰² The producers have also exported a significant amount of their production of non-subject micro-alloy corrosion-resistant steel to the United States.⁹⁰³

⁸⁹⁶ CR/PR at Tables CORE-IV-36, IV-54.

⁸⁹⁷ CR/PR at Tables CORE-IV-36, IV-54.

⁸⁹⁸ CR/PR at Tables CORE IV-36, IV-54. Cumulated excess capacity in interim (January-June) 2006 was approximately *** tons. This represents excess capacity of Korea alone as German producers reported no excess capacity in interim 2006. As discussed above, given that the German industry reported excess capacity in every other full- and partial-year period of the period of review, and substantial year-to-year fluctuations in capacity utilization, we are hesitant to conclude that German producers will have no available capacity in the foreseeable future based on the experience of a single partial year.

⁸⁹⁹ CR/PR at Table CORE-IV-56.

⁹⁰⁰ CR/PR at Table CORE-IV-38. German respondent interested parties argue that demand in their home market and the EU is sufficiently strong that they would not have an incentive to ship product to the United States. They point out that over 90 percent of their shipments are to the German market or other EU markets. German Respondents' Posthearing Brief at 3. We note below that prices for corrosion-resistant steel in EU markets have not been sufficiently below U.S. prices so as to create a price incentive to shift sales to the U.S. market. However, prices in certain Asian markets have typically been lower than U.S. prices, as has the "EU export" price. CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006). Thus, there would appear to be some price incentive for German producers to direct to the United States sales currently made to markets outside the EU. The record also reflects that exports from Germany to markets outside the European Union increased in 2005, much of which was to the United States.

⁹⁰¹ The same is true over the interim periods, with combined exports to the United States growing from *** short tons in interim 2005, to *** short tons, in interim 2006. CR/PR at Tables CORE-IV-38, IV-56.

Korean producers attribute the increase in their U.S. exports during the review period to a short-term request by Hyundai for POSCO to supply Hyundai's new facility in Alabama. Even if this were correct, which is not clear on the current record, several purchasers in the construction sector also reported significant increases in purchases of Korean product in 2005, indicating that imports from Korea were more broadly based. Questionnaire Responses of ***.

⁹⁰² Derived from CR at CORE-IV-54 and CORE-IV-81, PR at CORE-IV-20 and CORE-IV-29.

⁹⁰³ Germany produced *** short tons of micro-alloy corrosion-resistant steel in 2005. German exports of micro-alloy corrosion-resistant steel to the United States ranged from *** percent of total German exports of micro-alloy corrosion-resistant steel in 2000 to *** percent in interim 2006, and were *** short tons in 2005. CR/PR at Table CORE-IV-43. Although Korea's total exports of micro-alloy corrosion-resistant steel were *** than those of

(continued...)

Although the Korean and German industries have demonstrated a strong interest in serving the U.S. market, neither has a sufficient presence to supply the U.S. market from within the United States or even North America. Korean producer POSCO has 50 percent ownership of U.S. producer USS-POSCO. While POSCO and its related Korean producer POCOS represent a substantial share of Korean production (***) percent in 2005),⁹⁰⁴ USS-POSCO represented only *** percent of 2005 production in the United States.⁹⁰⁵ Moreover, the presence of USS-POSCO has not stopped POSCO from shipping appreciable quantities of subject product to the U.S. market.⁹⁰⁶ ThyssenKrupp, representing *** percent of German production in 2005 and accounting for *** exports of subject corrosion-resistant steel to the United States since 2000,⁹⁰⁷ does not have a U.S. production affiliate. Nor do German producers Salzgitter and Corus, which together accounted for *** percent of German production in 2005. Arcelor Germany, which will soon be affiliated with a U.S. producer (Mittal Steel USA), represented only *** percent of German production in 2005.⁹⁰⁸

Thus, for Korea and Germany, the affiliations of their producers with U.S. producers represent either a relatively small share of U.S. production (in the case of Korea) or a relatively small share of foreign industry production (in the case of Germany). ThyssenKrupp Germany has taken some steps toward establishing a production facility in North America, by seeking to purchase the assets of Dofasco in Canada, to construct or acquire a facility in the United States, or both.⁹⁰⁹ As noted above, the record does not indicate that it is more likely than not that, in the reasonably foreseeable future, ThyssenKrupp will have such a U.S. or North American facility from which to serve its interest in the U.S. market. The demonstrated interest of Korean and German producers in serving the U.S. market combined with a lack of sufficient U.S. or North American production assets indicate that these producers are likely to deepen their participation in the U.S. market through exports from Korea and Germany.

The increase is likely to occur in the several main end-use sectors for corrosion-resistant steel. A significant portion of Korea's exports and production is for the construction sector,⁹¹⁰ which typically is project-based and not supplied under long-term contracts.⁹¹¹ Thus, subject producers in Korea would be likely to increase sales to the U.S. construction sector if the orders were revoked, in many cases without being hampered by long-term supply commitments in other markets.⁹¹²

⁹⁰³ (...continued)

Germany, *** short tons, *** percent of these exports were exported to the United States in 2005. CR/PR at Table CORE-IV-61.

⁹⁰⁴ CR/PR at Table CORE-IV-53.

⁹⁰⁵ CR/PR at Table CORE-I-12.

⁹⁰⁶ POSCO's Questionnaire Response at 9 (exports to the United States of *** tons in 2005). USS-POSCO's net sales in 2005 were *** short tons. CR/PR at Table CORE-III-10.

⁹⁰⁷ German Producers' Questionnaire Responses at II-18a, II-18b.

⁹⁰⁸ CR at CORE-IV-46, PR at CORE-IV-18, CR/PR at Table CORE-IV-35.

⁹⁰⁹ CR at CORE-III-7, CORE-IV-24, n.28, PR at CORE-III-5, CORE-IV-12, n.28.

⁹¹⁰ Korean Respondents' Posthearing Brief at 7-9.

⁹¹¹ CR at CORE-V-10, PR at CORE-V-8, n.15.

⁹¹² CR at OVERVIEW-17, PR at OVERVIEW-14, n. 42. We note that Commerce found that the Korean government provides export subsidies to Korean corrosion-resistant steel producers in 5 of the 11 programs investigated.

The Korean industry also had a significant and growing level of U.S. imports into the contract-based automotive sector.⁹¹³ The largest share of Germany's exports to the United States over the period has been to the automotive sector, and we would expect this trend to continue if the order were lifted.⁹¹⁴

We have considered relative prices for corrosion-resistant steel in the markets served by Korean and German producers. Negotiated transaction prices for hot-dip galvanized steel show Korean prices to be lower than U.S. prices during 2005 and 2006, except from May through September of 2005. Negotiated transaction prices for electro-galvanized steel show Korean prices to be lower throughout 2005 and 2006.⁹¹⁵ Other data (published by ***) show prices in China (a major market of Korean producers) and the Far East to be lower than U.S. prices from at least September 2005.⁹¹⁶ Thus Korean producers would have an incentive to shift some sales to the U.S. market to obtain higher prices.

With respect to Germany, most German shipments are made to its domestic market or other European markets. On balance, prices for corrosion-resistant steel in Germany and other EU markets do not appear to be sufficiently below U.S. prices so as to create a price incentive to shift sales to the U.S. market.⁹¹⁷ However, prices in certain Asian markets have typically been lower than U.S. prices, as has the "EU export" price.⁹¹⁸ Thus, German producers would have some price incentive to direct to the United States sales currently made to markets outside the EU. German exports to markets outside the European Union increased in 2005, with much of the increase directed to the United States.⁹¹⁹

Subject producers in Korea and Germany have strong relationships with U.S. distributors and/or customers that would facilitate their increased exports to the United States from their production operations in their home countries, if the orders on the two countries were revoked. ThyssenKrupp supplies the U.S. market from inventories maintained in warehouses in Michigan.⁹²⁰ It owns a significant U.S. service center.⁹²¹ While German respondents argue that the vast majority of the subject product imported from Germany is ***, we find that ThyssenKrupp will need to supply its U.S. customers with

⁹¹³ CR/PR at Table CORE-II-1 (U.S. shipments of subject imports from Korea to automotive end users constituted *** percent of shipments of Korean product in 2005). The auto sector accounts for about *** percent of Korea's total shipments. CR/PR at Table CORE-IV-57.

⁹¹⁴ CR/PR at Tables CORE IV-4, IV-39. The automotive sector accounts for *** of German producers' total corrosion-resistant steel shipments.

⁹¹⁵ CR/PR at Tables CORE-IV-68, CORE-IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006) (data published by MEPS).

⁹¹⁶ CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁹¹⁷ Negotiated transaction prices for hot-dip galvanized steel show German prices higher than U.S. prices from January through September of 2005, lower from October 2005 through September 2006, and higher in October and November 2006. CR/PR at Table CORE-IV-68, as revised by Memorandum INV-DD-162 (Dec. 5, 2006). Negotiated transaction prices for electro-galvanized steel show U.S. prices generally higher than German prices throughout 2005 and 2006. CR/PR at Table CORE-IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006). *** monthly price data for galvanized steel from 2005 through November 2006 show a mixed pattern of whether U.S. prices were higher or lower than German and EU-wide prices. CR at CORE-IV-95, PR at CORE-IV-34-35, CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁹¹⁸ CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁹¹⁹ CR/PR at Table CORE-IV-38.

⁹²⁰ CR at CORE-IV-53, PR at CORE-IV-20.

⁹²¹ The U.S. service center firm owned by ThyssenKrupp is TKSS. Corrosion-resistant steel is among the products distributed by TKSS. TKSS presents one ready avenue for subject imports from ThyssenKrupp or other producers in Germany to reach the U.S. market. German respondents claim that this is not likely because TKSS currently handles very little imported product, and because the sales of ThyssenKrupp Germany have been to auto-related end-users and not service centers. German Respondents' Posthearing Brief at 8-9. The fact that TKSS does not currently distribute much imported product with the orders in place does not diminish its availability as a channel for imports if the orders were revoked.

imports from Germany so that it can maintain and likely build its customer base to support an eventual North American production platform. Korean producers already have strong relationships with U.S. customers, as evidenced by the level of their shipments to the United States during the review period.

The record thus indicates that Korean and German producers would have a significant volume of subject product available for shipment to the United States if the orders were revoked, based on their substantial capacity and production of corrosion-resistant steel, excess capacity, general export orientation, the substantial and increasing level of their exports to the United States during the review period, and their well established relationships or distribution channels that would facilitate their increased supply to the U.S. market. Generally higher prices in the United States than in other Asian markets would give Korean producers the incentive to increase shipments to the U.S. market and German producers the incentive to redirect volumes currently exported to Asia to the U.S. market.

We thus find, based on the foregoing, that the likely volume of subject imports from Korea and Germany would increase, and would be significant absent the orders.

b. Likely Price Effects

We applied the legal standards discussed in section III above.

As during the original investigation and first review period, we continue to find that domestically produced and imported corrosion-resistant steel are generally substitutable, provided suppliers meet qualification requirements, and that price is an important factor in purchasing decisions.⁹²²

While U.S. prices generally strengthened over the review period,⁹²³ a major driver behind the rise in prices was soaring raw material and energy costs, and there is no indication that these costs will decrease for the foreseeable future.⁹²⁴ As we have noted, the U.S. industry underwent major restructuring and reduced its fixed costs over the review period, and has been able to obtain prices comfortably above rising variable costs, particularly raw material and energy costs.⁹²⁵ The domestic industry's ratio of COGS to net sales fluctuated yet declined overall during the review period.⁹²⁶ Nevertheless, an influx of subject imports of corrosion-resistant steel from Korea and Germany would likely limit the industry's ability to recover the costs, forcing it into a cost-price squeeze.

In the original investigation and both review periods, there was mixed underselling and overselling by Korean product.⁹²⁷ The prices of imports from Germany generally showed overselling in both the original investigation, first review, and current review.⁹²⁸ The generally higher prices in the U.S.

⁹²² CR at CORE-II-21-22, PR at CORE-II-14-15.

⁹²³ CR at CORE-V-35, PR at CORE-V-16, CR/PR at Figures CORE-V-4 to V-11.

⁹²⁴ Letters to Commission from U.S. Steel (Nov. 16, 2006); Mittal Steel USA (Nov. 22, 2006); AK Steel (Dec. 5, 2006); Auto Producers' Posthearing Brief at Exhibit 1.

⁹²⁵ CR/PR at Table CORE-III-9.

⁹²⁶ CR/PR at Table CORE-III-9.

⁹²⁷ During the period examined in the original investigation, subject imports from Korea *** the domestic product in *** of *** comparisons of sales to manufacturers and end users, in *** of *** comparisons of sales to distributors and service centers, and in *** of *** purchaser price comparisons reported by distributors and service centers. Original Confidential Staff Report at Tables 110-111, 113. In the first review period, Korean product undersold the U.S. product in 22 of 65 sales to distributors and in 25 of 44 sales to end users. USITC Pub. 3364 at Tables CORROSION-V-5, V-7. In the current review period, Korean product undersold U.S. product in 13 of 53 comparisons. CR/PR at Table CORE-V-17.

⁹²⁸ In the original investigation, subject imports from Germany *** the domestic product in *** of *** comparisons of sales to distributors and service centers and in *** of *** purchaser price comparisons reported by manufacturers and end users and *** the domestic product in *** of *** comparisons of sales to manufacturers and end users. Original Confidential Staff Report at Tables 110-112. In the first review, subject product from Germany (continued...)

market than key Asian markets, as described above, would enable producers in Korea, and to a lesser extent Germany, to obtain higher prices in the U.S. market and still sell below the prevailing U.S. market price.

As discussed above, Korean production and exports to the United States have been focused on non-automotive uses such as the construction sector. Construction sales are mainly spot sales or project-based sales and are not typically based on long-term contracts. Under these conditions the expected increased imports from Korea for construction uses would have an immediate effect on market prices. Lower spot market prices would have a ripple effect on the overall market including having a negative influence on contract sales prices.

As noted above, Korean and German producers would also be likely to increase their sales into the U.S. automotive sector. U.S. auto producers have indicated that, though they prefer to buy from suppliers in the North American market, the availability of subject imports in the event of revocation would give them leverage to negotiate more favorable prices with U.S. producers.⁹²⁹ Imports could only serve as leverage if they presented a sufficiently credible volume threat to existing sales of domestic producers. We find that the increased subject imports offered by producers in Germany and Korea likely would be sufficient for the U.S. auto producers to use them as a tool to hold down the contract price levels they negotiate with U.S. producers.⁹³⁰ The likely price suppression that would result would be exacerbated by elevated variable costs.

Based on the foregoing, we determine that the substantially larger volume of subject imports from Korea and Germany that are likely to enter the U.S. market upon revocation would either be priced aggressively to gain market share, or leveraged by purchasers to obtain more favorable domestic prices, and would likely depress or suppress domestic prices to a significant degree. We consequently conclude that revocation of the orders on subject imports from Korea and Germany would likely result in significant adverse price effects.

c. Likely Impact

We applied the legal standards discussed in section III above. As instructed by the statute, we have also considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders and countervailing duty order at issue and whether the industry is vulnerable to material injury if the orders are revoked.

For the reasons already discussed, we do not find the domestic industry to be vulnerable. We incorporate herein our entire finding on vulnerability from section VI.D.3.c above.

While we do not find the domestic industry to be vulnerable, we do find that if the orders were revoked, the likely significant increase in the volume of subject imports from Germany and Korea,

⁹²⁸ (...continued)

oversold the domestic product in all 15 comparisons. USITC Pub. 3364 at CORROSION-V-10-12. Pricing data collected by the Commission in this review show German product underselling U.S. product in 8 of 38 comparisons despite the order. CR/PR at Table CORE-V-17.

⁹²⁹ Tr. at 421-422 (Mohatarem), 455-456 (Cover).

⁹³⁰ The record does not support that same proposition with respect to imports from Canada, Australia, France, or Japan. Canadian producers already participate actively in the U.S. market. Their available capacity is modest. Many sales of Canadian producers have not been on the basis of aggressive pricing. We do not expect a substantial change in Canada's participation in the U.S. market if the order on Canada is revoked.

With respect to Australia, France, and Japan, we have found that those subject producers either lack incentive or the ability to export significant volumes to the United States. For example, the major French and Japanese producers have strong corporate relationships with significant U.S. counterparts. Any price leverage they would add would be through the activities of their U.S. production assets which are part of the domestic industry. Producers in these subject countries are generally operating at relatively high levels of capacity utilization and what excess capacity they have is directed at their home and regional markets.

coupled with their likely adverse price effects, would likely have a significant negative impact on the domestic industry. The negative effects would be felt in such industry factors as output, sales, market share, profits, productivity, return on investments, utilization of capacity, cash flow, inventories, employment, wage growth, ability to raise capital, investment, and the industry's development and production efforts.

As we noted above in our discussion of likely price effects, there is no indication that raw material and energy costs will decrease in the reasonably foreseeable future, and the domestic industry's ability to continue to recover these costs and remain profitable will be hampered by increased volumes of subject imports that are either priced aggressively to gain market share, or leveraged by purchasers to obtain favorable domestic prices. While the domestic industry is stronger and better able to handle the vicissitudes of the corrosion-resistant market, it is not impervious to the effects of significant quantities of aggressively priced import supplies. We find that the negative impact caused by subject imports would be felt both by U.S. producers that supply the construction and other non-automotive sectors and to those that supply automotive customers. The combined negative effect on the industry as a whole would be significant.

For the foregoing reasons, we find that the likely significant volumes of subject imports from Germany and Korea likely would have a significant negative impact on the domestic industry if the orders on Germany and Korea were revoked.

CONCLUSION

For the foregoing reasons, we find that revocation of the countervailing duty order on corrosion-resistant steel from France and the antidumping duty orders on corrosion-resistant steel from Australia, Canada, France, and Japan, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We also find that revocation of the countervailing duty order on corrosion-resistant steel from Korea and the antidumping duty orders on corrosion-resistant steel from Germany and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**SEPARATE AND DISSENTING VIEWS OF COMMISSIONER STEPHEN KOPLAN AND
COMMISSIONER CHARLOTTE R. LANE WITH RESPECT TO CERTAIN CARBON
CORROSION-RESISTANT STEEL**

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the countervailing duty orders on certain carbon corrosion-resistant (“CORE”) steel from France and Korea and antidumping duty orders on CORE steel from Australia, Canada, France, Germany, Japan, and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, we dissent from the Commission’s determination with respect to CORE steel imports from Australia, Canada, France, and Japan, and write separately to explain our findings. Except, as noted in the Commission’s opinion, we join its determination regarding legal standards, cut-to-length plate, and CORE steel with respect to background, domestic like product, and domestic industry.

I. CUMULATION

We applied the legal standards for cumulation discussed in section III of the Commission’s Views above.¹ In these reviews, the statutory requirements for cumulation that all CORE steel reviews be initiated on the same day is satisfied.

We consider three issues in deciding whether to cumulate the subject imports: (1) whether imports from any of the subject countries are precluded from cumulation because they are likely to have no discernible adverse impact on the domestic industry; (2) whether imports of CORE steel from the subject countries are likely to compete with each other and with the domestic like product according to the traditional four-factor test; and (3) other factors that the Commission may consider. In so doing, we take into account the various arguments by the parties in favor of and against cumulation.

Based on the available information regarding, *inter alia*, the capacity, excess capacity, and exports of the industries in Australia, Canada, France, Germany, Japan, and Korea, as well as their trade and pricing patterns during the original investigations and the first and second reviews, we find that subject imports from all six countries would be likely to have a discernible adverse impact on the domestic industry if the orders were revoked. We also find that a reasonable overlap of competition between the subject imports and the domestic like product would be likely to exist if the orders were revoked. While there are some variations in the volume and price trends for subject imports from all six countries during the current review period, we find that none of them are distinct from all others or that there are any significant differences in the conditions of competition among the subject countries. We, therefore, have exercised our discretion to cumulatively assess the likely volume and effect of subject imports of CORE steel from Australia, Canada, France, Germany, Japan, and Korea.

¹ Specifically, section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.

19 U.S.C. § 1675a(a)(7).

A. Parties' Arguments

The domestic interested parties argue that all subject CORE steel imports should be cumulated. They argue that the likelihood of “no discernible adverse impact” is a “limited exception” to the Commission’s ability to cumulate subject imports in five-year reviews.² Given the pre-order levels of subject imports, sufficient excess capacity in each of the subject countries, their export-orientation, and the level of imports into the United States during the review period by certain countries, particularly *** and ***, they urge the Commission to find that the exception does not apply to any country.³ Addressing the traditional four-factor test, they note, with respect to fungibility, that producers, importers, and purchasers responding to the Commission’s questionnaires overwhelmingly reported that imports from each country were “always” or “frequently” interchangeable with each other and the domestic like product. They maintain that, even with the orders in place, subject imports from all countries have been simultaneously present in the U.S. market, have similar channels of distribution, and have also been sold in the same geographic markets before and since the imposition of the orders and this will likely continue.⁴

U.S. producers also argue that there are no significant differences in conditions of competition among the subject countries that would warrant the Commission exercising its discretion not to cumulate any of them. All six countries have large CORE steel industries. Producers in all countries are export-oriented and make steel that can be used in the most demanding applications. All six countries have excess capacity, make products that are sold on the basis of price, and will be impacted by changing conditions in China. Finally, with the exception of ***, all subject country producers have U.S. affiliates and such relationships could enhance their ability to penetrate the U.S. market.⁵

Respondents from each of the subject countries, except Korea,⁶ argue that their imports should not be cumulated with those from the other subject countries on the following bases: Australia, no discernible adverse impact;⁷ Canada, different conditions of competition;⁸ France, lack of discernible adverse impact, lack of overlap of competition, and differences in conditions of competition, based mainly on the Arcelor-Mittal relationship;⁹ Germany, no discernible adverse impact;¹⁰ and Japan, no discernible adverse impact and different conditions of competition.¹¹

B. Likely Discernible Adverse Impact

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.¹² In the first reviews, the Commission found that there was no likelihood of no discernible adverse impact in the event of revocation with respect to all the subject countries, based on: their continuing presence in the U.S.

² U.S. Steel’s Prehearing Brief at 13.

³ U.S. Steel’s Prehearing Brief at 13-45.

⁴ U.S. Steel’s Prehearing Brief at 49-51.

⁵ U.S. Steel’s Prehearing Brief at 52-53.

⁶ The Korean respondents do not object to cumulation of all subject imports, including those from Korea, but instead argue that, due to changes in the overall conditions of competition, all the orders should be revoked. Korean Respondents’ Prehearing Brief at 1.

⁷ Australian Respondents’ Posthearing Brief at 10.

⁸ Canadian Respondents’ Posthearing Brief at 1-8, Answers to Commissioners’ Questions at 31-41.

⁹ French Respondents’ Posthearing Brief at 8-10.

¹⁰ German Respondents’ Posthearing Brief at 5-9.

¹¹ Japanese Respondents’ Posthearing Brief at 15.

¹² 19 U.S.C. § 1675a(a)(7).

market, indicating they had the contacts and distribution channels necessary to compete; their excess capacity; and the considerable resources devoted to export markets.¹³ In its remand opinions with respect to Canada, France, and Germany, the Commission discussed the “no discernible adverse impact” standard in greater detail, citing some of the same factors it considers in analyzing likelihood of material injury, but noting that the threshold for finding likelihood of a discernible or “noticeable” adverse impact is lower than the threshold for finding likelihood of material injury, or of a “significant” adverse impact if the order is revoked.¹⁴ The factors considered on remand for each of the subject countries included: production capacity and unused capacity relative to U.S. production and apparent consumption, available inventories, export reliance, substitutability of the subject imports with U.S. product, underselling in the original investigation, ability to product shift, and trade patterns during the original investigations.¹⁵

We consider all these factors in analyzing “no discernible adverse impact” in these reviews. Our review of the record, as discussed below, indicates that there is no basis for concluding that revocation of any of the CORE steel orders would likely have no discernible adverse impact on the domestic industry. In particular, the CORE steel industry in each of these subject countries has significant production capacity, considerable unused capacity, and is export-oriented. Therefore we are not precluded from cumulating any of the subject countries on the basis of the “no discernible adverse impact” exception to cumulation.

*Australia.*¹⁶ In 1992, imports from Australia to the U.S. market of CORE steel were 183,782 short tons.¹⁷ Subject imports from Australia declined sharply after imposition of the orders and have remained at minimal levels with the discipline of the orders in place.¹⁸

Australian capacity to produce CORE steel has increased since the original investigation, from *** in 2005.¹⁹ Moreover, the evidence indicates that there has been an increase of *** in Australian capacity in 2006 and that there will be increases of another *** in 2007.²⁰ Capacity utilization, on the other hand, declined from *** in 2005.²¹ Thus, even before the capacity increases in 2006 and 2007, the Australian producer’s excess capacity was *** in 2005, more than *** of its total exports to the United States during 1992, the last year of the original investigation period.²² Australian inventories, as a share of total shipments, also increased from ***, and were *** in 2005.²³ While Australia’s total exports, as a

¹³ USITC Pub. 3364 at 47.

¹⁴ USITC Pub. 3539 at 21-22; USITC Pub. 3753 at 3.

¹⁵ USITC Pub. 3539 at 27-28, 32.

¹⁶ The Australian respondent, BlueScope, contends that its imports likely would have no discernible adverse impact on the basis that it has been absent from the U.S. market for many years and is fully committed to its home and export markets outside of Asia. Australian Respondent’s Posthearing Brief at 1 and 7-9.

¹⁷ CR/PR at Table CORE-I-1.

¹⁸ CR/PR at Table CORE-I-1. We note that CORE steel imports from Australia have been subject to antidumping duty margins ranging from 24.96 percent to 39.05 percent during the current review period. See CR/PR at Table CORE-I-2.

¹⁹ CR/PR at Table CORE-I-1.

²⁰ In its posthearing brief, Australian producer, BlueScope Steel, acknowledges these increases in capacity and refutes other alleged capacity increases. Australian Respondent’s Posthearing Brief at 13-14; CR at CORE-IV-17; PR at CORE-IV-9-10. BlueScope Steel provided information in the current review and reported that it is currently the sole producer of the subject product in Australia; there were two known producers during the first review and one producer during the original investigation. CR at CORE-IV-16; PR at CORE-IV-9. No Australian producer responded to the first review, but there are data from the original investigation.

²¹ In 1992, the Australian industry’s capacity utilization was ***. CR/PR at Table CORE-IV-10.

²² CR/PR at Tables CORE-I-1 and IV-12.

²³ CR/PR at Table CORE-IV-12.

share of its total shipments, ranged from a high of *** in 2000 to a low of *** in 2005, its total exports in January-June 2006 were *** of its total shipments, or ***.²⁴

All Australian CORE steel production is hot-dip galvanized and largely produced for premium building construction materials.²⁵ There is no evidence of an ability to product shift²⁶ and there were no price comparisons for imports from Australia in this review, nor in the first review.²⁷ Australia, the only subject country to face import barriers in third countries, is subject to a 79 percent tariff on painted corrosion-resistant steel in South Africa and a 70 percent tariff in Argentina.²⁸

In sum, the Australian CORE steel industry has substantial excess capacity and inventories, considerable resources devoted to export markets, and produces CORE steel that is substitutable with the domestic product. These factors indicate that subject imports from Australia are likely to have a discernible adverse impact on the domestic industry if the orders are revoked.

Canada. During the original investigation, imports from Canada to the U.S. market of CORE steel increased from 180,030 short tons to 451,082 short tons, an increase of 151 percent.²⁹ Canadian imports remained in the U.S. market in substantial quantities after imposition of the orders,³⁰ and increased by 43.8 percent during this review period, from 380,490 short tons in 2000 to 547,326 short tons in 2005.³¹

Since the original investigation, the Canadian industry's capacity to produce CORE steel has increased from *** in 1992 and 1999 to *** in 2005.³² While production and capacity utilization have increased since the original investigation,³³ an increasing share of Canadian shipments was directed to the U.S. market, during the current review period, from *** of total shipments in 2000 to *** in 2005.³⁴ Canada's increasing reliance on exports to the U.S. market likely will continue as Canadian demand for

²⁴ CR/PR at Table CORE-IV-12

²⁵ In April 2004, BlueScope acquired Butler, a market leader in the U.S. and China for pre-engineered steel building systems, which provides it increased contacts and distribution channels for its CORE steel in the construction sector of the U.S. market. CR at CORE IV-21, n.22; PR at CORE IV-16, n.22.

²⁶ The Australian producer reported that *** and does not have other production lines that could be diverted to produce CORE steel. CR at CORE-II-10 and Table CORE-IV-16; PR at CORE-II-7 and Table CORE-IV-16.

²⁷ In the original investigation, Australian product *** the U.S. product in all but *** possible price comparisons. Original Confidential Staff Report at Tables 110 and 113.

²⁸ CR at CORE-IV-21; PR at CORE-IV-10.

²⁹ CR/PR at Table CORE-I-1.

³⁰ We note that CORE steel imports from Canada have been subject to antidumping duty margins ranging from 0.51 percent to 18.71 percent during the current review period. See CR/PR at Table CORE-I-3.

³¹ CR/PR at Table CORE-I-1. In contrast, during the first review period, subject imports from Canada declined by 9.5 percent from 1997 to 1999. *Id.* We recognize that the import statistics show higher levels than the exports reported by Canadian mills in Commission questionnaire responses and may be overstated in that the import statistics reportedly include some non-subject tin-and chromium-coated steel sheet that has been lacquered. CR/PR at CORE-IV-4; Canadian Respondents' Posthearing Brief, Answers to Commission Questions at 21-22. We note, however, that exports reported by Canadian mills may be lower because they do not include exports by Canadian service centers and show an increase of *** during the current review period, from *** in 2000 to *** in 2005. CR/PR at Table CORE-IV-20.

³² CR/PR at Tables CORE-IV-18 and IV-20.

³³ Canadian production of CORE steel increased from *** in 1992 to *** in 1999 and was *** in 2005; the Canadian industry's capacity utilization rate increased from *** in 1992 to *** in 1999, and declined to *** in 2005. CR/PR at Table CORE-IV-20.

³⁴ CR/PR at Table CORE-IV-20. The Canadian industry's exports to Mexico, its primary other export market, increased *** in absolute quantity and as a share of its total shipments in 2005. *Id.*

CORE steel is projected to decrease.³⁵ Moreover, the Canadian industry had *** in excess CORE steel capacity in 2005 and *** in inventories in 2005.³⁶ There also is the possibility of product-shifting by Canadian producers, given that they produce micro-alloy and other types of non-subject corrosion resistant steel on the same equipment used to produce the subject product.³⁷

Virtually all Canadian CORE steel production (*** in 2005) is hot-dipped galvanized.³⁸ The Canadian industry produces CORE steel for both automotive and non-automotive applications, with *** of total Canadian shipments for automotive applications in 2005.³⁹ U.S. importers' shipments of Canadian CORE steel, however, are virtually all for automotive applications, *** in 2005.⁴⁰

The Commission has price comparisons for imports from Canada in this review which show price underselling, even with the discipline of the orders in place, in 31 of 50 possible comparisons.⁴¹ Moreover, Canadian negotiated transaction prices for hot-dip galvanized coils were lower than U.S. prices for each month from June to November 2006.⁴²

In sum, the Canadian CORE steel industry has substantial capacity, excess capacity, and inventories; devotes considerable and increasing resources to the U.S. market; produces and exports to the U.S. market CORE steel that is substitutable with the domestic product; has the ability to shift production; and has undersold the U.S. product in the majority of possible price comparisons during this review period, even with the discipline of the orders. These factors indicate that subject imports from Canada are likely to have a discernible adverse impact on the domestic industry if the orders are revoked.

France. In 1992, imports from France to the U.S. market of CORE steel were 94,523 short tons.⁴³ Subject imports from France declined sharply after imposition of the orders and have remained at minimal levels with the discipline of the orders in place.⁴⁴

³⁵ Nucor/SDI's Posthearing Brief, Answers to Commission Questions at 1-4; U.S. Steel's Prehearing Brief at 23 and 24 (alleges that Dofasco's rosy view of Canadian demand in this proceeding is inconsistent with the position it took before the Canadian International Trade Tribunal regarding demand for all flat-rolled steel). In contrast, Dofasco alleges that Canadian demand will increase through 2008, but provides nothing to support this allegation. Canadian Respondents' Prehearing Brief at 24-28; Canadian Respondents' Posthearing Brief at 8 and 9. Moreover, Dofasco's business plan notes that ***. Dofasco Importer's Questionnaire Response at Attachment 2, p. 10.

³⁶ CR/PR at Tables CORE-IV-18 and IV-20.

³⁷ One Canadian producer reported that ***. CR at CORE-II-10; PR at CORE-II-7. In 2005, Canadian non-subject corrosion-resistant steel production was approximately ***, as compared to *** of subject product. CR/PR at Table CORE-IV-24. Exports of non-subject micro-alloy corrosion-resistant steel to the U.S. market in 2005 were ***, representing *** of Canada's total shipments of that product and virtually all its exports. CR/PR at Table CORE-IV-25.

³⁸ CR/PR at Table CORE-IV-19.

³⁹ CR/PR at Table CORE-IV-21.

⁴⁰ CR/PR at Table CORE-IV-4.

⁴¹ CR/PR at Table CORE-V-17. In the original investigation, subject imports from Canada *** the domestic product in *** of *** possible price comparisons. Original Confidential Staff Report at Tables 110-113.

⁴² CR/PR at Table CORE-IV-68, as revised by Memorandum INV-DD-162 (Dec. 5, 2006). Negotiated transaction prices for hot-dipped galvanized steel show U.S. prices as higher than Canadian prices in early 2005, lower than Canadian prices from the second half of 2005 through May of 2006, and higher than Canadian prices from June through November of 2006. *Id.*

⁴³ CR/PR at Table CORE-I-1.

⁴⁴ CR/PR at Table CORE-I-1. We note that CORE steel imports from France have been subject to antidumping duty margins of 29.41 percent. *See* CR/PR at CORE-I-7 and Table CORE-I-7.

French capacity to produce CORE steel has *** since the original investigation, increasing from *** in 1992, to *** in 1999, to *** in 2005.⁴⁵ However, since French production has not increased at the same rate, French capacity utilization has declined from *** at the end of the first review period in 1999 to *** in 2005.⁴⁶ As a result, the French CORE steel industry has substantial excess capacity, *** in 2005; excess capacity equivalent to *** of apparent U.S. consumption in 2005 and *** of total subject imports in 2005.⁴⁷ There also is the possibility of product-shifting by French producers, given that they produce and export micro-alloy and other types of non-subject corrosion resistant steel.⁴⁸

The French industry devotes considerable resources to export markets, *** of total shipments in 2005.⁴⁹ While shipments of subject product to the U.S. market, with the orders in place, have been minimal, *** exports of subject CORE steel to other North American markets (Canada and Mexico) have ***.⁵⁰

The majority of French CORE steel production (*** in 2005) is hot-dipped galvanized.⁵¹ The French industry produces CORE steel for both automotive and non-automotive applications, with *** of total French shipments for automotive applications in 2005.⁵²

While there were no price comparisons for subject imports from France in this review or in the first review, subject imports from France *** the U.S. product in *** possible price comparisons in the original investigation.⁵³ Negotiated transaction prices for hot-dip galvanized coils and for electro-galvanized are mixed with French prices higher than U.S. prices in the spring of 2005 and the second half of 2006, but lower for the middle of 2005 to the middle of 2006.⁵⁴

In sum, the French CORE steel industry has substantial capacity and excess capacity; devotes considerable resources to export markets; has substantially increased exports to other North American markets during this review period; produces CORE steel that is substitutable with the domestic product; and has the ability to shift production. These factors indicate that subject imports from France are likely to have a discernible adverse impact on the domestic industry if the orders are revoked.

⁴⁵ CR/PR at Table CORE-IV-27. Two French producers, Arcelor and Duferco, appear to represent all CORE steel capacity in France, with Arcelor representing *** in 2005. CR at CORE-IV-35 and Table CORE-IV-26; PR at CORE-IV-15 and Table CORE-IV-26.

⁴⁶ CR/PR at Table CORE-IV-27. In 1992, French capacity utilization was ***. *Id.* We recognize the French respondents' claims that declines in capacity utilization reflect "the company's decision to ***." French Respondents' Prehearing Brief at 10. However, the evidence demonstrates that French CORE steel exports to other North American markets increased substantially during the current review period and indicate French producers' continuing interest in supplying markets in North America.

⁴⁷ CR/PR at Tables CORE-I-1 and IV-28.

⁴⁸ French producers reported non-subject production, mostly of micro-alloy product, in 2005 of *** as compared to *** of subject product, and *** of their micro-alloy corrosion-resistant steel was exported, including ***, to the United States. CR/PR at Tables CORE-IV-33 and CORE-IV-34. French producers, however, did not indicate how readily equipment used to produce the non-subject product could be switched to production of subject CORE steel.

⁴⁹ CR/PR at Table CORE-IV-29.

⁵⁰ CR at CORE-IV-41; PR at CORE-IV-17.

⁵¹ CR/PR at Table CORE-IV-28.

⁵² CR/PR at Table CORE-IV-30.

⁵³ Original Confidential Staff Report at Tables 110-112.

⁵⁴ CR/PR at Tables CORE-IV-68 and CORE-IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

*Germany.*⁵⁵ In 1992, imports from Germany to the U.S. market of CORE steel were 189,192 short tons.⁵⁶ German imports remained in the U.S. market, after imposition of the orders, and increased by 63.5 percent during this review period, from 46,453 short tons in 2000 to 75,941 short tons in 2005, even with the discipline of the orders.⁵⁷

German capacity to produce CORE steel has increased since the original investigation, with the substantial increases occurring since the first review; capacity increased from *** of capacity in 1999 to *** in 2005.⁵⁸ However, since German production has not increased at the same rate, German capacity utilization has declined from *** at the end of the first review period in 1999 to *** in 2005.⁵⁹ As a result, the German CORE steel industry has substantial excess capacity, *** in 2005, which was equivalent to *** of apparent U.S. consumption, *** of U.S. production, and *** of total subject imports in 2005.⁶⁰ Moreover, German producers manufacture substantial quantities of non-subject corrosion-resistant steel on the same equipment used to produce subject product, raising the possibility of product shifting.⁶¹ German producers' inventories were *** as a share of total shipments and *** in 2005.⁶²

The German industry devotes considerable resources to export markets, *** of total shipments in 2005.⁶³ Not only did shipments of subject product to the U.S. market increase, with the orders in place, but German exports of subject CORE steel to other North American markets (Canada and Mexico) ***.⁶⁴

The majority of German CORE steel production (*** in 2005) is hot-dipped galvanized.⁶⁵ The German industry produces CORE steel for both automotive and non-automotive applications, with *** of total German shipments for automotive applications in 2005.⁶⁶

Pricing data collected by the Commission show German product underselling U.S. product in 8 of 38 comparisons during the current review period, even with the discipline of the orders in place.⁶⁷ Negotiated transaction prices for hot-dip galvanized steel show German prices generally higher than U.S. prices from January through September of 2005, lower from October 2005 through September 2006, and

⁵⁵ German respondents contend that German imports should not be cumulated on the basis that the German industry does not have substantial excess capacity or inventories, their focus is on their home and the European markets, and German producers owned by Arcelor-Mittal will avoid exporting to compete with related U.S. plants. German Respondents' Posthearing Brief at 5-9, 13, and Answers to Commission Questions at 2, 12, and 27-28.

⁵⁶ CR/PR at Table CORE-I-1.

⁵⁷ CR/PR at Table CORE-I-1. In contrast, during the first review period, subject imports from Germany declined by 37.2 percent from 1997 to 1999. *Id.* We note that CORE steel imports from Germany have been subject to antidumping duty margins of 10.02 percent. *See Id.* at CORE-I-7 and Table CORE-I-7.

⁵⁸ CR/PR at Table CORE-IV-36.

⁵⁹ CR/PR at Table CORE-IV-36. In 1992, German capacity utilization was ***. *Id.*

⁶⁰ CR/PR at Tables C-7 and CORE-IV-38.

⁶¹ Of the reported German production in 2005 of *** was subject product, and the remainder was non-subject product, with *** consisting of micro-alloy corrosion-resistant steel. CR/PR at Table CORE-IV-42. Exports of micro-alloy corrosion-resistant steel to the U.S. market, as a percentage of total shipments of that product, ranged from *** in interim 2006, and were *** in 2005. CR/PR at Table CORE-IV-43. German producers stated, however, ***. CR at CORE-II-12; PR at CORE-II-8.

⁶² CR/PR at Table CORE-IV-38.

⁶³ CR/PR at Table CORE-IV-38.

⁶⁴ CR at CORE-IV-54; PR at CORE-IV-20.

⁶⁵ CR/PR at Table CORE-IV-37.

⁶⁶ CR/PR at Table CORE-IV-39.

⁶⁷ CR/PR at Table CORE-V-17. In the original investigation, German product oversold U.S. product in *** possible price comparisons. Original Confidential Staff Report at Tables 110-112.

higher in October and November 2006;⁶⁸ for electro-galvanized steel, German prices were lower in all months for the January 2005-November 2006 period, except four.⁶⁹ *** monthly prices for galvanized steel from 2000 through November 2006 show U.S. prices often higher than German prices.⁷⁰

In sum, Germany has substantial production capacity and unused capacity relative to apparent U.S. consumption and production; it relies heavily on export markets, including markets outside the European Union; its exports to the U.S. market increased significantly during the period, demonstrating that it has an interest in the U.S. market, as well as established distribution channels to readily divert shipments to this market; and it shipped significant quantities of non-subject micro-alloy corrosion-resistant steel to the United States during the period.⁷¹ These factors indicate that subject imports from Germany are likely to have a discernible adverse impact on the domestic industry if the orders are revoked.

*Japan.*⁷² In 1992, imports from Japan to the U.S. market of CORE steel were 824,743 short tons.⁷³ Subject imports from Japan declined sharply after imposition of the orders and have remained at low levels with the discipline of the orders in place.⁷⁴

Japanese capacity to produce CORE steel has increased since the original investigation, with a substantial increase occurring since the first review; capacity increased from *** of capacity in 1999 to *** in 2005.⁷⁵ While Japanese production and capacity utilization have increased since the first review, Japan still had substantial excess capacity in 2005; Japanese producers' excess capacity was *** in 2005, which was equivalent to *** of apparent U.S. consumption and *** of total subject imports in 2005.⁷⁶ Moreover, Japanese producers manufacture substantial quantities of non-subject corrosion-resistant steel on the same equipment used to produce subject product, raising the possibility of product shifting.⁷⁷ Japanese producers' inventories were ***, as a share of total shipments, and *** in 2005.⁷⁸

⁶⁸ CR/PR at Table CORE-IV-68, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁶⁹ CR/PR at Table CORE-IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁷⁰ CR at CORE-IV-95; PR at CORE-IV-35; CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁷¹ We note the German producers' assertions regarding product shifting and inventories, but find that subject imports from Germany would not be likely to have no discernible adverse impact in the event of revocation even if we do not include non-subject product and inventories as potential increased shipments to the United States. CR at CORE-II-12; PR at CORE-II-8; German Respondents' Posthearing Brief at 7.

⁷² Japanese respondents contend that Japanese CORE steel imports should not be cumulated on the basis that the Japanese industry has no excess capacity and has strong home and other export market demand, including a competitive advantage in supplying China and Asia. Japanese Respondents' Prehearing Brief at 86-89.

⁷³ CR/PR at Table CORE-I-1.

⁷⁴ CR/PR at Table CORE-I-1. We note that CORE steel imports from Japan have been subject to antidumping duty margins ranging from 1.61 percent to 36.41 percent during the current review period. See CR/PR at CORE-I-7-8 and Table CORE-I-4.

⁷⁵ CR/PR at Table CORE-IV-45.

⁷⁶ CR/PR at Tables C-7 and CORE-IV-47.

⁷⁷ The Japanese industry produced non-subject product on the same equipment, in the amount of *** in 2005, out of *** in total production. CR/PR at Table CORE-IV-51. Japan's exports to the U.S. market of non-subject micro-alloy corrosion-resistant steel were at a high of *** in 2000 and were *** in interim 2006. These exports to the U.S. market represented *** of total shipments in 2005 and *** in interim 2006, with total exports around *** of total shipments throughout most of the review period. CR/PR at Table CORE-IV-52. One Japanese producer ***. CR at CORE-II-12; PR at CORE-II-8.

⁷⁸ CR/PR at Table CORE-IV-47.

The Japanese industry devotes considerable resources to export markets (mostly to China and other Asian markets), *** of total shipments in 2005.⁷⁹ While shipments of subject product to the U.S. market, with the orders in place, have been low, the evidence in the record show that Japanese exports of subject CORE steel to other North American markets (Canada and Mexico) have been substantial and increasing during this review period.⁸⁰ These exports demonstrate a continuing interest in serving and shipping to other North American markets in close proximity to the U.S. market.

The majority of Japanese CORE steel production (*** in 2005) is hot-dipped galvanized.⁸¹ The Japanese industry produces CORE steel for both automotive and non-automotive applications, with *** of total Japanese shipments for automotive applications in 2005.⁸²

The Commission's pricing data show underselling by Japanese product in 5 out of 20 comparisons during the current review period, even with the discipline of the orders.⁸³ Negotiated transaction prices for hot-dip galvanized steel show Japanese prices generally higher than U.S. prices in 2005 and lower in 2006; for electro-galvanized steel, Japanese prices generally were higher than U.S. prices from February through June of 2005, lower from July 2005 through September 2006, and higher in October and November 2006.⁸⁴ *** monthly prices for galvanized steel show U.S. prices generally higher than Japanese export prices in 2002, 2004, and 2006, and generally lower during the rest of the review period.⁸⁵

In sum, the Japanese CORE steel industry has substantial capacity, excess capacity and inventories; devotes considerable resources to export markets; has substantially increased exports to other North American markets during this review period, indicating a continued interest in serving the markets in close proximity to the U.S. market; produces CORE steel that is substitutable with the domestic product; has shipped significant quantities of non-subject micro-alloy corrosion-resistant steel to the U.S. market during the review period; and has the ability to shift production. These factors indicate that subject imports from Japan are likely to have a discernible adverse impact on the domestic industry if the orders are revoked.

Korea. In 1992, imports from Korea to the U.S. market of CORE steel were 193,513 short tons.⁸⁶ Korean subject imports remained in the U.S. market after imposition of the orders and increased substantially during the review period, despite the discipline imposed by the orders.⁸⁷ During this review period, Korean subject imports reached a high of 330,858 short tons in 2005, or 1.5 percent of apparent U.S. consumption, for an increase of 30.5 percent from 2000 to 2005, and were 50.4 percent higher in interim 2006 than in interim 2005.⁸⁸

Korean capacity to produce CORE steel has more than doubled since the original investigation, increasing from 3.1 million in 1992, to *** in 1999, to 8.4 million in 2005.⁸⁹ However, since Korean production has not increased at the same rate, Korean capacity utilization has declined from *** at the

⁷⁹ CR/PR at Table CORE-IV-47.

⁸⁰ See Nucor/SDI's Posthearing Brief, Answers to Commission Questions at 22.

⁸¹ CR/PR at Table CORE-IV-46.

⁸² CR/PR at Table CORE-IV-48.

⁸³ CR/PR at Table CORE-V-17. In the original investigation, Japanese product undersold U.S. product in *** possible price comparisons. Original Confidential Staff Report at Tables 110-112.

⁸⁴ CR/PR at Tables CORE-IV-68 and CORE-IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁸⁵ CR/PR at Table CORE-IV-70, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

⁸⁶ CR/PR at Table CORE-I-1.

⁸⁷ CR/PR at Table CORE-I-1. We note that CORE steel imports from Korea have been subject to antidumping duty margins ranging from 0.68 percent to 17.70 percent during the current review period. See CR/PR at Table CORE-I-5.

⁸⁸ CR/PR at Tables CORE-I-1, IV-1, and C-7.

⁸⁹ CR/PR at Table CORE-IV-54.

end of the first review period in 1999 to 87.0 percent in 2005.⁹⁰ As a result, the Korean CORE steel industry has substantial excess capacity, 1.1 million short tons in 2005; excess capacity equivalent to almost 5 percent of apparent U.S. consumption in 2005 and 113 percent of total subject imports in 2005.⁹¹ The Korean industry also produces non-subject product on the same equipment, including *** of micro-alloy corrosion-resistant steel, *** of which was exported to the U.S. market in 2005.⁹² Korean producers' inventories, as a share of total shipments, increased from 3.3 percent in 2000 to 4.6 percent in 2005, and were 334,202 short tons in 2005.⁹³

In addition to current substantial volumes of U.S. imports from Korea despite the orders, Korea exported 28.8 percent of its total shipments in 2005 to countries other than the United States, amounting to 2.1 million short tons of CORE steel.⁹⁴ These other export markets included Korean exports of subject CORE steel to other North American markets (Canada and Mexico), which *** from 2000 to 2005.⁹⁵

The majority of Korean CORE steel production (*** in 2005) is hot-dipped galvanized.⁹⁶ The Korean industry produces CORE steel for both automotive and non-automotive applications, with 20.5 percent of total Korean shipments for automotive applications in 2005.⁹⁷

Pricing data show Korean product underselling U.S. product in 13 of 53 comparisons during the current review period, even with the discipline of the orders.⁹⁸ Negotiated transaction prices for hot-dip galvanized steel show Korean prices higher than U.S. prices in May through September of 2005, and lower in the remaining months of 2005 and 2006; for electro-galvanized steel, Korean prices generally were lower throughout 2005 and 2006.⁹⁹

In sum, the Korean CORE steel industry has substantial production capacity, excess capacity, and inventories; relies heavily on export markets; devotes considerable and increasing resources to the U.S. and other North American markets during the review period, demonstrating that it has an interest in the U.S. market, as well as established distribution channels to readily divert shipments to this market; and shipped significant quantities of non-subject micro-alloy corrosion-resistant steel to the United States during the period. These factors indicate that subject imports from Korea are likely to have a discernible adverse impact on the domestic industry if the orders are revoked.

Conclusion. In sum, each of the subject countries has increased its capacity since the original investigation and each has excess capacity. Each country has maintained at least some level of exports to the U.S. market during the review period, devotes considerable resources to export markets, and undersold U.S. product at times during the original investigation period, and, in some cases, during the review periods as well. These factors indicate that the subject imports from each country would have a discernible adverse impact on the U.S. market if the orders were lifted.

⁹⁰ CR/PR at Table CORE-IV-54. In 1992, Korean capacity utilization was 93.8 percent. *Id.*

⁹¹ CR/PR at Tables CORE-I-1 and IV-56.

⁹² CR/PR at Tables CORE-IV-60 and CORE-IV-61. Korean producers, however, did not indicate how readily equipment used to produce non-subject product could be modified to produce subject merchandise.

⁹³ CR/PR at Table CORE-IV-56.

⁹⁴ CR/PR at Table CORE-IV-56.

⁹⁵ CR at CORE-IV-81; PR at CORE-IV-29.

⁹⁶ CR/PR at Table CORE-IV-55.

⁹⁷ CR/PR at Table CORE-IV-57.

⁹⁸ CR/PR at Table CORE-V-17. In the original investigation, Korean product undersold U.S. product in *** possible price comparisons. Original Confidential Staff Report at Tables 110, 111, and 113.

⁹⁹ CR/PR at Tables CORE-IV-68 and CORE-IV-69, as revised by Memorandum INV-DD-162 (Dec. 5, 2006).

C. Likelihood of a Reasonable Overlap of Competition

Since we find that the “no discernible adverse impact” exception to cumulation does not apply to any of the subject countries, we next analyze the four factors the Commission typically examines in determining whether there will be a likely overlap of competition.¹⁰⁰ We note that the relevant inquiry is whether there would likely be competition even if there are no current imports from a subject country.¹⁰¹ Further, only a “reasonable overlap” of competition is required.¹⁰²

In the original investigations and in the first five-year reviews, the Commission majority found a reasonable overlap of competition and cumulated subject imports from all subject countries.¹⁰³

Fungibility. In these reviews, the record indicates that domestically produced and imported CORE steel are fungible products. Subject imports and the domestic product share the same essential chemical and physical properties, and there is a moderate to high degree of substitution between them.¹⁰⁴ Generally, producers, importers and purchasers reported that CORE steel from the U.S. and from other countries is always or frequently interchangeable.¹⁰⁵ Twenty-nine of 35 responding purchasers indicated that imported and domestically produced CORE steel are generally used in the same applications, as long as the steel conforms to the purchaser’s specifications or the supplier has been approved.¹⁰⁶

The evidence also shows that the types of CORE steel produced by the subject producers during the review period reveal a sufficient degree of fungibility among the subject imports and with the domestic product.¹⁰⁷ For example, producers in all subject countries produced hot-dip galvanized CORE steel during the review period and in some cases exported significant quantities to the U.S. market.¹⁰⁸ In addition, contrary to Canadian respondents’ claims that imports from Canada are focused on specialty automotive products to a much greater extent than other subject imports,¹⁰⁹ all the subject countries produce CORE steel for exposed automotive applications and the record shows that the majority of U.S. shipments of imports from Germany also are used in automotive applications (***)¹¹⁰ Moreover, there is sufficient overlap in the other types of CORE steel produced in all six countries, as well as exported to the

¹⁰⁰ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

¹⁰¹ See generally Cheflin Corp. v. United States, 219 F. Supp. 2d 1313, 1314 (Ct. Int’l Trade 2002).

¹⁰² See Mukand Ltd. v. United States, 937 F. Supp. 910, 917 (Ct. Int’l Trade 1996).

¹⁰³ USITC Pub. 3364 at 47-48.

¹⁰⁴ CR at CORE-II-20; PR at CORE-II-13.

¹⁰⁵ CR at CORE-II-30; PR at CORE-II-23.

¹⁰⁶ CR at CORE-II-21; PR at CORE-II-14.

¹⁰⁷ CR/PR at Tables CORE-IV-4-6, IV-11, IV-13-16, IV-19, IV-21-24, IV-28, IV-30-33, IV-37, IV-39-42, IV-46, IV-48-51, IV-55, IV-57-60.

¹⁰⁸ CR/PR at Tables CORE-IV-4, IV-11, IV-19, IV-28, IV-37, IV-46, and IV-55.

¹⁰⁹ Canadian Respondents’ Posthearing Brief, Answers to Commission Questions at 38.

¹¹⁰ CR/PR at Tables CORE-IV-4-6, IV-11, IV-13-16, IV-19, IV-21-24, IV-28, IV-30-33, IV-37, IV-39-42, IV-46, IV-48-51, IV-55, IV-57-60.

United States.¹¹¹ Specifically, each country shipped significant quantities of CORE steel for non-automotive applications during the review period (2005): Australia, ***; Canada, ***; France, ***; Germany, ***; Japan ***; and Korea, ***.¹¹² Similarly, while the Japanese producers assert a focus on high-value specialty products,¹¹³ the record shows they produce a full-range of CORE steel products.¹¹⁴

Channels of Distribution. The record also indicates that there is sufficient overlap in the channels of distribution for domestic and imported CORE steel. U.S. producers and importers ship CORE steel to automotive, construction, and other end users, as well as to distributors and service centers, although in different proportions.¹¹⁵ This is similar to the distribution patterns observed in the original investigations and prior reviews.

Simultaneous Presence and Geographic Overlap. Imports from each of the subject countries have been present in the U.S. market during at least some portion of the review period.¹¹⁶ The record also indicates that, despite low levels of imports from some of the subject countries during the review period, subject imports and the domestic product are sold in the same geographic markets.¹¹⁷ In addition, the record shows that U.S. producers and importers, on the whole, reported nationwide sales of CORE steel.¹¹⁸ Similarly, in both the original investigations and prior reviews, U.S. producers and importers reported that the United States was the geographic market area in which they competed.

Conclusion. The record indicates that the likely reasonable overlap in competition criteria are satisfied. Both domestically produced CORE steel and subject imports from all sources are fungible, are sold through similar channels of distribution, have geographic overlaps in sales, and have been present in the U.S. market during at least some portion of the period of review. We consequently conclude that subject imports from each of these six countries will likely compete with each other and with the domestic like product should the orders under review be revoked.

D. Other Considerations

In determining whether to exercise our discretion to cumulate subject imports of CORE steel, we assess whether the subject imports from each country are likely to compete under similar or different conditions of competition in the U.S. market. The domestic producers contend that there are no appreciable differences between the subject countries in likely conditions of competition.¹¹⁹ Respondents from Canada, France and Japan, however, contend that their imports are likely to compete under conditions of competition different from those of other subject imports and thus that each of their countries' imports should not be cumulated. We address their arguments below.

Canada. The Canadian respondent contends that trade patterns and conditions, due primarily to the integration of the North American automotive and CORE steel markets are different for Canadian

¹¹¹ CR/PR at Tables CORE-IV-4-6, IV-11, IV-13-16, IV-19, IV-21-24, IV-28, IV-30-33, IV-37, IV-39-42, IV-46, IV-48-51, IV-55, IV-57-60.

¹¹² CR/PR at Tables CORE-IV-13, IV-21, IV-30, IV-39, IV-48, and IV-57.

¹¹³ Japanese Respondents' Prehearing Brief at 90.

¹¹⁴ CR/PR at Tables CORE-IV-46, IV-48-51.

¹¹⁵ CR/PR at Table CORE-II-1.

¹¹⁶ CR/PR at Table CORE-IV-8.

¹¹⁷ CR/PR at Table CORE-IV-7.

¹¹⁸ CR/PR at Table CORE-II-2.

¹¹⁹ See e.g., U.S. Steel's Prehearing Brief at 52-53; Nucor/SDI's Posthearing Brief at 10-15; Mittal's Posthearing Brief, Answers to Commission Questions at Koplan-7-11, Lane-1-4, Okun-1-6, and Aranoff-1-3.

imports relative to the conditions for CORE steel imports from other subject countries.¹²⁰ In particular, the Canadian respondents maintain that automotive companies treat Canadian producers as domestic producers and that only North American suppliers are the “core” suppliers which the auto industry has indicated it would continue to rely principally on, even if the orders were revoked.¹²¹

First, any differences in conditions of competition between Canada and other subject countries due to the proximity of the Canadian suppliers are not significant enough to find that such imports are not likely to compete with each other if the orders are revoked.¹²² The U.S. and Canadian markets do not comprise one home market, either legally or factually.¹²³ Nor do we find a basis for claims that Canadian exports do not compete with U.S. product or other subject imports because Canadian exports are the result of decisions by auto companies to shift model production to the U.S. market and thus require their “core” steel companies to redirect shipments to the new assembly location.¹²⁴ While the Canadian respondent provided examples where such shifts resulted in CORE steel exports to the U.S. market, it also testified at the Commission hearing that “Dofasco has actually lost a major piece of corrosion resistant steel business at an OEM location in the United States due to a lower priced product from a U.S. mill displacing Dofasco.”¹²⁵ Clearly, Canadian CORE steel imports compete with U.S. product and CORE steel imports from other subject countries.

Moreover, as discussed above regarding no discernible adverse impact and reasonable overlap of competition, the Canadian CORE steel industry has substantial excess capacity and inventories, produces CORE steel that is substitutable with the domestic product and other subject imports, devotes considerable and increasing resources to exports to the U.S. market, and has undersold the U.S. product in the majority of possible price comparisons during this review period. We find that the evidence does not demonstrate any significant differences in conditions of competition between likely subject imports from Canada and CORE steel imports from other subject countries.

¹²⁰ Canadian Respondents’ Prehearing Brief at 1-15; Canadian Respondents’ Posthearing Brief at 1-8 and Answers to Commission Questions at 31-41.

¹²¹ Canadian Respondents’ Posthearing Brief at 2-3.

¹²² We note that other subject imports are held in service center inventories to meet just-in-time requirements.

¹²³ On the issue of whether the North American market is integrated, the Canadian respondent contends that the domestic CORE steel producers testified at the Commission hearing that it is “not integrated” but argued that they were “operating in an integrated North American market” in the 2004 Canadian sunset proceedings. Canadian Respondents’ Posthearing Brief at 4-5. The statements by the domestic CORE steel producers are not necessarily inconsistent when taken in context. For example, in the Canadian sunset proceeding, the context was whether the U.S. mills were dumping in the Canadian market (*i.e.*, selling at a different price in the home market relative to the Canadian market); the Canadian decision stated “U.S. Mills submitted that they have no propensity to dump because, operating in an integrated North American market, they do not differentiate between U.S. and Canadian customers for pricing purposes, and selling at the same ex-mill price is not dumping.” *Id.* at Exhibit 2 (paragraph 162, page 25). At the Commission hearing, the context was whether the U.S. and Canadian markets for steel sourcing were a single market and the question from Commissioner Hillman was “whether you would agree that the auto market in North America has become an integrated market, in terms of sourcing steel.” Tr. at 334. Mr. Goodish of U.S. Steel responded: “Would not look at it as an integrated market. Auto manufacturers come to us and we bid steel – or price steel based on specific models, not looking necessarily where they’re going to be bid. We do have different arrangements that we have to make from a freight perspective on getting material into Canada. So, we’re not looking at it as an integrated market. I think that would be dangerous on our part.” *Id.* Mr. Gant of AK Steel added: “it’s a border that’s easily crossed. But, from another matter, it is a different country. . . . there are different costs of doing business for producers there. . . . we ship to Mexico and Canada at the request of our customers and we do that to serve them, because its proximity is reasonable. But, it’s not the same market.” *Id.* at 336.

¹²⁴ Canadian Respondents’ Prehearing Brief at 5-6; Canadian Respondents’ Posthearing Brief at 3.

¹²⁵ Tr. at 512-513.

France. In arguing that “there are fundamental differences in competition between France” and other subject countries, the French Respondents focus on the proposed merger of Mittal and Arcelor, and indicate that Arcelor has no incentive to ship to the U.S. market to compete against Mittal.¹²⁶

We recognize the June 2006 announcement that Arcelor and Mittal plan to merge, but also take into consideration that this merger is under review and is not expected to be finalized until at best June 2007.¹²⁷ We also acknowledge the statements by Arcelor officials that “[i]f the Orders were revoked, whatever imports of subject merchandise from France to the United States that occur will have no adverse impact on the U.S. industry, because it is not in Arcelor-Mittal’s interest to do anything to undermine its position in the United States.”¹²⁸ Both Arcelor and Mittal produce a broad range of products.¹²⁹ While Arcelor may not intend to export to the U.S. market in a manner that adversely impacts its proposed U.S. affiliate operations, such statements do not speak to whether its exports would adversely impact the U.S. industry as a whole. Thus, rather than rely on intentions, we base our findings on the record evidence in the current review, which do not demonstrate that subject imports from France likely would compete under different conditions of competition in the U.S. market, if the orders were revoked.

As discussed above regarding no discernible adverse impact, the French CORE steel industry has substantial and increasing excess capacity, produces CORE steel that is substitutable with the domestic product and other subject imports, and devotes considerable resources to export markets. French respondents contend that their exports to the U.S. market will follow the pattern of their exports to Canada after revocation of the Canadian orders.¹³⁰ However, they do not mention the pattern of CORE steel exports from France to another North American market, Mexico, whose imports from France substantially increased from 2002 to 2005.¹³¹ These French exports demonstrate a continuing interest in serving and shipping to other North American markets in close proximity to the U.S. market. Finally, during the current review period, French producers of CORE steel have exported non-subject corrosion-resistant steel, such as micro-alloy steel, to the U.S. market providing them existing customers and channels of distribution for subject CORE steel exports if the orders were revoked.

We find that the evidence does not demonstrate any significant differences in conditions of competition between likely subject imports from France and CORE steel imports from other subject countries.

Japan. In arguing that subject imports from Japan likely will compete under different conditions of competition, Japanese respondents focus on their affiliations with U.S. CORE steel producers, and assertions about Japanese trade patterns and product mix.¹³²

First, as the Commission recognized in the first review, significant Japanese affiliate presence existed prior to the original investigations, but this did not cause the Japanese companies to participate in the U.S. market in a significantly different way than the other subject producers.¹³³ We do not believe that the situation is fundamentally different today. In fact, there are fewer Japanese CORE steel producers affiliated with U.S. operations today, and they account for a smaller share of U.S. capacity and

¹²⁶ French Respondents’ Posthearing Brief at 8-10 (they also contend that Arcelor’s investment plans are to acquire production facilities so as to produce locally rather than to export from France); French Respondents’ Prehearing Brief at 14-16.

¹²⁷ CR at CORE-III-5; PR at CORE-III-4.

¹²⁸ French Respondents’ Prehearing Brief at 13; French Respondents’ Posthearing Brief at Exhibit 3.

¹²⁹ See e.g., Mittal’s Posthearing Brief, Answers to Commission Questions at Okun-3-6.

¹³⁰ French Respondents’ Posthearing Brief at 5.

¹³¹ CR at CORE-IV-41; PR at CORE-IV-17.

¹³² Japanese Respondents’ Prehearing Brief at 89 and 90.

¹³³ See USITC Pub. 3364 at 48, n. 321.

production than in the first review.¹³⁴ Thus, we do not agree with the Japanese respondents' claim that their significant investments in U.S. affiliate CORE steel producers sufficiently distinguishes them from the producers in other subject countries, many of whom also have, or have plans to have, significant U.S. CORE steel investments.

Second, the evidence shows that the Japanese industry's production is not limited to specialty products but rather includes production of a broad range of CORE steel products which compete with other subject CORE steel.

Finally, Japanese respondents (as did French respondents) urge the Commission to consider their exports to Canada after revocation of the Canadian order as a "model" of their likely trade patterns to the U.S. market if the orders were revoked.¹³⁵ In doing so, Japanese respondents also fail to make mention of the substantial and increasing CORE steel exports from Japan to Mexico during the current review period. Japanese customs evidence shows Japanese exports to Mexico were large and increased substantially—increased from about 75,000 metric tons in 2000 to 186,412 metric tons in 2004, and were 125,780 metric tons in 2005 and 131,610 metric tons for the January-October 2006 period.¹³⁶ These exports demonstrate a continuing interest in serving and shipping to other North American markets in close proximity to the U.S. market rather than a commitment to have U.S. affiliates supply these North American markets.

Moreover, as discussed above regarding no discernible adverse impact, the Japanese CORE steel industry has substantial and increasing excess capacity, produces CORE steel that is substitutable with the domestic product and other subject imports, and devotes considerable resources to export markets. We find that the evidence does not demonstrate any significant differences in conditions of competition between likely subject imports from Japan and subject CORE steel imports from other subject countries.

We find that the record in these reviews does not indicate that there are likely to be any significant differences in conditions of competition between subject CORE steel imports from any of the six subject countries. Consequently, we exercise our discretion to cumulate subject imports from Australia, Canada, France, Germany, Japan, and Korea.

II. REVOCATION OF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS ON CORE STEEL FROM AUSTRALIA, CANADA, FRANCE, GERMANY, JAPAN, AND KOREA WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY

We applied the legal standards regarding the likelihood of continuation or recurrence of material injury to the domestic CORE steel industry as discussed in section III of the Commission's Views above.¹³⁷

¹³⁴ In the current review, *** Japanese respondents have an ownership interest in a domestic producer. CR/PR at Table CORE-I-12. While the current Japanese affiliations represent *** of U.S. production in 2005, the six Japanese producers with domestic producer affiliations in the first review accounted for *** of U.S. capacity in 1999. CR/PR at Table CORE-I-12; Japanese Respondents' Prehearing Brief at 90; Confidential Views of the Commission (First Review) at 77.

¹³⁵ Japanese Respondents' Posthearing Brief at 10-12.

¹³⁶ The Japanese customs evidence was provided by Nucor/SDI. See Nucor/SDI's Posthearing Brief, Answers to Commission Questions at 22. Japanese respondents acknowledged CORE steel exports to Mexico, but did not provide specifically requested export data regarding Mexico and did not refute the Japanese customs evidence provided by Nucor/SDI. See Japanese Posthearing Brief at Tab E.

¹³⁷ Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the magnitude of dumping to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). In Commerce's final five-year review determinations with respect to all subject countries, it

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A. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹³⁸

In the first five-year reviews, the Commission found that supply and demand conditions as well as the business cycle for CORE steel had not changed significantly since the original investigations.¹³⁹ The Commission noted the two processes for making CORE steel, hot-dipping and electrolytic galvanizing, and that demand depended on the level of demand in the principal end use markets, automotive and construction. It described demand for hot-dipped CORE steel as having grown significantly faster since the original investigations than demand for the electrogalvanized product. It also found that apparent U.S. consumption had increased since the original investigations.

The Commission in the first reviews found subject imports and domestic product to be broadly interchangeable and price therefore an important factor in purchasing decisions. It further found that price competition had increased since the original investigations with the consolidation of purchasing power in the automobile industry, the reduced number of service centers, and the adoption and application of international standards. It found that pricing patterns had not changed significantly in recent years, with many purchasers reporting they changed suppliers only infrequently. Domestic producers reportedly sold their product both by contract and on the spot market and indicated that contracts gave them little protection given that purchasers requested price concessions when spot prices fell.

As in the original investigations, domestic producers dominated the U.S. market for CORE steel during the first review period and had made significant investments since 1992 to add capacity and improve existing capacity. The Commission noted that CORE steel production was technologically complex and capital intensive, with high fixed costs, requiring high capacity utilization rates for domestic producers to stay profitable. It further noted the affiliations of the major Japanese producers with U.S. producers.

While many of these conditions of competition are the same in the second reviews, there are some differences which we also find relevant to our determinations in these reviews.

¹³⁷ (...continued)

assigned five-year review margins as follows: Australia, 24.96 percent; Canada, 11.71 to 22.70 percent; France, 29.41 percent; Germany, 10.02 percent; Japan, 36.41 percent; and Korea, 17.70 percent. CR/PR at Table CORE-I-7.

Although the statute does not expressly define the “magnitude of the net countervailable subsidy” to be used by the Commission in five-year reviews, it states that “[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated.” 19 U.S.C. §1675a(b)(3). Commerce found likely subsidy rates as follows: France, 0.16 percent; and Korea, 1.15 percent. It revoked the countervailing duty order against CORE steel from Germany. CR/PR at Table CORE-I-8.

In five-year reviews concerning countervailing duty orders the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. §1675a(b)(6). In its final determinations, Commerce described the various subsidy programs as follows:

France. In its final determination in the review of the countervailing duty order, Commerce identified 9 programs which provided countervailable subsidies to French subject producers, none of which fell within the meaning of Article 3 the Subsidies Agreement.

Korea. In its final determination in the review of the countervailing duty order, Commerce identified 11 programs which provided countervailable subsidies to Korean subject producers, 5 of which were found to be export subsidies as described in Article 3 of the Subsidies Agreement. CR at OVERVIEW-16-17, nn.41 and 42; PR at OVERVIEW-14, nn.41 and 42.

¹³⁸ 19 U.S.C. § 1675a(a)(4).

¹³⁹ USITC Pub. 3364 at 49-51.

1. Demand

Demand for CORE steel continues to be dependent on the demand in its end use sectors, primarily automotive manufacturing and construction, although it is also used in home appliances, HVAC components, and battery cans and components.¹⁴⁰ In the current reviews, the automotive sector accounted for 47.6 percent of domestic CORE steel shipments in 2005, with 25.8 percent to steel service centers and distributors, 18.8 percent to the construction sector, 3.6 percent to appliances/utensils/cutlery, and 4.2 percent to other sectors.¹⁴¹ There are different business cycles for the different end user industries, and the evidence is mixed on whether there is a distinctive business cycle for CORE steel, with the majority of purchasers reporting there is not a distinctive business cycle and the majority of producers reporting there is.¹⁴²

Apparent U.S. consumption of CORE steel, which fluctuated from year to year over the 2000-2005 period, only increased by 3.4 percent from 21.9 million short tons in 2000 to 22.7 million short tons in 2005.¹⁴³ In contrast, the increase in apparent U.S. consumption was higher in the original investigations – 6.0 percent from 1990 to 1992 – and substantially higher in the first reviews – 12.1 percent from 1997 to 1999.¹⁴⁴

Demand for CORE steel, based on projections for end use demand, is expected to remain flat or increase at a slower rate in the reasonably foreseeable future than over the current review period.¹⁴⁵ For example, the record evidence shows that North American automobile production is expected to decline in 2006, based on announced cuts in automobile production by General Motors, Ford, and DaimlerChrysler, stabilize or level off in 2007 and not increase until 2008 or 2009, depending on the forecast considered.¹⁴⁶

¹⁴⁰ CR at CORE-II-15; PR at CORE-II-10. Although the cost share of CORE steel varies greatly by end use, it can account for a relatively large percentage of the total cost of end use products. In vehicle parts for automobiles and light trucks, it can be 50 to 85 percent even though it accounts for only 1.4 to 5 percent of the total cost of the vehicle. In certain construction components, such as metal studs, steel decks, and metal roofs, CORE steel accounts for 70 to 100 percent of the total cost. CR at CORE-II-19; PR at CORE-II-21.

¹⁴¹ CR/PR at Table CORE-II-3 (American Iron & Steel Institute data), as revised by Memorandum INV-DD-164 (Dec. 13, 2006). Based on Commission questionnaire responses, U.S. producers reported in 2005 that 35.6 percent of their total shipments were directly to automotive end users, 24.0 percent directly to construction end users, 9.4 percent to other end users, and 31.0 percent to steel service centers and distributors. CR/PR at Tables CORE-I-11 and II-1.

¹⁴² CR at CORE-II-17.

¹⁴³ CR/PR at Tables CORE-I-17 and C-7. While apparent U.S. consumption was 14.6 percent higher in January-June 2006 compared with January-June 2005, we note that there have been substantial fluctuations in apparent U.S. consumption in recent years; apparent U.S. consumption increased by 15.3 percent from 2003 to 2004, but declined by 9.3 percent from 2004 to 2005. *Id.*

¹⁴⁴ CR/PR at Table CORE-I-1.

¹⁴⁵ CR at CORE-II-14 and II-15, and notes 24-28; PR at CORE-II-9 and II-10, and notes 24-28. *See* Auto Producers' Posthearing Brief, Answers to Commission Questions at 6-12 (GM Projection at 9 and CSM Global Production – North America at 11); *see also* Nucor/SDI's Prehearing Brief, Exhibit 14 at Exhibit 1 (Ward's US Light Vehicle Production); U.S. Steel's Prehearing Brief at Exhibit 37; Japanese Respondents' Prehearing Brief, Volume 2, Exhibit 9 at 6.

¹⁴⁶ *See* CR at CORE-II-14 and II-15, and notes 24-28; PR at CORE-II-9 and II-10, and notes 24-28. The parties disagreed about how to characterize the demand forecasts, but the evidence that they provided was similar. While the "Auto Producers project that domestic demand for CORE will continue to be 'robust,'" we note that the evidence they provided showed declines in automobile production in 2006, and flat demand in 2007. Specifically, the Auto Producers recognized these similarities in stating:

In the near term, these data [GM projections] demonstrate that North American vehicle production will

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The evidence on the record is mixed as to whether a shift in production from SUVs and light trucks to smaller passenger cars will result in less CORE steel per car.¹⁴⁷ Thus, any increases in CORE steel consumption due to increases in production of smaller vehicles is generally offset by declines in CORE steel consumption due to decreases in SUV production. North American heavy truck production is expected to decline in 2007.¹⁴⁸ In addition, demand in the residential construction sector showed signs of weakening at the end of the period and into 2007, which likely will reduce demand for HVAC components and appliances; non-residential construction is expected to remain strong into 2007.¹⁴⁹

Continuing the trend developing during the first reviews, demand for hot-dipped galvanized CORE steel grew while demand for electrogalvanized CORE steel declined. Electrogalvanized CORE steel reportedly is more costly to produce in part due to zinc and energy costs.¹⁵⁰ The shift can be attributed to costs as well as recent technological changes that have encouraged automakers to use the less costly hot-dipped steel in place of electrogalvanized for exposed auto parts.¹⁵¹ While the shift has meant that new capacity is hot-dip CORE steel and that some electrogalvanized has been phased out,¹⁵² there

¹⁴⁶ (...continued)

decline slightly in 2006, stabilize in 2007 and 2008, and then begin to increase significantly starting in 2009. Similarly, Ward's and Automotive News (another highly reliable industry publication) predict a small decrease in U.S. vehicle production in 2006, a leveling off in 2007, and then increases from 2008 through 2010.

Auto Producers' Posthearing Brief, Answers to Commission Questions at 10; see also Nucor/SDI's Prehearing Brief, Exhibit 14 at Exhibit 1 (Ward's US Light Vehicle Production); U.S. Steel's Prehearing Brief at Exhibit 37; Japanese Respondents' Prehearing Brief, Volume 2, Exhibit 9 at 6.

¹⁴⁷ Domestic producers argue that a shift in demand from SUVs and light trucks to smaller passenger cars will result in less CORE steel per car. See U.S. Steel's Posthearing Brief at Exhibit B, and Answers to Commission Questions at 7 ("U.S. Steel estimates that the average SUV contains *** pounds of corrosion-resistant steel, while the average small car contains only *** pounds of corrosion-resistant steel. In other words, small cars generally use *** less corrosion-resistant steel than SUVs. As these figures show, any major shift in production from SUVs to smaller, more fuel-efficient automobiles could have a *** impact on demand for corrosion-resistant steel."); Mittal's Posthearing Brief, Answers to Commission Questions at Koplán-12-15 ("the amount of CORE used in the average passenger car is likely to be 470 pounds less than the CORE content of the average SUV or light truck. Thus, for each reduction in SUV and light truck production of 1,000 vehicles, an additional 1,374 passenger cars would need to be produced to maintain CORE demand at a steady volume. . . . [for example, the] increasingly popular Civic model requires only 53 to 57 percent of the CORE needed to construct the heavier Pilot model, meaning that nearly two Civics need to be built to create the same demand for CORE generated by one Pilot vehicle."); Nucor/SDI's Prehearing Brief at Exhibit 14. According to respondents, a "possible 'modest' shift in consumer demand for smaller automobiles is not going to result in a decrease in the amount of CORE used to produce the average vehicle." See Canadian Respondents' Posthearing Brief, Answers to Commission Questions at 44 ("As smaller cross-over utility vehicles ('CUV') gain in popularity and take market share from larger sport utility vehicles ('SUV'), the demand for CORE may increase as the typical CUV is a unibody vehicle in which the frame uses relatively more CORE than the average SUV."); Auto Producers' Posthearing Brief, Answers to Commission Questions at 18-23.

¹⁴⁸ CR at CORE-II-14, n. 24; PR at CORE-II-9, n. 24.

¹⁴⁹ CR at CORE-II-14 and n. 24; PR at CORE-II-9 and n. 24.

¹⁵⁰ CR at CORE-II-5 and n.5; PR at CORE-II-4 and n.5.

¹⁵¹ CR at CORE-II-4-6; PR at CORE-II-3-5.

¹⁵² Electrogalvanized CORE steel almost exclusively is shipped to automotive end users, who also receive about 40 percent of shipments of hot-dipped CORE steel. All domestic production capacity added over the current review period was for hot-dipped CORE steel, which increased from 19.1 million short tons in 2000 to 20.1 million short tons in 2005, whereas electrogalvanized capacity decreased from 4.4 million short tons to 3.4 million short tons, and other capacity also decreased from 2.9 million short tons to 2.7 million short tons over the same period. CR/PR at

(continued...)

still is demand for electrogalvanized, particularly by certain auto producers that have not changed their requirements and/or designs.¹⁵³

2. Supply

Since the first reviews, there have been a number of mergers and a restructuring of the domestic CORE steel industry.¹⁵⁴ However, while the domestic CORE steel industry has become somewhat more concentrated,¹⁵⁵ the number of domestic CORE steel producers has remained about the same – in the original investigations, 23 firms produced CORE steel; in the first reviews, 20 firms produced CORE steel; and in these reviews, 23 firms produced CORE steel.¹⁵⁶

During the process of consolidation and restructuring,¹⁵⁷ domestic producers have been able to reduce their fixed costs, and increase their productivity.¹⁵⁸ Nevertheless, CORE steel production still is technologically complex, involves high fixed costs, is capital intensive in nature, and requires high capacity utilization rates to remain profitable. In spite of the consolidation and restructuring, the domestic industry's overall production capacity remained relatively steady during the current review period, and its capacity utilization hovered around 80 percent, down from 87.3 percent in 1999.¹⁵⁹ Most domestic producers do not produce other products on the same equipment or with the same employees.¹⁶⁰

¹⁵² (...continued)

Table CORE-III-3.

¹⁵³ See e.g., U.S. Steel's Posthearing Brief at 5, n. 19 and Exhibit B at paras. 12-16; Tr. at 195-196 and 535-536 (Mr. Cover: "There is no swing in mix from electrogalvanized to hot-dipped, and the reason is a technical reason. GM is the largest consumer of electrogalvanized steel in the country, and the design specifications for our use of that product are stable. There are four other companies in the United States that also produce their vehicles with electrogalvanized steel. Those are Ford, Chrysler, BMW and Mercedes Benz. . . . To move from one product to another is technically infeasible in a short time for lots of manufactureability and product validation reasons, so to my knowledge, and it's certainly true of GM, there is no intentional design shift to move the materials of construction from electrogalvanized to galvaneal.").

¹⁵⁴ See CR at CORE-III-4-6 and Table CORE-III-3; PR at CORE-III-4 and Table CORE-III-3. The consolidations have included: ISG acquired all of LTV's assets in 2002, the assets of Bethlehem Steel in 2003, and Weirton Steel's assets in 2004; in 2003, U.S. Steel bought the steel-making assets of National Steel; in 2004, Severstal purchased the assets of Rouge Steel; in 2005, Mittal acquired ISG, including CORE steel production facilities previously owned by LTV Steel, Bethlehem Steel, Weirton Steel, and Ispat Inland. CR/PR at Tables CORE-I-12 and III-1.

¹⁵⁵ The seven largest CORE steel producers accounted for *** of CORE steel production in 2005 as follows: ***. CR/PR at Table CORE-I-12. In 2005, the top four domestic mills accounted for *** of U.S. CORE steel production, as compared to *** in 1999. CR/PR at Table CORE-I-12.

¹⁵⁶ CR at CORE-I-23; PR at CORE-I-19; Confidential Views of the Commission (First Review) at 77.

¹⁵⁷ We recognize that during the current review period the restructuring of the U.S. CORE steel industry may have been facilitated in part by global safeguards on a variety of steel products, including CORE steel, from March 20, 2002, through December 4, 2003. The safeguard tariff was 30 percent *ad valorem* for the first year of relief and 24 percent *ad valorem* starting on March 20, 2003. CR at OVERVIEW-12-15; PR at OVERVIEW-10-11.

¹⁵⁸ Fixed costs, or "other factory costs," as a ratio to net sales, decreased from 41.4 percent in 2000 to 28.0 percent in 2005. CR/PR at Table CORE-III-9. Productivity increased by 66.1 percent over the current period. CR/PR at Table C-7.

¹⁵⁹ CR/PR at Tables CORE-I-1 and C-7. While the industry had excess capacity for both hot-dipped and electrogalvanized product, its capacity utilization rate was generally higher for hot-dipped production: hot-dipped capacity utilization was at 80.2 percent in 2005 as compared to 74.8 percent in 2005 for electrogalvanized capacity utilization. CR/PR at Table CORE-III-3.

¹⁶⁰ CR at CORE-III-7; PR at CORE-III-5.

In the first reviews, as the orders had a positive effect on the domestic CORE steel producers' performance, they were able to make significant investments to add capacity and improve existing capacity for a net increase of 6.7 million short tons from 1992 to 1999.¹⁶¹ In the second reviews, while overall domestic CORE steel capacity remained flat from 2000 to 2005, a number of investments were undertaken in 2005 and 2006, which will add 1.9 million short tons of CORE steel capacity by 2008.¹⁶² Specifically, the additional capacity includes: Winner Steel added 700,000 tons of hot-dip galvanized and galannealed steel in 2006; SeverCorr began construction in 2005 on a new mill which is expected to start production in 2007 and reach full capacity in 2008 with 400,000 tons devoted to hot-dip galvanized and galannealed steel production; Mittal plans to bring on line 700,000 tons of hot-dipped galvanizing capability by the end of the first quarter of 2007 and will shut down about 410,000 tons of other hot-dip and aluminizing capacity, for a net increase in CORE steel capacity of 290,000 tons; and Nucor announced plans to add 500,000 short tons of hot-dipped galvanized capacity.¹⁶³

The majority of CORE steel sold by both domestic producers and importers is made to order, but a significant minority is sold from inventory.¹⁶⁴ By the end of the review period, service center inventories were relatively high. After a correction in 2005 they began rising again.¹⁶⁵

Purchasers reported periodic shortages during the second review, mostly in 2004 and early 2005, when demand and prices peaked.¹⁶⁶ The reported shortages were in the form of allocations, controlled order entries, and attempts to obtain supply quantities in excess of those specified in their contracts, all of which forced some purchasers into the spot market.¹⁶⁷ Some of the shortages can be attributed to unplanned outages at certain domestic facilities and labor disputes at AK Steel.¹⁶⁸

The percentage of apparent U.S. consumption supplied by the domestic CORE steel industry declined during the second review, from 92.6 percent in 2000 to 88.4 percent in 2005.¹⁶⁹ Imports from subject sources increased their presence in the U.S. market during the second review, as discussed

¹⁶¹ USITC Pub. 3364 at 55.

¹⁶² CR at CORE-III-5-6 and Table CORE-III-3; PR at CORE-III-4-5 and Table CORE-III-3. In line with plans to upgrade and add this capacity, the industry's capital expenditures were \$428,147,000 in 2005, increasing from \$295,331,000 in 2000, and research and development expenses increased to \$34,022,000 in 2005, from \$15,950,000 in 2000. CR/PR at Table CORE-III-12.

¹⁶³ CR at CORE-III-4-7 and Table CORE-III-1; PR at CORE-III-4 and Table CORE-III-1.

¹⁶⁴ Twelve of 17 responding producers reported selling at least 95 percent of their CORE steel produced to order and 18 of 20 responding importers reported selling 75 percent of their CORE steel produced to order. CR at CORE-II-29; PR at CORE-II-21.

¹⁶⁵ CR/PR at Figure CORE-III-1. Service center inventory data, however, are for all steel sheet and are not limited to CORE steel product.

¹⁶⁶ Eleven of 17 producers responding to the Commission's questionnaires and 8 of 26 responding importers reported that they had refused, declined or been unable to supply CORE steel at certain times since 2000. CR/PR at CORE-II-5.

¹⁶⁷ CR at CORE-II-4-6; PR at CORE-II-4. The domestic producers maintain that in 2004 their ability to supply CORE steel may have been constrained to some extent by raw material shortages but there is currently no short supply. In addition, they assert that some shortages alleged by purchasers were not real shortages but resulted from consumers wanting quantities in excess of contract volumes at low contract prices, or from automakers switching the grades they wanted on very short notice. See e.g., U.S. Steel's Posthearing Brief at 4 and 6-8.

¹⁶⁸ CR at CORE-II-4 - II-5 and CORE-III-14; PR at CORE-II-3 - II-5 and CORE-III-11. When the collective bargaining agreement between AK Steel and its union expired on March 1, 2006, AK Steel locked out its union workers and began operating its Middletown Works facility using salaried and replacement workers. Negotiations have continued. CR at CORE-III-14 and n. 27; PR at CORE-III-11 and n. 27.

¹⁶⁹ CR/PR at Tables CORE-I-1 and C-7.

below.¹⁷⁰ Non-subject imports as a share of apparent U.S. consumption rose irregularly during the current review, and were the highest in 2004 at 9.7 percent, when demand and prices were peaking.¹⁷¹ Non-subject imports then declined in 2005.¹⁷²

Global production capacity also increased during the second review and is expected to continue increasing in the near future in both the subject countries and non-subject countries, including China, other Asian countries, the EU, Turkey and Russia.¹⁷³ Although China has been and is expected to remain a net importer of CORE steel for the foreseeable future, the substantial increase in Chinese capacity will likely slow imports into China of CORE steel.¹⁷⁴

In the original investigations and the first reviews, each of the six major Japanese CORE steel producers owned or was affiliated with a domestic producer.¹⁷⁵ During the current review period, *** Japanese respondents, *** Korean producer and *** German producer are affiliated with domestic producers.¹⁷⁶ Moreover, if the proposed Arcelor/Mittal merger is finalized, Canadian, French and more German producers also will have affiliations with domestic producers.

3. Substitutability

Domestic and imported CORE steel, both subject and non-subject, is used in the same applications. The majority of purchasers reported that the domestic product is comparable or superior to subject imports from each country in every category.¹⁷⁷ Given the broad interchangeability of CORE steel, price continues to be an important factor in purchasing decisions, as it was in the original investigations and first reviews. As discussed below, domestic CORE steel is sold both by contract and on the spot market with little protection from contracts since price concessions are requested by purchasers if spot prices decline.¹⁷⁸

4. Raw Material/Energy Costs

Over the second review period, particularly in the latter half, the U.S. CORE steel industry's raw material and energy costs increased substantially and are forecast to remain at high levels for the foreseeable future.¹⁷⁹ For example, the world price of zinc, a primary coating material in the production of CORE steel, has risen from \$800 per metric ton in October 2003 to a high of \$3,600 per metric ton in

¹⁷⁰ CR/PR at Tables CORE-I-1 and C-7.

¹⁷¹ CR/PR at Table C-7.

¹⁷² CR/PR at Table CORE-IV-2. In 2005, the largest sources of non-subject imports were: India, Taiwan, Mexico, Brazil, and China. Imports from China were 148,000 short tons in 2005 (less than one percent of apparent U.S. consumption), but were higher in interim 2006, at 292,426 short tons.

¹⁷³ CR/PR at Tables CORE-IV-63 and IV-64. The evidence demonstrates that production in East and Southeast Asia resulted in that region being a net exporter of about *** tons of coated steel sheet in 2005 and that the region is expected to continue to be a net exporter, increasing to about *** tons in 2007. *Id.* at Tables CORE-IV-63, IV-64, IV-66, and IV-67.

¹⁷⁴ CR/PR at Tables CORE-IV-64 and IV-67.

¹⁷⁵ USITC Pub. 3364 at 51.

¹⁷⁶ CR/PR at Table CORE-I-12.

¹⁷⁷ CR at CORE-II-24-27; PR at CORE-II-20-21.

¹⁷⁸ CR at CORE-V-11; PR at CORE-V-9; U.S. Steel's Posthearing Brief at 12-14; Mittal's Posthearing Brief at 4-5; Nucor/SDI's Prehearing Brief at 50-51.

¹⁷⁹ CR/PR at CORE-V-2.

May 2006 and was \$3,300 per metric ton in August 2006.¹⁸⁰ Energy costs also have increased substantially from 2000 to 2005.¹⁸¹ Both producers and importers reported that raw material price increases have had a dramatic effect on CORE steel prices, especially since 2004.¹⁸²

B. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹⁸³ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.¹⁸⁴

In the original determinations, the Commission found that the cumulated subject imports decreased slightly from 1990 to 1991, and then increased sharply to 1.9 million short tons in 1992, along with a significant increase in market share during the same period.¹⁸⁵ In the first reviews, the Commission noted that the volumes of subject imports fell substantially after the orders were issued and had been at levels significantly below the pre-order levels during the review period. It found the volume of cumulated subject imports likely to be significant upon revocation based on: total production capacity in the subject countries that exceeded apparent U.S. consumption in 1999; additional non-subject capacity that could be shifted to produce the subject product; substantial excess capacity in the subject countries and the incentive to maximize and sustain the utilization of available capacity given the producers’ high fixed costs; and subject producers’ reliance on export markets.¹⁸⁶

Several factors in the current five-reviews, similar to the first reviews, support the conclusion that the likely volume of subject imports would be significant if the orders were revoked. First, even with the discipline of the orders in place, increases of cumulated subject imports of CORE steel substantially outpaced increases in consumption during the review period. While apparent U.S. consumption increased by 3.4 percent from 2000 to 2005, cumulated subject imports increased by 36.6 percent, from 711,842 short tons in 2000 to 972,681 short tons in 2005.¹⁸⁷ Cumulated subject imports were 14.1 percent higher in the January-June 2006 period compared with the January-June 2005 period.¹⁸⁸ The market penetration of cumulated subject imports increased as the domestic industry’s share of the U.S. market declined from

¹⁸⁰ CR at CORE-IV-104 and Figures CORE-V-1 and V-2; PR at CORE-IV-38 and Figures CORE-V-1 and V-2.

¹⁸¹ CR/PR at CORE-V-1. For example, natural gas prices increased from \$4.45 per thousand cubic feet in 2000 to \$8.21 per thousand cubic feet in 2006, and electricity prices increased from \$4.64 per kilowatt-hour in 2000 to \$5.93 per kilowatt-hour in 2006. *Id.*

¹⁸² CR/PR at CORE-V-3.

¹⁸³ 19 U.S.C. § 1675a(a)(2).

¹⁸⁴ 19 U.S.C. § 1675a(a)(2)(A-D).

¹⁸⁵ USITC Pub. 3364 at 51-52.

¹⁸⁶ USITC Pub. 3364 at 52-53.

¹⁸⁷ CR/PR at Table C-7. In the first reviews, apparent U.S. consumption increased by 12.1 percent from 1997 to 1999, while cumulated subject imports increased by about 40 percent for the same period. CR/PR at Table CORE-I-1.

¹⁸⁸ CR/PR at Table C-7.

2000 to 2005.¹⁸⁹ Cumulated subject imports also increased relative to U.S. production during the current review period.¹⁹⁰

Second, there is considerable and increasing capacity to produce CORE steel in the subject countries. CORE steel production capacity in the subject countries increased by 10.4 percent from 2000 to 2005.¹⁹¹ It was 37.7 million short tons in 2005, equivalent to 166 percent of apparent U.S. consumption.¹⁹² The total subject country production capacity is even more significant considering that additional capacity of 7.1 million short tons currently used to produce non-subject corrosion-resistant steel (such as micro-alloy) could be shifted to production of the subject merchandise.¹⁹³

In spite of the relatively high capacity utilization rates reported by all responding subject producers, there is substantial and increasing excess capacity in the subject countries. In 2005, excess CORE steel capacity was 3.4 million short tons, equivalent to 15.1 percent of apparent U.S. consumption. Moreover, total excess capacity in the subject countries increased by 18.7 percent from 2000 to 2005.¹⁹⁴ Given the high fixed costs associated with CORE steel production, there continues to be an incentive to maximize and sustain the utilization of available capacity.¹⁹⁵ Furthermore, subject CORE steel producers held substantial inventories of subject product, almost 2 million short tons in 2005.¹⁹⁶

Finally, as evident in the original investigations and first reviews, producers in all subject countries continue to rely heavily on their export markets. In 2005, total cumulated export shipments accounted for 30.3 percent of total cumulated shipments, with individual countries' devotion of resources to exports ranging from *** percent to *** percent of their total shipments.¹⁹⁷ Exports from subject countries have increased to the U.S. market, notwithstanding the discipline of the orders, and to other North American markets (Canada and Mexico) during the period of these reviews.¹⁹⁸ This evidence demonstrates that producers in subject countries have an interest in the U.S. market and established distribution channels to readily divert additional shipments to this market if the orders were revoked.¹⁹⁹

¹⁸⁹ CR/PR at Table C-7.

¹⁹⁰ Calculated from CR/PR at Table C-7. Despite increases in apparent U.S. consumption during the current review period, domestic CORE steel production declined by 1.5 percent from 2000 to 2005. Id.

¹⁹¹ CR/PR at Tables CORE-IV-12, IV-20, IV-29, IV-38, IV-47, and IV-56. During the period of review, the CORE steel production capacity in all subject countries has increased. See our analysis for each individual subject country in the no discernible adverse impact section of our opinion above.

¹⁹² CR/PR at Tables CORE-IV-12, IV-20, IV-29, IV-38, IV-47, IV-56 and C-7.

¹⁹³ Calculated from CR/PR at Tables CORE-IV-20, IV-24, IV-29, IV-33, IV-38, IV-42, IV-47, IV-51, IV-56, and IV-60.

¹⁹⁴ Calculated from CR/PR at Tables CORE-IV-12, IV-20, IV-29, IV-38, IV-47, and IV-56.

¹⁹⁵ See USITC Pub. 2664 at 19; USITC Pub. 3364 at 52; Mittal's Prehearing Brief at 25-26; Nucor/SDI's Prehearing Brief at 6-7; Tr. at 530.

¹⁹⁶ CR/PR at Tables CORE-IV-12, IV-20, IV-29, IV-38, IV-47, and IV-56.

¹⁹⁷ CR/PR at Tables CORE-IV-12 (Australia, exports as a share of total shipments ranged from ***), IV-20 (Canada, ranged from ***), IV-29 (France, ranged from ***), IV-38 (Germany, ranged from ***), IV-47 (Japan, ranged from ***), and IV-56 (Korea, ranged from 29.2 percent to 33.6 percent).

¹⁹⁸ CR at CORE-IV-30, IV-41, IV-54, IV-68, IV-81 and Table CORE-I-1; PR at CORE-IV-14, IV-17, IV-20, IV-24, IV-29 and Table CORE-I-1; Nucor/SDI's Posthearing Brief, Answers to Commission Questions at 22.

¹⁹⁹ Respondents argue that their investments and affiliations with domestic producers provide a disincentive to their increasing export shipments to the U.S. market that would harm their U.S. affiliates. See e.g., French Respondents' Prehearing Brief at 13 and 14; German Respondents' Posthearing Brief at 12-14; Japanese Respondents' Posthearing Brief at 13 and Attachment C; Korean Respondents' Posthearing Brief at 11-12 and Answers to Commission Questions at 2-5. We note that the presence of U.S. affiliates of Japanese and Korean producers during the original investigations did not prevent substantial volumes of imports from Japan and Korea from entering the U.S. market, and together with the other subject imports, causing injury to the domestic industry,

(continued...)

Given the subject producers' reliance on export markets, their substantial and increasing excess capacity, taken together with the incentive to maximize production, and their continued and increasing presence in the U.S. market, we find that they likely will export significant and increasing volumes of CORE steel to the U.S. market upon revocation of the antidumping and countervailing duty orders. Thus, we find that the volume of cumulated subject imports likely would be significant if the orders were revoked.

C. Likely Price Effects

In evaluating the likely price effects of subject imports if the orders under review are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.²⁰⁰

In the original investigations, the Commission found that price was an important factor for purchasers. It also found price suppression and/or depression based on import prices that were falling at a greater rate than domestic prices, together with increased import volumes and confirmed lost sales and lost revenue allegations.²⁰¹ In the first reviews the Commission found that the increased sales of subject imports would likely be achieved by aggressive pricing, which would result in significant effects on domestic prices. It noted that while contracts provide some measure of insulation from spot market price fluctuations, prices in the spot market could affect prices in the domestic industry's contract business.²⁰²

In considering the likely price effects of subject imports in these reviews if the orders were revoked, we recognize that domestically produced CORE steel and subject imports are used in the same applications, and are considered interchangeable and comparable.²⁰³ Moreover, the general importance of price in purchasing decisions has not changed since the time of the original investigations and first five-year reviews.²⁰⁴ The record in these reviews indicates that price is the factor most frequently cited by U.S. purchasers as the number one factor in their purchasing decisions, with quality the second most frequently cited factor.²⁰⁵ Price also was a factor repeatedly cited by purchasers as a "very important" factor in purchasing decisions; the only factor that purchasers cited as frequently was "availability."²⁰⁶ Moreover, the evidence shows that the domestic product and subject imports overwhelmingly compete in the same markets, specifically the automotive and construction industry markets. In light of the high degree of interchangeability and comparable quality, price will be the principal factor influencing purchasing decisions absent the orders. Thus, sustained underselling by even a relatively small amount of subject imports is likely to have significant price-suppressing or -depressing effects.

¹⁹⁹ (...continued)

as a whole. Moreover, in the case of the Korean producers, such an affiliation did not preclude substantial increases in subject Korean imports during the current review. In addition, we recognize the intentions, as discussed above, regarding any affiliations with French and German producers resulting from the proposed Arcelor and Mittal merger, but note that these have not been finalized.

²⁰⁰ 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

²⁰¹ USITC Pub. 3364 at 54.

²⁰² USITC Pub. 3364 at 54.

²⁰³ CR at CORE II-21-24 and Tables CORE-II-5-6; PR at CORE II-13-14 and Tables CORE-II-5-6.

²⁰⁴ CR at CORE II-21-24 and Tables CORE-II-5-6; PR at CORE II-13-14 and Tables CORE-II-5-6.

²⁰⁵ CR/PR at Table CORE-II-5.

²⁰⁶ CR/PR at Table CORE-II-6.

Purchasers buy CORE steel frequently, often daily or weekly; some buy the product consistently over the course of a year, and others experience seasonal peaks in their purchasing. Producers generally reported determining prices on a transaction-by-transaction basis, based on market conditions and raw material costs.²⁰⁷

A portion of domestic producers' sales are by long-term contracts, but several producers make the majority of their sales on the spot market.²⁰⁸ Automotive and appliance end users tend to favor longer-term contracts, whereas the construction industry is more short-term and project-based.²⁰⁹ Auto producers reported that they generally enter into contracts with individual producers to supply steel for certain auto parts and that the life of the vehicles is multiple years.²¹⁰ Long-term contracts generally fix either price only or both price and quantity and have no meet-or-release provisions.²¹¹ Both domestic producers and respondents seemed to agree that toward the end of the current review period long-term contracts were becoming shorter ***.²¹² Whereas in the first reviews the Commission found that contracts provided some measure of insulation, the evidence in the current reviews shows that contracts, particularly long-term contracts that do not provide for adjustments based on increases in raw material and energy costs, have been less advantageous for CORE producers than the spot market.²¹³

Pricing trends over the current period of review differ among the several products. Commission pricing data generally showed relatively little change for U.S. prices from 2000 through 2003 with increases in 2004 that leveled off or declined slightly in late 2004 or early 2005 and increases for some products in the first half of 2006.²¹⁴ While in general prices were somewhat higher at the end of the period of review than in 2000, both producers and importers reported that increases in raw material costs had a dramatic effect on CORE steel prices, particularly since 2004.²¹⁵ The pricing data also show a mixture of underselling and overselling by subject imports even with the orders in place.²¹⁶

Because price is important to purchasing decisions, the presence of significant quantities of CORE steel imports that are likely to enter the United States after revocation of the orders will force

²⁰⁷ CR at CORE-V-9; PR at CORE-V-8.

²⁰⁸ Eight of 20 U.S. producers reported that 85 percent or more of their sales are on a spot basis, while six producers (***) reported that 60 percent or more of their sales are on a long-term contract basis. CR at CORE-V-10; PR at CORE-V-8.

²⁰⁹ CR at CORE-V-10, n.15; PR at CORE-V-8-9, n.15.

²¹⁰ CR at CORE-V-9, n.14; PR at CORE-V-8, n.14.

²¹¹ CR at CORE-V-11; PR at CORE-V-9.

²¹² Nucor/SDI's Prehearing Brief at 50-51; Auto Producers' Prehearing Brief at 27-31.

²¹³ CR at V-3, nn.6 and 7, and V-10, n.16; PR at V-3, nn.6 and 7, and V-9, n.16. According to domestic producers, even when sales are under contract, if spot prices fall, purchasers do not hesitate to request price concessions under the contracts. Conversely, when prices and costs rise, the domestic producers are locked into below-market prices under the contracts. Nucor/SDI's Prehearing Brief at 50-51; U.S. Steel's Posthearing Brief at 12-14; Mittal's Posthearing Brief, Answers to Commission Questions at Koplan-4-5. Respondents assert that the U.S. industry is unwilling to commit to longer-term contracts because they believe prices will climb even higher than they did during the review period, and they have forced automakers to accept volume limitations in their contracts. Auto Producers' Prehearing Brief at 27-31.

²¹⁴ CR at CORE-V-35 and Figures CORE-V-4 to V-11; PR at CORE-V-16 and Figures CORE-V-4 to V-11. The prices of products 5, 7, and 8 (according to Mittal, products 5-8 are higher valued products for the automotive sector) showed little change over the period for contract sales, while prices of non-contract sales increased over the period for products 5 and 7. With the exception of products 5, 7, and 8, contract and non-contract prices generally followed the same trend. Prices of imports of products 2 and 6 from Korea, product 6 from Germany, and products 7 and 8 from Canada followed the general U.S. price trend. CR at CORE-V-35 and n. 23; PR at CORE-V-16 and n. 23.

²¹⁵ CR at CORE-V-1, V-3, V-35 and Figures CORE-V-1, V-2, and V-4 to V-11; PR at CORE-V-1, V-3, V-16 and Figures CORE-V-1, V-2, and V-4 to V-11.

²¹⁶ CR at CORE-V-17; PR at CORE-V-11.

domestic CORE steel producers to either lower prices or lose sales. In fact, the Auto Producers explicitly testified at the Commission’s hearing that the mere threat of competition from subject imports is likely to drive prices down in the U.S. market, if the orders are revoked. For example, General Motor’s economist stated, “We think if you revoke the industry will know that the domestic buyers have an alternative and therefore will be much more willing to sit down in a partnership with us and supply this field we need at globally competitive prices. . . . We have qualified suppliers around the world. . . . But we believe that the threat of potential competition, the alternative is what will drive the domestic steel industry to behave competitively in negotiations, in the supply terms, with the domestic manufacturers.”²¹⁷

For the foregoing reasons, we find that the significant likely volume of subject imports is likely to significantly undersell and have significant price depressing or suppressing effects on the prices of the domestic product, if the orders are revoked.

D. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.²¹⁸ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.²¹⁹ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.²²⁰

In the original investigations, the Commission found that the increased volume of lower priced subject imports and their significant market share depressed prices and caused the U.S. industry to suffer lost market share, reduced capacity utilization, and growing financial losses despite increasing apparent consumption. The industry’s capital expenditures and research and development expenses also declined, especially during the latter part of the period examined.²²¹

In the first reviews, the Commission found that the orders had a positive effect on the domestic industry’s performance, its operating margin was higher at the beginning of the review period than during the original investigations, and its capital expenditures and research and development expenses had increased. Nevertheless, it found the industry vulnerable, based on declines in operating income,

²¹⁷ Tr. at 421-422; see also Tr. at 455-456 (Mr. Cover: “we can’t make a supplier do anything that they don’t want to do. Only competition or competitive pressure can do that. So revocation of the orders would allow us to invite proposals from the subject countries. It would allow us to start the validation process. It would allow us and the domestic industry to observe the level of interest and energy that those countries would put into winning our business. I think for those reasons the appearance and the reality of competitive pressure would create more flexibility for us in the domestic supply base and make it a more balanced engagement when we do negotiate each year price and volume.”).

²¹⁸ 19 U.S.C. § 1675a(a)(4).

²¹⁹ 19 U.S.C. § 1675a(a)(4).

²²⁰ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

²²¹ USITC Pub. 3364 at 55.

operating margins, capacity utilization levels, and unit sales values. It found that the likely significant volumes of subject imports upon revocation would likely undersell the domestic product and suppress or depress U.S. prices, cause the domestic industry to lose market share and have a significant adverse impact on the domestic industry.²²²

The domestic CORE steel industry's performance has been mixed during the current reviews. The domestic industry's production and U.S. shipments have fluctuated from year to year and declined overall from 2000 to 2005 by 1.5 percent and 1.2 percent, respectively.²²³ These declines occurred while apparent U.S. consumption increased by 3.4 percent and cumulated subject imports increased by 36.6 percent.²²⁴ Whereas in the first reviews, the domestic industry's production and U.S. shipments increased from 1997 to 1999, by 13 percent and 10.9 percent, respectively, as apparent U.S. consumption also increased by 12.1 percent.²²⁵ During the current reviews, the domestic industry's share of the U.S. market declined as the presence in the U.S. market of the cumulated subject imports increased.²²⁶ Capacity utilization fluctuated from year to year but hovered about 80 percent through the review period, down from 87.3 percent in 1999 at the end of the first reviews.²²⁷

The domestic industry's financial performance at the beginning of the current reviews was lower than that in the first reviews and similar to its performance during the original investigations. In the first reviews, the domestic CORE steel industry appeared to have positively benefitted from the orders, at least initially, with declines in financial performance at the end of the first review period. That weakening financial performance worsened from 2000 to 2003 at the beginning of the second reviews. Operating margins fluctuated between low income margins and losses from 2000 to 2003 (1.4 percent in 2000, -5.0 percent in 2001, -1.6 percent in 2002, and 0.7 percent in 2003), down from 5.9 percent at the end of the first review in 1999.²²⁸ The domestic industry's performance improved substantially to 10.8 percent in 2004, as apparent U.S. consumption and domestic production increased and capacity utilization reached a period high of 85 percent. While this level of operating income might not suggest vulnerability, even for a high value-added product such as CORE steel, it was not sustained as the domestic industry's operating income declined to 4.9 percent in 2005.²²⁹

Based on the record evidence in these reviews, we find that the domestic industry is currently vulnerable to material injury if the orders are revoked. There are a number of important factors underlying the financial performance of the CORE steel industry. First, the swings in the domestic industry's financial performance correlate to the increases in cost of goods sold, particularly rising raw material and energy costs. As discussed above, raw material costs as a share of net sales increased from 42.1 percent in 2000 to 55.6 percent in 2005, as direct labor costs (11.3 percent to 7.9 percent) and other factory costs (41.4 percent to 28 percent) declined overall from 2000 to 2005.²³⁰ The evidence indicates that the automotive producers, which account for 47.6 percent of CORE steel shipments, have generally

²²² USITC Pub. 3364 at 55-57.

²²³ CR/PR at Table C-7.

²²⁴ CR/PR at Table C-7.

²²⁵ CR/PR at Table CORE-I-1.

²²⁶ CR/PR at Table C-7. Imports of CORE steel from nonsubject sources also increased their presence in the U.S. market during the review period. *Id.*

²²⁷ CR/PR at Table C-7.

²²⁸ CR/PR at Table CORE-I-1. The Commission found the industry vulnerable in the first reviews where operating margins declined from 10.5 percent in 1997 to 5.9 percent in 1999. *Id.*

²²⁹ CR/PR at Table CORE-I-1.

²³⁰ CR/PR at Table CORE-III-9.

not agreed to contracts with adjustments for increases in raw material and energy costs.²³¹ Thus, the domestic industry has been caught in a cost/price squeeze.²³² As discussed above, the automotive producers explicitly indicated that if the orders were revoked that they would use the threat of competition from subject imports to ensure that the domestic CORE steel producers priced “competitively” and thus that this cost/price squeeze would continue.

Second, the CORE steel producers with substantial shares of their shipments devoted to the automotive sector generally are experiencing worse financial performance than those not serving the automotive sector. For example, the largest three domestic CORE steel producers with substantial shipments to the automotive sector, and their share of production and operating margins:

	Share of U.S. production ²³³	Share of Sales to the Automotive Sector	2005 Operating Margin
***	***	***	***
***	***	***	***
***	***	***	***

In response to a request from the Commission, these domestic producers provided the Commission specific materials regarding their sales to the automotive industry which demonstrate the differences in financial performance regarding sales to the automotive industry.²³⁴ For example, *** had a positive overall operating margin of *** in 2005. However, its operating margin in 2005 for its sales to the automotive industry, which accounted for *** of its total sales, was ***; in 2006, its automotive sales operating margin was ***.²³⁵

²³¹ CR/PR at CORE-V-3 and nn. 6 and 7. We recognize that some recently negotiated contracts for future CORE steel shipments to the automotive sector may contain such adjustment provisions for raw material and energy costs. CR/PR at CORE-V-3, n. 7; Auto Producers’ Prehearing Brief at 30

²³² See e.g., Mittal’s Posthearing Brief, Answers to Commission Questions at Koplan-1-6; U.S. Steel’s Prehearing Brief at 81-82.

²³³ CR/PR at Tables CORE-I-12 and III-10 (net sales data); *** Producer Questionnaire at Question II-3; *** Producer Questionnaire at Question II-3; *** Producer Questionnaire at Question II-3. We recognize that ***, which accounts for *** of domestic production and sells about *** of its production to the automotive sector, had an operating margin of *** in 2005. However, *** has a niche market – the development and commercialization of *** to the auto producers. CR at CORE-III-5; PR at CORE-III-4. In contrast, the *** automotive U.S. CORE steel producer, ***, which sells about *** of its production to the automotive sector, had an operating margin of *** in 2005.

²³⁴ These projections were included in submissions that Commission staff requested from AK Steel, U.S. Steel, and Mittal. See AK Steel Supplemental Submission (December 4, 2006); U.S. Steel Supplemental Submission (November 16, 2006); and Mittal Supplemental Submission (November 22, 2006). We have considered the 2007 projections, particularly the projected operating income and margins, submitted by *** with caution because each includes assumptions regarding expenses or costs that raise questions about the accuracy of the projections. For example, *** 2007 projection does not include any expenses for ***. *** that zinc and other raw material and energy costs likely will continue to increase.

²³⁵ *** also provided a breakdown of its automotive sales by company – its operating margins on its sales to ***, which accounted for about *** of its automotive shipments, were *** in 2005 and *** in 2006; its operating margins on its sales to ***, which also accounted for *** of its automotive sales, were *** in 2005 and *** in 2006. It has mixed operating margins on automotive sales for the other ***. See AK Steel Supplemental Submission (December 4, 2006); U.S. Steel Supplemental Submission (November 16, 2006); and Mittal Supplemental Submission (November 22, 2006).

As the domestic CORE steel industry experienced positive financial performance in 2004 and 2005, plans for a number of investments were announced in 2005 and 2006, which will add 1.9 million short tons of CORE steel capacity by 2008.²³⁶ However, these investments will provide for substantially less additional capacity than the 6.7 million short tons that the industry's positive performance warranted undertaking in first review period.

We have concluded that revocation of the antidumping and countervailing duty orders with respect to CORE steel from the six subject countries likely would lead to significant increases in the volume of subject imports in the reasonably foreseeable future. Such increases in subject import volumes will likely have the effect of exacerbating the declines in production, shipments, and market share, and the increases in the cost of goods sold that the domestic industry sustained during the current period of review.

Additionally, because of the likely aggressive pricing of the subject imports, the domestic industry either will need to cut prices for the domestic like product or lose sales. Under either scenario, the domestic industry's revenues will likely decline significantly in light of the anticipated volume of subject imports. This, in turn, will likely lead to declines in the industry's operating performance.

We consequently find that revocation of the orders under review will likely have a significant adverse impact on the domestic industry. We therefore determine that revocation of the antidumping and countervailing duty orders on CORE steel from Australia, Canada, France, Germany, Japan, and Korea will likely lead to continuation or recurrence of material injury to the domestic CORE steel industry within a reasonably foreseeable time.

²³⁶ CR at CORE-III-5-6 and Table CORE-III-3; PR at CORE-III-4-5 and Table CORE-III-3. In line with plans to upgrade and add this capacity, the industry's capital expenditures were \$428,147,000 in 2005, increasing from \$295,331,000 in 2000, and research and development expenses increased to \$34,022,000 in 2005, from \$15,950,000 in 2000. CR/PR at Table CORE-III-12.