U.S. International Trade Commission

Washington, DC 20436

Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom

Investigation No. 701-TA-413 (Final) and
Investigations Nos. 731-TA-913-916 and 918 (Final)

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-413 and 731-TA-913-916 and 918 (Final)

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

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Italy of stainless steel bar, provided for in subheadings 7222.11.00, 7222.19.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be subsidized by the Government of Italy.

The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from France, Germany, Italy, Korea, and the United Kingdom of stainless steel bar, provided for in the HTS subheadings listed above, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective December 28, 2000, following receipt of a petition filed with the Commission and Commerce by Carpenter Technology Corp. (Wyomissing, PA); Crucible Specialty Metals (Syracuse, NY); Electralloy Corp. (Oil City, PA); Empire Specialty Steel, Inc. (Dunkirk, NY); Slater Steels Corp., Specialty Alloys Division (Fort Wayne, IN); and the United Steelworkers of America, AFL-CIO/CLC (Pittsburgh, PA). The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that certain imports of stainless steel bar from Italy were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and that certain imports of stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)).[2] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 17, 2001 (66 FR 48063).[3] The hearing was held in Washington, DC, on January 17, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Investigation No. 731-TA-917 (Final), concerning stainless steel bar from Taiwan, was terminated effective January 23, 2002 (67 FR 4745, January 31, 2002), consequent to Commerce's final negative LTFV determination with respect to Taiwan (67 FR 3152, January 23, 2002).

[3] The Commission published notice of its revised schedule on November 20, 2001 (66 FR 58162).

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is materially injured by reason of imports of stainless steel bar from Italy found to be subsidized, and by imports of stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom found to be sold in the United States at less than fair value ("LTFV").

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[1] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[2] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[3]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[4] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[5] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[6] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the

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[1] 19 U.S.C. § 1677(4)(A).

[2] 19 U.S.C. § 1677(4)(A).

[3] 19 U.S.C. § 1677(10).

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

[5] See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

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

Commission determines what domestic product is like the imported articles Commerce has identified.[7]

B. Product Description

Commerce's final determinations define the imported merchandise within the scope of these investigations as follows:

> "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.
>
> Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.[8]

The subject merchandise consists of straight lengths of stainless steel with a uniform cross-section in various shapes. It is used to produce a wide variety of parts for use where its corrosion resistance, heat resistance, or appearance is needed.[9]

C. Domestic Like Product

In its preliminary determination in these investigations, the Commission found that all stainless

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[7] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[8] 67 Fed. Reg. 3143, 3144 (Jan. 23, 2002) (France); 67 Fed. Reg. 3159, 3160 (Jan. 23, 2002) (Germany); 67 Fed. Reg. 3155, 3155 (Jan. 23, 2002) (Italy antidumping); 67 Fed. Reg. 3163, 3163 (Jan. 23, 2002) (Italy countervailing duty); 67 Fed. Reg. 3149, 3150 (Jan. 23, 2002) (Korea); 67 Fed. Reg. 3146, 3147 (Jan. 23, 2002) (United Kingdom). The notices state that Commerce received requests from respondents to exclude four products from the scope of the investigations. These were stainless steel tool steel, welding wire, special quality oil field equipment steel, and special profile wire. Commerce determined that special profile wire did not fall within the scope of the investigation as written. It declined to amend the scope to exclude the other three products. It also determined that special quality oil field equipment steel did not constitute a separate "class or kind" of stainless steel bar. E.g., 67 Fed. Reg. at 3144.

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

steel bar subject to investigation constituted a single domestic like product. The Commission specifically rejected arguments that medical bar and special quality oil field equipment bar ("oil field bar") should be defined as distinct domestic like products. The Commission acknowledged that these particular products had distinct uses and were not interchangeable with other types of stainless steel bar. It noted, however, that stainless steel bar encompassed a variety of specialty products with different physical characteristics and end uses. It found that all stainless steel bar was made at the same facilities by the same employees. The Commission concluded that stainless steel bar constituted a continuum of products and that there was no clear dividing line to distinguish specialty products on the continuum.[10] For the reasons stated below, we make the same conclusion in these final phase investigations.

Oil Field Bar and Medical Bar. In the final phase investigations, respondents have renewed their arguments that the Commission should find oil field bar and medical bar to be separate like products.[11] The current record concerning these products, however, does not differ materially from that developed during the preliminary phase investigations.

There are many varieties of stainless steel bar that differ from each other in such factors as metallurgical content, surface finishes, and cross-sectional shape.[12] Indeed, "oil field bar" as defined by respondents encompasses a variety of products that differ in metallurgical content.[13] However, the various bar grades are all stainless steel products, which indicates that they have a minimum chromium content and superior corrosion resistance in comparison with carbon and alloy steels.[14]

While stainless steel bar products such as oil field bar and medical bar may have distinct end uses,

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[10] Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom, Inv. Nos. 701-TA-413, 731-TA-913-918 (Preliminary), USITC Pub. 3395 at 6-7 (Feb. 2001) ("Preliminary Determination").

[11] Respondents' arguments in the final phase investigations concerning oil field bar and medical bar, while framed as like product arguments, focus heavily on whether products that can be used as substitutes for the subject imports are produced in the United States in adequate commercial qualities. Such arguments are of limited pertinence to our inquiry under the statute, which entails identification of the domestically produced product "which is like, or in the absence of like, most similar in characteristics and uses with, the articles subject to investigation under this title." 19 U.S.C. § 1677(10). Petitioners indicate that they currently produce both oil field bar and medical bar. See Petitioners Posthearing Brief, ex. 15. While the parties dispute the extent to which the specialty products the domestic industry produces are good substitutes for the subject imports, respondents do not challenge the proposition that the oil field and medical bar products produced by petitioners are the domestically produced products most similar in uses and characteristics with the comparable subject imports.

[12] Hearing Transcript (Tr.) at 49 (McElwee) (domestic producer Carpenter produces over 450 separate and distinct grades of product). See CR at I-6-10, PR at I-5-8; BGH Edelstahl Postconference Brief, app. 2.

[13] Compare BGH Edelstahl Postconference Brief, app. 1 with id., app. 2 at Fig. 17-2.

[14] See CR at I-6 n.12, PR at I-5 n.12.

this is also true of the range of stainless steel bar products generally.[15] Although stainless steel bar intended for one application (*i.e.*, medical bar) would not necessarily be interchangeable with stainless steel bar intended for another (*i.e.*, oil field bar), there are also questions of interchangeability even within bar types intended for the same application.[16]

The Commission found in the preliminary determination that domestic producers make oil field bar and medical bar on the same production facilities and equipment on which they make other types of stainless steel bar.[17] The record on this matter has not changed in the final phase investigations.

The limited material in the record pertinent to the issue indicates that medical bar purchases are made directly by the end user, while oil field bar purchases are made by distributors.[18] Sales to both distributors and end users are common channels of distribution for domestically produced stainless steel bar products generally.[19]

In the preliminary determination, the Commission concluded that stainless steel bar "encompasses a wide variety of specialty products with different physical characteristics, end uses, production processes, and prices," but there were no clear dividing lines between product groups in the continuum that would justify treating oil field bar and medical bar as separate like products.[20] The current record supports the same conclusion. Insofar as oil field bar and medical bar may have distinct end uses and physical characteristics, this does not appear to distinguish these products from many of the several hundred other products that constitute stainless steel bar. In any event, oil field bar and medical bar share some common physical characteristics, production facilities, and channels of distribution with other types of stainless steel bar. In similar circumstances where the domestically manufactured merchandise consists of a continuum of similar products, the Commission does not consider each item of merchandise to be a separate like product that is only "like" its imported counterpart, but considers the

continuum itself to constitute the domestic like product.[21] Consequently, we conclude that oil field bar and

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[15] Stainless steel bar has diverse applications such as automotive applications, chemical processing equipment, dairy, food processing, and pharmaceutical equipment, marine applications, and fluid handling systems. CR at I-6, PR at I-5-6.

[16] One domestic purchaser, for example, testified that different types of oil field bar were not fully interchangeable with each other. Tr. at 114-15 (Baker).

[17] Preliminary Determination, USITC Pub. 3395 at 7.

[18] See Sandvik Prehearing Brief at 1-2; Petitioners Posthearing Brief, ex. 14; deKieffer Respondents Posthearing Brief, ex. 12; Stahlwerk Ergstewestig GmbH Postconference Brief at 6.

[19] CR at II-1, PR at II-1. Indeed, two of the oil field bar distributors that have been specifically identified by the parties are nationwide distributors that stock a broad range of stainless steel bar products. See Tr. at 113 (Baker); Petitioners Posthearing Brief, ex. 14; *** World Wide Web site at *** (Feb. 4, 2002).

[20] Preliminary Determination, USITC Pub. 3395 at 7.

[21] See Certain Cold-Rolled Steel Products from Argentina, Austria, Belgium, Brazil, China, France, Germany, (continued...)

medical bar are not separate like products.

Ultra Low Sulfur Bar. Respondent Aubert & Duval ("Aubert") argues that ultra low sulfur bar should not be included in the same domestic like product as other stainless steel bar. Aubert contends that the domestically produced products most similar to the ultra low sulfur bar it produces in France are not stainless steel products.

We do not agree with Aubert as to the domestically produced products most similar to the ultra low sulfur bar that it produces in France. Aubert has identified Nimonic 80A as the domestically produced product most similar to Aubert grade X21RC, the ultra low sulfur stainless steel bar product that Aubert sells to Eaton Corp. for use in exhaust valves. However, Nimonic 80A, which is predominantly nickel by weight, differs significantly in chemistry from X21RC, which is principally iron by weight. By contrast, the domestically produced EMS 247 stainless steel bar product used for exhaust valves that petitioning domestic producer Crucible formerly supplied to Eaton has essentially the same chemical profile as X21RC, with the principal difference being a slightly higher maximum sulfur content.[22] Both X21RC and EMS 247 have been used by Eaton for valves used in automotive and truck engines.[23] By contrast, Aubert indicates that Nimonic 80 is only used for industrial engine valves and exhaust engine valves for very high-performance sports and racing cars.[24]

Aubert has identified R30605 and R30021 as the domestically produced products most similar to the X15 grade medical instrument steel it sells; however, only R30605 is produced in the United States in bar form. Again, the chemical composition of R30605, which is principally cobalt by weight, differs significantly from that of the Aubert product, which is principally iron by weight. R30605 also has a broad range of uses, which include aerospace and nuclear applications and prosthetic devices as well as medical instruments. By contrast, Biodur Trimrite Stainless, a stainless medical bar grade produced by petitioner Carpenter, has a chemical composition very close to that of X15.[25]

Because they most closely resemble the Aubert product in chemical composition and end uses, we conclude that the Crucible EMS 247 and Carpenter Biodur Trimrite stainless steel bar products discussed above are the domestically produced products most similar in characteristics and uses to Aubert's ultra low sulfur stainless steel bar products.[26] As discussed above with respect to oil field bar and medical bar, stainless steel bar is a continuum of many different products, and we do not believe there is a basis for

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[21] (...continued)
India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, Inv. Nos. 701-TA-422-425, 731-TA-964-983 (Preliminary), USITC Pub. 3471 at 6 (Nov. 2001).

[22] Memorandum from Gerald Houck to Staff (Feb. 1, 2002) ("Houck Memorandum"); see also CR at I-11 n.17, PR at I-8 n.17.

[23] Eaton Prehearing Comments at 3.

[24] Aubert Posthearing Brief at 5.

[25] Houck Memorandum.

[26] In advocating that the Commission reach an opposite conclusion, Aubert in essence urges the Commission to look solely at the sulfur content of the various metals. See Aubert Final Comments at 3. We perceive no basis for disregarding all other aspects of the metallurgy of the various products.

separate like product treatment of niche stainless steel bar products such as ultra low sulfur stainless steel bar.[27] Accordingly, we do not define ultra low sulfur stainless steel bar as a separate like product. Instead, we define a single domestic like product in these investigations consisting of all stainless steel bar meeting the specifications described in Commerce's scope determination.

D. Domestic Industry

Section 771(4) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of that product."[28] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[29] Based on our like product determination, we determine that there is a single domestic industry encompassing U.S. producers of stainless steel bar.[30]

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[31] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[32]

Domestic producer *** imported subject merchandise during the period of investigation. Hence

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[27] See also CR at I-11 n.17, PR at I-8 n.17 (noting that Crucible's engine valve steel produced at same facilities as other stainless steel bar products); Houck Memorandum (Biodur Trimrite a variant of widely used grade 420).

[28] 19 U.S.C. § 1677(4)(A).

[29] See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

[30] In the preliminary determination, the Commission concluded that service centers were not part of the domestic industry. Preliminary Determination, USITC Pub. 3395 at 7 n.37. The record continues to reflect that service centers do not perform sufficient production operations to be treated as domestic producers.

[31] 19 U.S.C. § 1677(4)(B).

[32] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

*** is potentially subject to exclusion from the domestic industry subject to section 771(4)(B)(i) of the Act.[33] We consequently examine whether "appropriate circumstances" exist that would support *** exclusion. During the period of investigation, *** imported *** short tons of subject merchandise from *** and *** short tons from ***. It produced *** short tons of stainless steel bar in the United States during the same period. *** states that it imported product types it cannot produce in its U.S. facilities in order to offer a more complete product line to its customers.[34]

In 2000, *** was the *** largest U.S. producer, accounting for *** percent of domestic production.[35] ***.[36] *** operating margins ranked *** in 1998, *** in 1999, and *** in 2000 of the *** domestic stainless steel bar producers reporting data.[37]

We conclude that appropriate circumstances do not exist for the exclusion of *** pursuant to the related parties provision. *** subject imports during the period of investigation are equivalent to only *** percent of its domestic production during the period of investigation. Consequently, its interests appear to be in domestic production as opposed to importation, notwithstanding ***. Additionally, its financial results do not appear to be appreciably different from those of the other domestic producers that did not import subject merchandise. Accordingly, we define the domestic industry to include all producers of stainless steel bar in the United States.

II. CUMULATION

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.[38] In assessing whether subject imports compete with each other and with the domestic like product,[39] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer

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[33] 19 U.S.C. § 1677(4)(B)(i).

[34] CR at IV-1, PR at IV-1; *** Producer Questionnaire.

[35] CR and PR, Table III-1.

[36] ***. CR and PR, Table III-1.

[37] CR and PR, Table VI-2.

[38] 19 U.S.C. § 1677(7)(G)(i).

[39] The Uruguay Round Agreements Act Statement of Administrative Action (SAA) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA, H.R. Rep. 103-316, vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[40]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[41] Only a "reasonable overlap" of competition is required.[42]

The petition was filed with respect to all subject imports on the same day, and none of the four statutory exceptions to the general cumulation rule applies to these investigations.[43] Based on our examination of the four factors the Commission customarily considers, we find that there is a reasonable overlap of competition between the subject imports and between the subject imports and the domestic like product.

Fungibility. No party disputes that imports from each of the subject countries are fungible with stainless steel bar produced in the United States. At least a plurality of purchasers reported that imports from each subject country are used in the same applications as domestically produced stainless steel bar.[44] Additionally, subject imports and the domestically produced product were found to be comparable in product consistency, product quality, and product range by at least a plurality of purchasers of the Korean product, and majorities of purchasers of product from the other subject countries.[45]

While there is a dispute concerning whether imports from each of the subject countries are fungible

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[40] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

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

[42] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[43] These exceptions concern imports from countries as to which investigations have been terminated, imports from Israel, imports from countries as to which Commerce has made preliminary negative determinations, and imports from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

[44] CR and PR, Table II-2.

[45] CR and PR, Table II-4.

with each other, the record does not support Ugine Respondents'[46] contention that imports from France, insofar as they are mainly proprietary products, do not compete in any significant way with imports from any other subject country. For every subject country combination, all U.S. producers and a majority of responding importers reported that the imports were always or frequently interchangeable. In particular, for France, the number of importers reporting imports from a subject country combination were always or frequently interchangeable were eight of nine comparing France and Germany, 11 of 12 comparing France and Italy, eight of ten comparing France and Korea, and nine of nine comparing France and the United Kingdom.[47] In their questionnaire responses, importers reported that the principal stainless steel bar product imported from France -- bar for use in automatic screw machines -- was also available from subject sources in Germany, Italy, Korea, and the United Kingdom.[48]

Geographic Overlap. Most U.S. producers and importers operate nationwide.[49] A majority of imports from all subject sources other than France are distributed through national distributor networks; imports from France also are distributed nationwide.[50]

Channels of Distribution. A majority of shipments of domestically produced stainless steel bar (54.8 percent) is distributed by national distributors. Significant amounts also are distributed through regional distributors (16.5 percent) and directly to end users (*** percent). For each of the subject countries except France, a majority of imports is sold to national distributors. The proportion shipped to regional distributors varies from *** percent for Korea to *** percent for the United Kingdom; the proportion shipped to end users varies from *** percent for two of the countries to *** percent for the United Kingdom. For France, *** percent of shipments are made to end users, *** percent are made to regional distributors, and *** percent are made to national distributors.[51]

Simultaneous Presence. Imports from each subject country have been present in the United States throughout the period of investigation.[52]

Conclusion. No party disputes, and the record clearly indicates, that imports from all subject countries satisfy the geographic overlap and simultaneous presence criteria. Instead, the sole point of contention in these investigations concerns whether the subject imports from France satisfy the

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[46] "Ugine Respondents" are Ugine-Savoie Imphy ("USI"), a French producer and exporter of stainless steel bar, Trafilerie Bedini ("Bedini"), an Italian producer and exporter of stainless steel bar, and Ugine Stainless & Alloys, Inc. ("US&A"), an importer of stainless steel bar from France and Italy.

[47] CR and PR, Table II-6. We rely on comparisons by U.S. producers and importers because there were very few purchaser comparisons of imports from different subject country sources; no more than one purchaser provided any information on any particular subject country combination. CR and PR, Tables II-2, II-5.

[48] Tabulation of responses to Importer Questionnaire question III-B-17 compiled by staff economist.

[49] CR at V-3-4, PR at V-1-3.

[50] CR at II-1, PR at II-1; *** Importers Questionnaire Response.

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

[52] CR and PR, Table IV-1.

requirements concerning fungibility and overlap in channels of distribution.

We find that the criterion of fungibility is satisfied. An overwhelming proportion of market participants – including importers – contend that subject imports from France are interchangeable with the subject imports from Germany, Italy, Korea, and the United Kingdom. Importers' questionnaire responses indicate that the bar products for use in automatic screw machines that Ugine Respondents contend comprise the bulk of the imports from France are available from each of the other subject countries. Moreover, according to Ugine Respondents' own data, about 20 percent of the subject imports from France consist of non-proprietary products that would be available from other subject countries.[53]

The questionnaire data do indicate that the subject imports from France have a different distribution pattern than imports from other subject countries. Specifically, the questionnaire data indicate that the bulk of subject imports from France are distributed directly to end users, a channel of distribution used for only a small percentage of the imports from most of the other subject countries.[54] Nevertheless, the questionnaire data indicate that an appreciable proportion -- *** percent -- of the subject imports from France are sold to distributors, the predominant distribution channel for imports from all other subject countries as well as for domestically produced stainless steel bar.[55] Particularly in light of the information in the record indicating that imports from France are fungible with imports from the other subject countries, are sold in the same geographic markets, and are simultaneously present in the marketplace, we do not believe that the distinctions in distribution channels for the subject imports from France are sufficient to defeat a finding of reasonable overlap of competition.

Consequently, we cumulate imports from all subject countries in our analysis of material injury by reason of subject imports.

III. MATERIAL INJURY BY REASON OF LTFV AND SUBSIDIZED IMPORTS

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[56] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like

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[53] After the hearing Commissioner Hillman asked in writing for Ugine Respondents to document their assertions that approximately 80 percent of subject imports from France consist of proprietary USI products for use in automatic screw machines. See Electronic mail message from Larry Reavis to John Ryan and Laurence Lasoff (Jan. 18, 2002). Ugine Respondents failed to respond to this request, and there are no other data in the record to corroborate their assertion.

[54] CR at II-1, PR at II-1. However, the questionnaire data appear to understate the extent to which subject imports from France are sold through a nationwide distribution network. The principal importer of subject merchandise from France, US&A, is a service center as well, with six U.S. distribution locations. Conference Tr. at 81 (O'Donnell). Consequently, the sales of French imports to end users reported in the questionnaire data generally reflect shipments made to end users through US&A's U.S. distribution facilities.

[55] CR at II-1, PR at II-1. Because national distributors sell to regional distributors, id., we believe it is appropriate to combine the national and regional distribution figures in making this comparison.

[56] 19 U.S.C. §§ 1671d(b) and 1673d(b).

product, but only in the context of U.S. production operations.[57] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[58] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[59] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[60]

For the reasons discussed below, we determine that the domestic stainless steel bar industry is materially injured by reason of cumulated subject imports from France, Germany, Italy, Korea and the United Kingdom found to be sold at LTFV, and by imports from Italy found to be subsidized.

A. Conditions of Competition

The following conditions of competition in the stainless steel bar industry inform our determinations.

First, petitioners and respondents agree that a large range of stainless steel bar products is sold in the United States. For example, an official of domestic producer Carpenter testified at the hearing that his firm sells 450 separate and distinct grades of stainless steel bar products.[61] Both petitioners and respondents agree that the stainless steel bar market encompasses both "commodity" and "specialty" products, although they do not necessarily agree on which products should be categorized as "commodity" or "specialty."[62] Respondents contend that they produce several specialty products that are not available at all, or not available in commercial quantities, from the domestic industry. These include certain types of oil field bar, certain types of medical bar, and Aubert's ultra low sulfur products. Petitioners, by contrast, argue that the domestic industry produces products that compete with all the specialty products that are imported.

The record indicates that respondents' claims of lack of competition from domestically produced merchandise are overstated. The record does not support respondents' assertions that the domestic industry does not produce entire categories of stainless steel bar products. In particular, the domestic industry produces oil field products, medical bar products, and even a specific product that competes with the ultra

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[57] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[58] 19 U.S.C. § 1677(7)(A).

[59] 19 U.S.C. § 1677(7)(C)(iii).

[60] Id.

[61] Tr. at 49 (McElwee).

[62] Compare Tr. at 165-66 (Malashevich) with Tr. at 196-98 (Hudgens).

low sulfur bar produced by Aubert.[63] At most, there may be certain product lines within these categories that the domestic industry does not produce. For example, one purchaser testified about its inability to obtain a certain type of liquid quenched oil field bar from domestic producers.[64] Petitioners did not indicate that the domestic industry currently produces such a product, although it does produce other types of oil field bar.[65] In any event, the products in question account for only a small proportion of total stainless steel bar imports. Oil field bar – which would include those varieties produced by the domestic industry – accounted for *** percent of subject imports during 2000, while the ultra low sulfur grades imported by Aubert and medical bar each accounted for less than *** percent of subject imports. The significant majority of the subject imports, as well as of domestically produced product, consists of commodity grade products.[66]

Second, price plays an important role in stainless steel bar purchasing decisions. Purchasers identified price second most frequently -- behind quality -- as the most important factor in their purchasing decisions, and most frequently as the second most important factor in such decisions.[67] However, the great majority of purchasers stated that all or nearly all their stainless steel bar purchasers must be prequalified, so the quality factor is met in most purchasing decisions.[68] Additionally, purchasers overwhelmingly found imports from each of the subject countries to be comparable to domestically produced stainless steel bar in the factor of product quality, and found imports from each of the subject countries to be generally comparable in other non-price characteristics.[69] This indicates that there is a high degree of substitutability between the subject imports and domestically produced stainless steel bar.

Third, the parties agree that changes in prices for raw materials used in stainless steel production, particularly nickel, will have some effect on prices for stainless steel bar. Indeed, some domestic producers have long-standing surcharge mechanisms which are, in theory, designed to raise bar prices when raw material prices increase.[70] The price for stainless steel scrap declined during 1998, more than doubled between the last quarter of 1998 and the second quarter of 2000, and then generally declined irregularly through the third quarter of 2001.[71]

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[63] See Petitioners Posthearing Brief, exs. 14, 15; CR at I-11 n.17, PR at I-8 n.17.

[64] Tr. at 115-16 (Baker).

[65] Petitioners Posthearing Brief, ex. 1 at 8-9.

[66] Importers Questionnaires; Aubert Prehearing Brief at 1. The percentages for oil field bar and medical bar were derived by dividing the import shipment figures for those products from subject sources reported in the importers' questionnaires by total subject import shipments reported in the importers' questionnaires. Aubert's percentage was derived by dividing the figure it provided in its prehearing brief by the figure for all subject imports.

[67] CR and PR, Table II-1.

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

[69] CR and PR, Table II-4.

[70] Tr. at 65-66 (McElwee); CR at V-1, PR at V-1.

[71] CR and PR, Figure V-3.

Fourth, apparent U.S. consumption of stainless steel bar increased from 1998 to 2000 and declined thereafter.[72] Measured by quantity, apparent consumption declined from 257,778 short tons in 1998 to 237,659 short tons in 1999, and then increased to 290,479 short tons in 2000. The quantity consumed was lower in interim (January-September) 2001, at 193,176 short tons, than in interim 2000, when it was 226,830 short tons. Measured by value, apparent consumption declined from $822 million in 1998 to $687 million in 1999, and then increased to $888 million in 2000. The value consumed was lower in interim 2001, at $593 million, than in interim 2000, when it was $669 million.[73] The parties agree that the drop in apparent consumption between the interim periods reflects reduced demand for capital goods in which stainless steel bar is used.[74]

Fifth, there are numerous producers of stainless steel bar in the United States. Thirteen U.S. firms that responded to Commission questionnaires produced stainless steel bar in 2000, although two of these firms subsequently terminated production operations. The individual producers vary considerably in size.[75] Although the parties dispute the accuracy of the capacity data provided in the producers' questionnaires, the available data indicate that capacity substantially exceeded production for the industry throughout the period of investigation.[76]

Sixth, nonsubject imports were present in the U.S. market during the period of investigation, but at volumes below those of the subject imports. The quantity of nonsubject imports declined from *** short tons in 1998 to *** short tons in 1999, and then increased to *** short tons in 2000. Nonsubject import quantity was lower in interim 2001, at *** short tons, than it was in interim 2000, when it was *** short tons.[77] Nonsubject import market penetration, measured by quantity, increased from *** percent in 1998 to *** percent in 1999 and then to *** percent in 2000. Nonsubject import market penetration was higher in interim 2001, at *** percent, than in interim 2000, when it was *** percent.[78]

Canada was the largest supplier of nonsubject imports throughout the period of investigation and was responsible for a significant share of all nonsubject imports.[79] The assets of the sole stainless steel bar producer in Canada, Atlas, were acquired by the parent company of U.S. stainless steel bar producer Slater

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[72] In these investigations, we have used our customary period of investigation of the three most recent full calendar years for which data are available and an interim period. While petitioners requested a five-year period of investigation, we did not find any persuasive justification (*e.g.*, because of concerns with business cycles or years reflecting anomalous conditions) to deviate from our customary practice.

[73] CR and PR, Table IV-2.

[74] Tr. at 82 (Blot); deKieffer Respondents Posthearing Brief at 2-3; Petitioners Posthearing Brief, ex. 12.

[75] CR and PR at III-1, Table III-1.

[76] CR and PR, Table III-2.

[77] CR and PR, Table IV-1.

[78] CR and PR, Table IV-2.

[79] Petitioners Posthearing Brief, ex. 3. During 2000, imports from Canada accounted for *** percent of total nonsubject imports. See id.; CR and PR, Table IV-1.

in August 2000.[80]

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[81]

While the volume of cumulated subject imports fluctuated from year to year, both the quantity and market penetration of the subject imports were greater in 2000 than in 1998. Measured by quantity, cumulated subject imports increased from *** short tons in 1998 to *** short tons in 2000, after declining to *** short tons in 1999. The increase in quantity between 1998 and 2000 was *** percent. The quantity of cumulated subject imports was lower in interim 2001, when it was *** short tons, than in interim 2000, when it was *** short tons.[82]

The market penetration of cumulated subject imports also increased during the period of investigation. Subject import market penetration, measured by quantity, increased from *** percent in 1998 to *** percent in 2000, after declining to *** percent in 1999. Subject import market penetration was lower in interim 2001, when it was *** percent, than in interim 2000, when it was *** percent.[83]

The subject imports' market share increase came at the expense of the domestic industry. Domestic producers' market share, measured by quantity, increased from 62.7 percent in 1998 to 63.2 percent in 1999, but then declined to 56.5 percent in 2000. The domestic industry's market share was higher in interim 2001, at 57.2 percent, than in interim 2000, when it was 56.1 percent.[84]

Thus, at the end of both 2000 and interim 2001, domestic industry market share was lower than it was in 1998. Conversely, subject import market penetration was higher in both 2000 and interim 2001 than it was in 1998.

We have examined the role of nonsubject imports in the domestic industry's decline in market share. From 1998 to 2000, the market share of subject imports increased by *** percentage points, which was greater than the *** percentage points by which the market share of nonsubject imports increased.[85] Nearly the entire amount of the market share increase for both subject imports and nonsubject imports

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[80] Tr. at 26, 84-85 (Anderson); see also CR and PR, Table III-1.

[81] 19 U.S.C. § 1677(7)(C)(i).

[82] CR and PR, Table IV-1. The value of subject imports declined from *** in 1998 to *** in 1999, and then increased to *** in 2000. The *** value of subject imports in interim 2001 was lower than the *** value in interim 2000. Id.

[83] CR and PR, Table IV-2.

[84] CR and PR, Table IV-2.

[85] CR and PR, Table IV-2.

occurred between 1999 and 2000.[86]

By contrast, between the interim periods, nonsubject import market penetration increased by *** percentage points while subject import market penetration declined by *** percentage points. We attribute the decline in subject import market penetration, as well as the decline in the quantity of subject imports between the interim periods, to the filing of the petition in these investigations on December 28, 2000. While subject import volume began declining in the second half of 2000, as respondents assert, the initial decline did not reduce subject import market penetration. To the contrary, subject import market penetration in interim 2000 – a period encompassing the initial decline in subject import volume – was higher than that in 1998 or 1999.[87] Respondents' own quarterly data indicate that the quarterly subject import volumes remained relatively high until the second quarter of 2001, and that the decline in subject import market penetration in interim 2001 was due to a precipitous decline in subject import volume that began between the second and third quarters of 2001.[88] We conclude that this decline is related to the filing of the petitions in these investigations, as respondents have conceded.[89] Consequently, pursuant to 19 U.S.C. § 1677(7)(I), we have reduced the weight we accord to the post-petition data concerning subject import volume.

Thus, while we have taken account of data throughout the entire period of investigation, our analysis of subject import volume focuses primarily on the period 1998 through 2000. During this period, there were significant increases in both the quantity and market penetration of the subject imports. We consequently find the volume of subject imports, and the increase in that volume, to be significant.

C. Price Effects of the Subject Imports

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

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[86] We reject respondents' arguments that the increases in subject import volume and market share between 1999 and 2000 were simply a function of purchasers desiring to increase their stainless steel bar purchases at a time consumption was rising, raw materials prices were increasing, and product may have been difficult to obtain from certain domestic suppliers. Under respondents' theory, one would expect imports to have increased generally between 1999 and 2000, particularly since most stainless steel bar grades sold, regardless of source, are commodity grades. See Importers' Questionnaires. Instead, the increase in import market volume and market penetration during this period went disproportionately to subject imports *vis a vis* nonsubject imports. Moreover, we do not believe that respondents' anecdotal assertions concerning purchasers having difficulty obtaining product from domestic suppliers are probative. Respondents' generalized claims of purchaser "complaints" concerning short supply, see deKieffer Respondents' Prehearing Brief at 17-18, are undocumented and in any event cannot be reconciled with the capacity utilization data in the Commission report. For the reasons explained below, we believe that low pricing, rather than supply shortages, provides a more persuasive explanation for the increase in subject import volume and market share between 1999 and 2000.

[87] CR and PR, Table IV-2.

[88] DeKieffer Respondents Posthearing Brief, ex. 7.

[89] Respondents ***. Tr. at 186 (Malashevich).

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[90]

We first examine whether there is significant price underselling by the subject imports. In this respect, we observe that we have previously found that the subject imports and the domestic like product are good substitutes and that price plays an important role in purchasing decisions.

In our analysis of underselling, we have relied principally on the pricing data collected by the Commission. These data provide the best available information in the record comparing prices at the same level of trade for comparable products from domestic and subject sources. While we have evaluated all available data, we have focused on certain subsets of the data that we believe are most probative regarding price effects. For example, the Commission report tabulates transfers to related distributors separately from sales to unrelated distributors and end users. We have relied principally on the data for sales to unrelated distributors and end users, because the related distributor transfer data do not reflect actual "sales" and Commission staff could not verify that they reflect arm's length valuations.[91] Additionally, the parties agree that data reported by *** for sales to unaffiliated purchasers may be anomalous. ***.[92] Consequently, we have paid particular attention to the pricing data in Appendix E of the Commission report, which excludes ***. Additionally, we have relied principally on data from the period 1998 through 2000 to analyze the effects of subject imports on prices. Because subject import volume fell in interim 2001 after the filing of the petition, we believe that a focus on earlier periods is more probative for ascertaining the effects of subject imports on prices in these investigations. Regardless of which data set is used, the pricing data indicate pervasive underselling by the cumulated subject imports.[93]

Because of the large number of stainless steel bar products available in the marketplace, the coverage provided by the pricing data is relatively low.[94] Consequently, we have also considered other information in the record in evaluating whether there was significant underselling by the subject imports. These sources corroborate the pricing data. Subject imports were rated as having lower prices than the

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[90] 19 U.S.C. § 1677(7)(C)(ii).

[91] See Tr. at 218-19 (Westcott). In addition, ***. Id.

[92] See CR at V-9, PR at V-8; Tr. at 201 (Hudgens); deKieffer Respondents Prehearing Brief at 26-27.

[93] For the period encompassing the first quarter of 1998 through the third quarter of 2001, imports undersold domestically produced stainless steel bar in 318 of 430 quarterly comparisons in sales to unrelated distributors and unrelated end users. For the period encompassing the first quarter of 1998 through the fourth quarter of 2000, imports undersold the domestic like product in 260 of 360 quarterly comparisons. CR and PR, Table V-11. If *** is excluded from the database, the 1998-2001 data indicate underselling by the subject imports in *** quarterly comparisons, and the 1998-2000 data indicate underselling by the subject imports in *** quarterly comparisons. Memorandum INV-Z-020.

[94] CR at V-10-11, PR at V-8.

domestically produced product by a majority of purchasers comparing French and U.S.-produced products and Korean and U.S.-produced products, a plurality of purchasers comparing the Italian and U.S.-produced products, and a significant minority of purchasers comparing the German and U.S.-produced products.[95] There were also numerous instances where purchasers confirmed that domestic stainless steel bar producers lost sales or revenues because of the availability of lower-priced subject imports.[96] In light of the importance of price in purchasing decisions and the significant and increasing volume of subject imports during the period of investigation, we find the underselling indicated by the pricing data, and corroborated by the other information in the record, to be significant.

We next consider whether the subject imports have had significant price-depressing or price-suppressing effects. Again, we have principally relied on the pricing data collected by the Commission, although we also have considered other sources of data.

The Commission collected pricing data on ten separate stainless steel bar products. Prices for all products did not move in the same manner; additionally, some of the products showed large quarterly price fluctuations. Generally speaking, prices declined during the 1998-99 period and increased by a lesser amount during 2000. Price declines were prevalent whether the period examined was between the first quarter of 1998 and the fourth quarter of 2000, the period on which we are focusing in our analysis, or the period between the first quarter of 1998 and the third quarter of 2001, which is the entire period for which the Commission collected data.[97]

We next examine what factors could have been responsible for this decline in prices, focusing particularly on the 1998-2000 period. Respondents argue that raw material costs and changes in demand conditions explain nearly all changes in price, a proposition petitioners dispute. With respect to raw material costs, prices for stainless steel scrap generally declined in 1998, rose sharply during 1999 and the

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[95] CR and PR, Table II-4. The vast majority of purchasers rated the U.S.-produced and British products comparable in price, however.

[96] CR at V-24-32, PR at V-20.

[97] For the entire domestic industry, between the first quarter of 1998 and the fourth quarter of 2000, prices charged by U.S. producers to unrelated distributors declined for all ten products, prices charged by U.S. producers to unrelated end users declined for three out of seven products, and prices paid by purchasers to unrelated suppliers of U.S. product declined for all five products for which information was available. CR and PR, Tables D-2, D-3, D-5, D-6, D-8, D-11, D-12, D-14, D-15, D-16, D-18, D-20, D-21, D-23, D-24, D-26, D-28, D-30, D-36, D-40, and D-42. Between the first quarter of 1998 and the third quarter of 2001, prices charged by U.S. producers to unrelated distributors declined for nine out of ten products, prices charged by U.S. producers to unrelated end users declined for two out of six products, and prices paid by purchasers to unrelated suppliers of U.S. product declined for all five products for which information was available. CR and PR, Tables D-2, D-3, D-5, D-6, D-8, D-11, D-12, D-14, D-15, D-16, D-18, D-20, D-21, D-23, D-24, D-26, D-28, D-30, D-36, D-40, and D-42.

Between the first quarter of 1998 and the fourth quarter of 2000, prices charged by U.S. producers other than *** to unrelated distributors declined for all ten products, and prices charged by U.S. producers other than *** to unrelated end users declined for the one product for which data were available. Between the first quarter of 1998 and the third quarter of 2001, prices charged by U.S. producers other than *** to unrelated distributors declined for nine out of ten products, and prices charged by U.S. producers other than *** to unrelated end users declined for the one product for which data were available. CR and PR, Tables E-2, E-5, E-8, E-11, E-14, E-15, E-16, E-18, E-20, E-23, and E-26.

first two quarters of 2000, and declined thereafter.[98] On a per-unit basis, the domestic industry's raw material costs increased from *** in 1998 to *** in 1999 and then to *** in 2000. The increase from 1998 to 2000 was *** percent.[99]

Consequently, changes in raw material costs cannot explain the pricing trends for the 1998-2000 period.[100] An *increase* in raw material costs would not normally be expected to lead to a *decline* in prices.[101]

We also have examined changes in demand. As discussed in the section on conditions of competition, U.S. apparent consumption of stainless steel bar increased from 1998 to 2000. Prices would not normally decline -- particularly when costs were rising -- in a period of increasing demand. However, the domestic industry was faced with an increasing volume of subject imports that were good substitutes for the domestic like product yet were generally sold at lower prices. We conclude that the subject imports contributed to the downward pressure on U.S. prices and the domestic industry's inability to raise prices commensurately with increasing raw material costs in a time of growing demand.[102] Accordingly, we

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[98] CR and PR, Figure V-3.

[99] See Producers' Questionnaire Responses. Data for *** are not included in this analysis.

[100] We also note that respondents' econometric analysis of the effects of nickel prices on prices for stainless steel bar covers only a period beginning in August 2000 and does not purport to analyze the raw materials price increases in 1999 and early 2000. (Nickel prices followed the same trends as those for stainless steel scrap during the period of investigation. See CR and PR, Figures V-2 and V-3.) Even if we were to accept respondents' argument that prices during the latter portion of the period of investigation merely tracked nickel price changes, this would not detract from our conclusion. Instead, such a pattern would merely continue the price suppression or depression that previously occurred when raw material costs were increasing.

[101] Because of the low coverage provided by our pricing data, we also have examined other sources of data in the record that could provide probative information concerning pricing trends for U.S.-produced stainless steel bar during the period of investigation. In particular, we have considered producer price index data compiled by the U.S. Bureau of Labor Statistics (BLS), notwithstanding that we do not agree with respondents that the BLS data are more probative than the pricing data collected by the Commission. Given the broad range of products offered by the stainless steel bar industry and the fact that BLS data are based on a sampling, it is unclear whether the BLS data offer greater, or more accurate, coverage than the data collected by the Commission. Moreover, some of the data the BLS includes in its sample are list prices rather than transaction prices and thus may not fully reflect prices charged during actual transactions. CR at V-1 n.3, PR at V-1 n.3.

The BLS producer price index for cold finished stainless steel bar fluctuated within a fairly narrow range for the first ten months of 1998, then declined sharply through February 1999, increased in April 1999 and fluctuated in a fairly narrow range through the summer of 1999, and then increased sharply through the summer of 2000 before declining. The index in December 2000 was 3.8 percent higher than it was in December 1999, 10.3 percent higher than it was in December 1998 (the low point for that year), and 5.5 percent higher than it was in January 1998. See deKieffer Respondents Prehearing Brief, ex. 8. Thus, even using the BLS pricing data, which are the set most favorable to respondents, the increase in prices during the 1998-2000 was far less than the corresponding increase in raw material prices.

[102] Respondents have argued that before the Commission can make such a finding, it must "subtract out" the injurious effects of other causes, such as nonsubject imports. See deKieffer Respondents Prehearing Brief at 4-5; Tr. at 13 (Horgan). This is not a correct statement of the law. As the CIT recently held in Asociacion de Productores de Salmon y Trucha de Chile AG v. USITC, Slip Op. 02-4 at 32 (Ct. Int'l Trade Jan. 9, 2002), "[t]he

(continued...)

conclude that the subject imports had significant price depressing or suppressing effects.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[103] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[104] [105] [106]

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[102] (...continued)
Commission is not required to isolate the effects of subject imports from other factors contributing to injury" or make "bright-line distinctions" between the effects of subject imports and other causes. Instead, we must examine other factors to ascertain that we are not attributing injury from other sources to the subject imports. Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001), citing SAA at 852.

Our examination of the role of raw material price changes and changes in demand was discussed in detail above. We have also considered the role of nonsubject imports. The information in the record concerning pricing of nonsubject imports is mixed. As previously discussed, the largest supplier of nonsubject imports during the period of investigation was Canada. The vice-president of sales and marketing of Slater Steel, the U.S. producer whose parent company now owns Atlas, the sole Canadian producer of stainless steel bar, testified that bar produced by both Slater and Atlas is priced the same in the United States. Tr. at 84 (Anderson). The second-largest supplier of nonsubject imports was Taiwan, whose imports were subject to investigation prior to Commerce's negative final dumping determination. Information in the record indicates that imports from Taiwan were generally priced below U.S.-produced products. See Prehearing Report, Table V-11. Data collected by the Commission also indicate that nonsubject imports from Italy were *** than subject imports from Italy. See Importers' Questionnaires.

As explained above, there is extensive information in the record indicating the nexus between the subject imports and the significant price depression or suppression experienced by the domestic industry. The mixed information in the record concerning pricing of nonsubject imports does not detract from our finding on the price effects of subject imports, particularly since nonsubject imports were a smaller factor in the market than subject imports and their market penetration showed less of an increase during the 1998-2000 period.

[103] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885.).

[104] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

[105] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final antidumping determination concerning France, Commerce found a 71.83 percent dumping margin for Aubert, a 3.90 percent dumping margin for USI, and a 3.90 percent dumping margin for all others. 67 Fed. Reg. at 3146. In its final antidumping determination concerning Germany, Commerce found dumping margins for four named exporters ranging from 4.31 percent to 32.24 percent, and an all others rate of 17.77 percent. 67 Fed. Reg. at 3162. In its final antidumping determination concerning Italy, Commerce found a *de minimis* margin for Trafilerie Bedini, Srl. For four other named exporters, Commerce found dumping margins ranging from 2.50 percent to 33.00 percent and an all others rate of 3.81 percent. 67 Fed. Reg. at 3158-59. In its (continued...)

Several output-related indicators for the domestic stainless steel bar industry increased over portions of the period of investigation. The domestic industry's production and quantity and value of U.S. shipments each increased between 1998 and 2000.[107] However, these increases were not commensurate with concurrent increases in either U.S. apparent consumption or the domestic industry's productive capacity.[108] As previously discussed, while the subject imports were increasing in both

quantity and market penetration, the domestic industry lost market share during the period of investigation.

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[105] (...continued)
final antidumping determination concerning Korea, Commerce found a dumping margin of 4.75 percent for Dongbang Industrial Co., 13.38 percent for Changwong Specialty Steel, and 11.30 percent for all others. 67 Fed. Reg. at 3152. In its final antidumping determination concerning the United Kingdom, Commerce found dumping margins for three named exporters of either 4.48 percent or 125.77 percent and an all others rate of 4.48 percent. 67 Fed. Reg. at 3149.

[106] Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

[107] Production declined from 168,341 short tons in 1998 to 155,530 short tons in 1999, and then increased to 171,230 short tons in 2000. The increase from 1998 to 2000 was 1.7 percent. Production was lower in interim 2001, at 109,644 short tons, than it was in interim 2000, when it was 131,494 short tons. CR and PR, Table III-2.

The quantity of the domestic industry's U.S. shipments declined from 161,622 short tons in 1998 to 150,116 short tons in 1999, and then increased to 164,244 short tons in 2000. The increase from 1998 to 2000 was 1.6 percent. The quantity of U.S. shipments was lower in interim 2001, at 110,553 short tons, than it was in interim 2000, when it was 127,188 short tons. CR and PR, Table III-3.

The value of the domestic industry's U.S. shipments declined from $578 million in 1998 to $488 million in 1999, and then increased to $596 million in 2000. The increase from 1998 to 2000 was 3.0 percent. The $395 million in U.S. shipments in interim 2001 was less than the $441 million in U.S. shipments in interim 2000. CR and PR, Table III-3.

[108] As previously stated, the quantity of U.S. apparent consumption increased by 12.7 percent from 1998 to 2000. U.S. producers' capacity increased from 304,867 short tons in 1998 to 317,697 short tons in 1999 and remained at the latter figure in 2000. The increase from 1998 to 2000 was 4.2 percent. Capacity was lower in interim 2001, when it was 193,391 short tons, than in interim 2000, when it was 238,261 short tons. CR and PR, Table III-2.

Capacity utilization fluctuated during the period of investigation, declining from 55.2 percent in 1998 to 49.0 percent in 1999, and then increasing to 53.9 percent in 2000. Capacity utilization was higher in interim 2001, at 56.7 percent, than in interim 2000, when it was 55.2 percent. CR and PR, Table III-2.

We also examined producers' inventories, which declined both on an absolute and relative basis during the period of investigation. End of period inventories were 24,908 short tons in 1998, 24,335 short tons in 1999, 23,031 short tons in 2000, 23,267 short tons in interim 2000, and 18,640 short tons in interim 2001. The ratio of inventories to total shipments was *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001. CR and PR, Table III-4.

Its market share declined from 62.7 percent in 1998 to 56.5 percent in 2000.[109]

Most employment-related indicators showed declines over the period of investigation. The number of production workers, hours worked, and wages paid each declined from 1998 to 2000.[110]

As discussed above, raw material costs generally increased from 1998 to 2000. While domestic producers were able to cut direct labor and other factory costs on a per unit basis from 1998 to 2000, the increase in raw material costs caused an overall increase in per unit cost of goods sold (COGS) during this period. Per unit COGS increased from *** in 1998 to *** in 2000.[111] The price pressure imposed by the subject imports prevented the domestic industry from fully recovering these increased costs. Indeed, raw material costs accounted for an increasing percentage of average unit sales values throughout the 1998-2000 period. Unit raw material costs, as a ratio to unit trade sales, increased from *** percent in 1998 to *** percent in 2000.[112]

Because domestic producers could not increase their prices as quickly as their costs, gross profits declined on both a per unit basis and as a ratio to net sales from 1998 to 2000. Moreover, as discussed above, the industry increased its output during this period only modestly while subject imports increased in volume and market penetration. Consequently, aggregate sales values remained relatively flat during the 1998-2000 period, increasing from *** in 1998 to *** in 1999, and then declining to *** in 2000. Operating income and ratios both declined. Industry operating income declined from *** in 1998 to *** in 1999 and then to *** then to *** in 2000.[113] Operating ratios declined from *** percent in 1998 to ***

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[109] CR and PR, Table IV-2. The domestic industry's market share was slightly higher in interim 2001, at 57.2 percent, than it was in interim 2000, when it was 56.1 percent. Id.

[110] The number of production and related workers declined from 2,035 in 1998 to 1,926 in 2000. The 1,634 production and related workers in interim 2001 were less than the 1,819 workers in interim 2000. Hours worked declined from 4,470 in 1998 to 4,031 in 2000, and the 2,394 hours worked in interim 2001 were fewer than the 2,988 hours worked in interim 2000. Wages paid declined from $100.1 million in 1998 to $93.1 million in 2000, and were lower in interim 2001, at $54.9 million, than in interim 2000, when they were $70.9 million. CR and PR, Table III-5.

[111] CR and PR, Table VI-1. Per-unit COGS were also higher in interim 2001 than in interim 2000. Id.

[112] See Producers Questionnaire Responses. Data for *** are not included in this analysis.

[113] We see no basis for conducting the disaggregated analysis of the domestic industry advocated by

(continued...)

percent in 1999 and to *** percent in 2000.[114] [115]

The domestic industry's capital expenditures declined sharply during the period of investigation.[116] Four domestic producers ceased stainless steel bar production operations entirely.[117]

The record shows that the increasing volumes of the subject imports took market share away from the domestic industry, leading the domestic industry to increase output only modestly during a period of increasing demand between 1998 and 2000. Because of the subject imports' significant underselling and price effects, the domestic industry could not raise prices to recover increased raw material costs. The results of the combined volume and price effects of the subject imports were reduced employment, declining capital expenditures, declining profitability, poor financial performance, and departures of several producers from the industry. We accordingly find that the subject imports are having a significant adverse impact on the domestic industry.

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[113] (...continued)
respondents. The statute requires us to consider the domestic industry "as a whole." 19 U.S.C. § 1677(4)(A); see also, e.g., Saarstahl AG v. United States, 858 F. Supp. 196, 201-02 (Ct. Int'l Trade 1994). Moreover, domestic producers and the subject imports compete in both "specialty" and "commodity" product lines.

[114] CR and PR, Table VI-1. We observe that the data in Table VI-1 of the Commission report reflects a reallocation by staff of the profit and loss data submitted by domestic producer ***. See CR at VI-2 n.6, PR at VI-2 n.6. ***. See Tr. at 168 (Malashevich), 192 (Hudgens).

We are mindful that the statute directs the Commission to consider the impact of subject imports only in the context of U.S. production operations. 19 U.S.C. § 1677(7)(B)(i)(III). Nevertheless, given the difficulties in disaggregating the financial data for *** related production and distribution operations, we have also considered the data in Appendix F of the Commission report that provides profit and loss data with sales made by integrated service centers to unrelated customers reported as commercial sales. We have examined both sets of data out of concern that the producers' data on production operations may not present an accurate picture of the overall financial performance of the production operations of the industry in view of the fact that a significant portion of sales by certain producers are at transfer prices.

The Appendix F data, like those in Table VI-1, indicate that domestic producers' operating income was declining during the period of investigation and that operating ratios were at low levels during the latter portion of the period of investigation. They show operating income declining from *** in 1998 to *** in 1999 and then to *** in 2000. Operating ratios declined from *** percent in 1998 to *** percent in 1999, and then to *** percent in 2000. CR and PR, Table F-1.

[115] While our analysis of industry financial performance has focused on the same 1998-2000 period on which we concentrated in our discussion of subject import volume and price effects, we have considered the interim 2001 data as well. During this period of declining demand for stainless steel bar, in which subject imports retained a substantial if diminishing presence in the U.S. market, sales declined and the financial condition of the domestic industry deteriorated further. The domestic industry sustained a *** operating loss in interim 2001, as opposed to the *** operating income it earned in interim 2000. CR and PR, Table VI-1; see also Tr. at 19-20 (McElwee). The Appendix F data show that operating income was lower in interim 2001, at ***, than in interim 2000, when it was ***. CR and PR, Table F-1.

[116] Capital expenses declined from *** in 1998 to *** in 1999 and then to *** in 2000. Capital expenses were lower in interim 2001 than in interim 2000. Research and development expenditures, which were at considerably lower levels than capital expenses, declined as well throughout the period of investigation. CR and PR, Table VI-3.

[117] CR at III-1, PR at III-1.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of subsidized imports of stainless steel bar from Italy, and LTFV imports of stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom.