UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STRUCTURAL STEEL BEAMS FROM CHINA, GERMANY, LUXEMBOURG, RUSSIA, SOUTH AFRICA, SPAIN, AND TAIWAN
Investigations Nos. 731-TA-935-936 and 938-942 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3522, June 2002)

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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan of certain structural steel beams, provided for in subheadings 7216.32.00 and 7216.33.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective May 23, 2001, following receipt of petitions filed with the Commission and Commerce by the Committee for Fair Beam Imports and its individual members Northwestern Steel & Wire Co., Sterling IL; Nucor Corp., Charlotte, NC; Nucor-Yamato Steel Co., Blytheville, AR; and TXI-Chaparral Steel Co., Midlothian, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain structural steel beams from China, Germany, Russia, South Africa, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Although Commerce made negative preliminary determinations with respect to imports from Luxembourg[3] and Spain, the Commission decided, for purposes of efficiency, to proceed concurrently with the final phase of all the investigations. 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 February 7, 2002 (67 FR 5851). The hearing was held in Washington, DC, on May 15, 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] Commissioner Lynn M. Bragg dissenting.

[3] Although Commerce initially made an affirmative dumping determination, it published an amended preliminary determination of sales at not less than fair value on January 31, 2002.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of certain structural steel beams from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan found to be sold in the United States at less than fair value ("LTFV").[1] [2]

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."[3] 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."[4] 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 . . . ."[5]

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.[6] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[7] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[8] Although the Commission must accept the determination of the Department of Commerce ("Commerce")

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[1] Material retardation is not an issue in these investigations.

[2] Commissioner Bragg determines that an industry in the United States is threatened with material injury by reason of imports of certain structural steel beams from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan found to be sold in the United States at LTFV. See Separate and Dissenting Views of Commissioner Lynn M. Bragg. Commissioner Bragg joins sections I, II, and III.A. of these views.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

[6] 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 Steel, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

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

[8] 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.").

as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[9]

B. Product Description

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

> The scope of this investigation covers doubly-symmetric shapes, whether hot or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I- sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.[10]

Structural steel beams are designed specifically to be load-bearing support members in a wide variety of applications, principally related to construction of structures or original equipment manufacturing applications. Beams are available in a range of overlapping sizes and cross-sectional profiles.[11]

C. Domestic Like Product Issues

The principal domestic like product issue in these final phase investigations concerns whether forklift mast profiles should be treated as a separate domestic like product. Petitioners contend that the Commission should find all structural steel beams of the type described by Commerce's scope definition

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[9] 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).

[10] 67 Fed. Reg. 35479, 35479-80 (May 20, 2002) (China); 67 Fed. Reg. 35482, 35483 (May 20, 2002) (Spain); 35 Fed. Reg. 35484, 35484-85 (May 20, 2002) (Taiwan); 67 Fed. Reg. 35485, 35486 (May 20, 2002) (South Africa), 67 Fed. Reg. 35488, 35488 (May 20, 2002) (Luxembourg); 67 Fed. Reg. 35490, 35490 (May 20, 2002) (Russia); 67 Fed. Reg. 35497, 35498 (May 20, 2002) (Germany). In its notices, Commerce indicates that it received requests from respondents to exclude two specific products from the scope of the investigations. These were beams of grade A913/65 and forklift mast profiles. Commerce declined to amend the scope to exclude these products. E.g., 67 Fed. Reg. at 35483.

[11] Confidential Report (CR), as revised by Memoranda INV-Z-085 (June 7, 2002), INV-Z-090 (June 12, 2002), and INV-Z-095 (June 17, 2002), at I-6, Public Report (PR) at I-4-5.

to be a single domestic like product. Respondents Hoesch Hohenlimburg GmbH ("Hoesch") and Salzgitter AG Stahl und Technologie ("Salzgitter"), each of which is a producer and exporter of structural steel beams from Germany, and Corus Respondents[12] argue that the Commission should find two like products: (1) forklift mast profiles and (2) all other structural steel beams subject to investigation.

In the preliminary determinations, the Commission considered the question of forklift mast profiles and determined that all structural steel beams described by the scope definition were a single domestic like product. The Commission stated that the limited information on the record concerning forklift mast profiles indicated some differences from other structural steel beams in terms of end uses and customer and producer perceptions, but also similarities in terms of physical characteristics, production processes, equipment, and workers, and channels of distribution.[13] We conclude that the more complete information now on the record supports a conclusion that there is not a clear dividing line between forklift mast profiles and other types of structural steel beams.

Physical Characteristics and Uses. Forklift mast profiles produced in the United States that meet the specifications of Commerce's scope definition are mast parts used in the construction of a forklift.[14] Forklift mast profiles are produced to the standards of the individual forklift producer that orders them.[15] One purchaser of forklift mast profiles reports that forklift mast profiles have greater strength, tighter dimensional tolerances, and less uniform mast channels than beams meeting the standards of the American Society for Testing and Materials (ASTM).[16]

Most structural steel beams produced in the United States are used for building, bridge, or tower construction.[17] Beams used for such purposes generally meet ASTM certification standards.[18] However, some U.S.-produced beams within the scope definition that are not forklift mast profiles ("non-FMP beams") are not used for construction of structures.[19] These beams are produced to customer specification and do not meet ASTM standards.[20]

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[12] "Corus Respondents" are Corus Specialty Profiles Mannstaedt-Werke GmbH & Co. ("Mannstaedt"), a German producer and exporter of subject merchandise, Corus America Inc., an importer of subject merchandise, and Corus Group plc, the parent of the preceding two firms.

[13] Certain Structural Steel Beams from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan, Inv. Nos. 731-TA-935-942 (Preliminary), USITC Pub. 3438 at 5 (July 2001) ("Preliminary Determination").

[14] CR at I-9-10, PR at I-7. Not all forklift mast profiles produced in the United States, however, meet the specifications of the scope definition – *i.e.*, doubly symmetric with at least one dimension of 80 mm. The sole domestic producer of forklift mast profiles, Steel of West Virginia, reports that *** percent of its 2001 forklift mast profile production was doubly symmetric and hence within the scope definition. Petitioners Posthearing Brief, ex. 1G, Affidavit of ***.

[15] Petitioners Prehearing Brief, vol. II, ex. 17-H; Corus Respondents Prehearing Brief, ex. 8.

[16] Corus Respondents Prehearing Brief, ex. 8.

[17] CR at I-6, II-10 n.9, PR at I-4-5, II-7 n.9.

[18] CR at I-6, PR at I-5; see Petitioners Prehearing Brief, vol. I at 3 n.2, 8 (small percentage of domestic production does not meet ASTM standards).

[19] About five to 10 percent of all structural steel beams used in the U.S. market are used for original equipment manufacture, and production of forklift mast profiles meeting the specifications of the scope definition constituted less than *** percent of total U.S. structural steel beam production in 2001. CR at II-10 n.9, Tables C-1, C-2, PR at II-7 n.9, Tables C-1, C-2.

[20] Petitioners Posthearing Brief, ex. 1G, affidavits of *** and *** (identifying specific non-FMP beams produced by domestic producers *** for use in applications such as ***).

Interchangeability. Forklift mast profiles are produced to individual customer specifications; consequently, there is no dispute that they are not interchangeable with other types of structural steel beams.[21] This also would be true of non-FMP beams made to individual customer specifications.

Channels of Distribution. Forklift mast profiles are sold *** to end users.[22] Non-FMP beams produced to individual customer specifications also generally are sold directly to the customer.[23] In 2001, 55.3 percent of shipments of all domestically produced structural steel beams were made to distributors, and the remaining 44.7 percent were made to end users.[24]

Customer and Producer Perceptions. The two purchasers that have submitted statements into the record indicate that they perceive forklift mast profiles to be distinct products from other types of structural steel beams.[25] While each U.S. producer's literature categorizes its beam product line in a different manner, the sole U.S. producer of forklift mast profiles, Steel of West Virginia, categorizes forklift mast profiles separately from "merchant" sections (which encompass W and S shapes).[26]

Production Facilities, Processes, and Employees. Steel of West Virginia states that it produces both forklift mast profiles and non-FMP beams on the same equipment using the same production workers. This includes both beams made to ASTM specifications and non-FMP beams made to individual customer specifications.[27] Other domestic producers that produce non-FMP beams to individual customer specifications state that they produce these beams and beams meeting ASTM standards on the same production equipment; however, each individual beam type requires a specific roll.[28]

Price. Steel of West Virginia reports that its forklift mast profiles are more expensive than beams meeting ASTM standards but can be priced either higher or lower than non-FMP beams produced to customer specifications.[29]

Conclusion. There are certain distinctions between forklift mast profiles and the majority of structural steel beams that are produced to ASTM standards and are used in construction applications. These include distinct end uses, lack of interchangeability, distinct customer and producer perceptions, and higher prices.

Nevertheless, these distinctions are insufficient to constitute a "clear dividing line" between forklift mast profiles and all non-FMP beams given distinctions within the category of non-FMP beams. The differences that exist between forklift mast profiles and non-FMP beams produced to ASTM standards also exist between non-FMP beams that are produced to ASTM standards ("commodity

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[21] CR at I-10, PR at I-8; see Corus Respondents Prehearing Brief, exs. 7-8.

[22] CR at I-10, PR at I-8.

[23] Petitioners Prehearing Brief, vol. II, ex. 17-H.

[24] CR and PR, Table III-6.

[25] Corus Respondents Prehearing Brief, exs. 6, 8.

[26] Steel of West Virginia Internet Site, *http://www.swvainc.com/industrial.html* and *http://www.swvainc.com/merchant.html* (printed May 28, 2002). Compare Nucor-Yamato Internet Site, *http://www.nucoryamato.com/general.htm* (printed May 28, 2002); Nucor Internet Site, *http://www.nucorsteel.com/WebSite/NSB.nsf/BSP?OpenForm* (printed May 28, 2002); TXI Internet Site, *http://www.chaparralsteel.com/structural/products.asp* (printed May 28, 2002).

[27] Petitioners Prehearing Brief, vol. II, ex. 17-H; Petitioners Posthearing Brief, ex. 1G, *** Affidavit. Steel of West Virginia states that the only production equipment unique to the production of forklift mast profiles are special mill rolls used to form the beam, which ***. Petitioners Posthearing Brief, ex. 1G, *** Affidavit; see also CR at I-10 n.22, PR at I-8 n.22.

[28] Petitioners Posthearing Brief, ex. 1G, *** Affidavits.

[29] Petitioners Prehearing Brief, vol. II, ex. 17-H.

beams") and those that are not ("specialized non-FMP beams"). Numerous domestic producers make a variety of specialized non-FMP beams that are produced to individual customer specifications for particularized end uses. Consequently, several of the distinctions with respect to end uses and lack of interchangeability that exist between forklift mast profiles and non-FMP beams generally also exist between (1) forklift mast profiles and specialized non-FMP beams; (2) specialized non-FMP beams and commodity beams; and (3) different types of specialized non-FMP beams.

By contrast, all structural steel beams – whether forklift mast profiles, non-FMP specialty beams, or commodity beams – within the scope definition have certain characteristics in common. These include commonality in dimension (i.e., doubly symmetric) and size, their general use as components used to assemble larger structures or equipment, and the fact that they are made in the United States using common production facilities, processes, and employees.[30]

We conclude that the record in these investigations supports a conclusion that the group of structural steel beams within the scope definition constitutes a continuum of products without a clear dividing line. Accordingly, we find a single domestic like product constituting all structural steel beams meeting the specifications of the scope definition.

D. Domestic Industry and Related Parties

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."[31] 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.[32] Based on our domestic like product determination, we determine that there is a single domestic industry consisting of all U.S. producers of structural steel beams.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[33] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[34]

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[30] As the Commission noted in its preliminary determinations, respondents' discussion concerning production processes in Germany is of limited probative value concerning the definition of the domestic like product. See Preliminary Determination, USITC Pub. 3438 at 5 n.15; Torrington Co. v. United States, 747 F. Supp. 744, 749 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) (like product analysis focuses on differences among domestically produced products). This is particularly true given that the record in the final phase investigations has much more complete information about U.S. producers' production processes than did the record in the preliminary phase investigations.

[31] 19 U.S.C. § 1677(4)(A).

[32] *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).

[33] 19 U.S.C. § 1677(4)(B).

[34] 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

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The single domestic industry issue in these investigations concerns the treatment of a domestic producer, ***. ***, a firm that imported subject merchandise during the period of investigation. Under the statutory related parties provision, a producer and an exporter or importer are to be considered related parties if, *inter alia*, "the exporter or importer directly or indirectly controls the producer."[35] The status of domestic producer *** as a *** of importer *** indicates that *** possesses the requisite control over *** to make that producer subject to potential exclusion from the domestic industry subject to section 771(4)(B)(i) of the Act.[36] However, we have determined that "appropriate circumstances" do not exist to support *** exclusion from the domestic industry.[37] Accordingly, we define a single domestic industry in these investigations encompassing all U.S. producers of structural steel beams.

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

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[34] (...continued)
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 at 14 n.81 (Feb. 1997).

[35] 19 U.S.C. § 1677(4)(B)(ii)(II).

[36] 19 U.S.C. § 1677(4)(B)(i).

[37] The quantity of *** subject imports was *** in 1999, *** short tons in 2000, and *** short tons in 2001. *** Importer Questionnaire. In response to the question asking its reason for importing structural steel beams its response was ***. Id.

*** accounted for *** percent of total U.S. production of structural steel beams in 2001; of the ten U.S. beams producers for which the Commission collected data, *** 2001 sales quantity ranked ***. CR and PR, Tables III-1, VI-3. The ratio of *** subject imports to *** production was *** in 1999, *** in 2000, and *** in 2001. *** Importer Questionnaire; *** Producer Questionnaire. *** operating margins were *** in 1999, *** in 2000, and *** in 2001. CR and PR, Table VI-3.

Because of the *** nature of *** subject imports and the *** production quantities of ***, it is unclear whether the principal interest of the *** combination is in domestic production or importation. There does not, however, appear to be any correlation between *** importation activities, on the one hand, and *** financial performance relative to its peers, on the other. Indeed, the main discrepancy between *** operating performance and those of its peers is that *** – which was the year of *** principal importations. Consequently, the record does not indicate that *** imports so that its domestic production affiliate may benefit from LTFV sales.

[38] 19 U.S.C. § 1677(7)(G)(i).

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 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 threshold for cumulation is satisfied in that the petition was filed with respect to imports from all subject countries on the same day. None of the statutory cumulation exceptions is applicable.[43]

We next examine the factors the Commission customarily considers in ascertaining whether there is a "reasonable overlap of competition."

Fungibility. Structural steel beams sold in the United States, regardless of source, generally meet ASTM specifications.[44] Market participants overwhelmingly reported that structural steel beams from each of the subject countries were always or frequently interchangeable with structural steel beams produced in the United States.[45] Purchasers also overwhelmingly reported that structural steel beams from each of the subject countries are comparable to domestically produced beams in terms of product consistency and product quality.[46] Both domestic producers and suppliers from the individual subject

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[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).

[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 at 8 n.29 (May 1986), aff'd sub nom. 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] Negligibility is not an issue in these investigations. CR at IV-6-7, PR at IV-5.

[44] See generally CR at I-6, PR at I-5; Petitioners Prehearing Brief, vol. I at 3 n.2; Arcelor Respondents Posthearing Brief, Tab H-1 at 15, Tab H-2 at 74, Tab H-3 at 8; Purchasers' Questionnaires.

[45] CR and PR, Table II-8.

[46] CR and PR, Table II-6.

countries offer products in a range of sizes and weights; there is an overlap between product offerings from each of these countries.[47]

Geographic Overlap. The major domestic producers sell their product throughout the continental United States.[48] Imports from each subject country are sold in the North Atlantic, South Atlantic, and Gulf regions, and imports from most of the subject countries are sold nationwide.[49]

Channels of Distribution. Structural steel beams from all sources are sold both to distributors and to end users. In 2001, 55.3 percent of U.S.-produced beams were sold to distributors, with the remainder sold to end users.[50] A majority of imports from all but one of the subject countries was sold to distributors.[51]

Simultaneous Presence. Imports from each of the subject countries were present in the U.S. market in 2000 and 2001, and imports from each of the subject countries except Taiwan were present in the U.S. market in 1999.[52]

Conclusion. No party disputes that there is a reasonable overlap of competition between imports from each subject country and the domestic like product, and among imports from the various subject countries, in terms of the four factors generally analyzed by the Commission.[53] We cumulate imports from all subject countries in our analysis of material injury by reason of subject imports.

III. NO MATERIAL INJURY BY REASON OF SUBJECT 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

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[47] Arcelor Respondents Posthearing Brief, Tab H-4; CR at V-8 and Tables V-9-10; PR at V-7 and Tables V-9-10.

[48] CR at V-3, PR at V-2; Arcelor Respondents Posthearing Brief, Tab H-4.

[49] Arcelor Respondents Posthearing Brief, Tab H-4.

[50] CR and PR, Table III-6.

[51] CR and PR, Table IV-4.

[52] CR and PR, Table IV-3.

[53] The record does indicate that there is some distinction between subject imports from Luxembourg, on the one hand, and imports from other subject countries, on the other, in terms of channels of distribution. We do not accord this substantial weight in our analysis, however, because the record indicates that TradeARBED, a U.S. importer, jointly marketed imports from Luxembourg with those from other subject countries, indicating some overlap in distribution channels. See Petitioners' Prehearing Brief, vol. III, ex. B (***). Indeed, in one instance TradeARBED required that purchasers order product from both Luxembourg and German sources. See Petitioners' Prehearing Brief, vol. III, ex. B (***); Tr. at 57 (Price).

The only argument against cumulation has come from Nizhny Tagil Iron and Steel Works ("Tagil"), a Russian producer and exporter of subject merchandise. Tagil's argument that imports from Russia should not be cumulated with imports from the other subject countries is based solely on the existence of a 1999 agreement between the Governments of Russia and the United States imposing quantitative restrictions on imports from Russia of several steel products, including structural steel beams. The Commission previously has concluded that, when the criteria it traditionally examines indicate a reasonable overlap of competition between subject imports from a country whose imports are subject to quantitative restrictions, on the one hand, and imports from other subject countries and the domestic like product, on the other, cumulation is warranted. See Honey from Argentina and China, Inv. Nos. 701-TA-402, 731-TA-892-893 (Final), USITC Pub. 3470 at 15 n.96 (Nov. 2001). The record indicates that, notwithstanding the 1999 agreement, subject imports from Russia continued to enter the U.S. market in competition with the domestic like product and imports from other subject countries, and Tagil does not argue to the contrary.

investigation.[54] 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 product, but only in the context of U.S. production operations.[55] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[56] 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.[57] 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."[58]

For the reasons discussed below, we determine that the domestic structural steel beams industry is not materially injured by reason of the cumulated subject imports.[59]

A. Conditions of Competition

Several conditions of competition pertinent to the structural steel beams industry are relevant to our analysis.[60]

The principal use of structural steel beams is in construction projects. Consequently, demand for structural steel beams is a function of construction activity.[61] Census Bureau statistics indicate that the value of nonresidential construction activity in the United States rose, in current dollars, from $194 billion in 1999 to $210 billion in 2000 and then declined to $209 billion in 2001.[62] The Census Bureau also publishes seasonally adjusted monthly data. The monthly data indicate that construction activity declined from the first to second and from the second to third quarters of 1999. Construction activity then increased during the fourth quarter of 1999 and throughout 2000 before reaching a peak in the first quarter of 2001. Activity then declined throughout the remainder of 2001, reaching period lows during the fourth quarter of 2001.[63]

Data on apparent U.S. consumption of structural steel beams derived from a mixture of Commission questionnaires and official Commerce import statistics show much sharper annual fluctuations in demand than do the Census Bureau construction data. Apparent U.S. consumption rose from 4.96 million short tons in 1999 to 6.23 million short tons in 2000, and then declined to 4.81 million short tons in 2001.[64]

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[54] 19 U.S.C. §§ 1671d(b) and 1673d(b).

[55] 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).

[56] 19 U.S.C. § 1677(7)(A).

[57] 19 U.S.C. § 1677(7)(C)(iii).

[58] 19 U.S.C. § 1677(7)(C)(iii).

[59] Commissioner Bragg determines that the domestic structural steel beams industry is threatened with material injury by reason of the cumulated subject imports. See Separate and Dissenting Views of Commissioner Lynn M. Bragg.

[60] 19 U.S.C. § 1677(7)(C)(iii).

[61] CR at II-10, PR at II-7.

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

[63] Arcelor Respondents Prehearing Brief, Tab 2; Petitioners Prehearing Brief, vol. I at 13.

[64] CR and PR, Table IV-3.

Purchasers of structural steel beams in the United States include distributors, which are principally steel service centers, and end users, which are mainly fabricators.[65] Purchasers must make orders several months in advance of delivery of the product. For imports, the lead time for orders is in the range of 90 to 150 days.[66] Market participants agree that lead times are shorter for domestically produced product.[67] Domestic producers reported considerable variations in lead times. Individual producers reported their average lead times during the period of investigation ranged from seven days to 81 days. Producers typically had the longest lead times during the second half of 1999 and the first half of 2000; lead times in 2001 were shorter than those in either 1999 or 2000.[68]

While fabricators do not maintain significant inventories,[69] steel service centers do. Service centers' inventories increased from 1999 to 2000, and declined from 2000 to 2001.[70] [71]

The Commission received questionnaire responses from all 10 domestic producers that produced structural steel beams in 2001. Three of these firms – TXI Chaparral Steel Co. (TXI), Nucor Corp., and Nucor-Yamato Steel Co.– account for *** of domestic production.[72] There have been several changes in domestic production operations during the period of investigation. Nucor's Berkeley mill, opened in December 1998, became fully operational during the fourth quarter of 1999. TXI opened a new mill in Petersburg, Virginia, in August 1999. Northwestern, which previously declared bankruptcy, shut down in May 2001.[73] Steel Dynamics, Inc. (SDI) constructed a new structural steel mill in Columbia City, Indiana, during the period of investigation; it anticipates that the mill will become operational during 2002.[74]

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

[66] Tr. at 111 (Athens); 161 (Reilly).

[67] CR at II-13, PR at II-9; Tr. at 26 (Stratman).

[68] Petitioners Posthearing Brief, ex. 1N.

[69] CR at II-1, PR at II-1; see Tr. at 47 (Grossi).

[70] End of period inventories for the 28 distributors that provided inventory data for all three years of the period of investigation in their purchasers questionnaire responses increased from 330,451 short tons in 1999 to 548,865 short tons in 2000 and then declined to 369,883 short tons in 2001. Purchasers' Questionnaires. (After completion of the Commission report in these investigations, Commission staff learned that Table II-1 of the Confidential Report incorrectly tabulated the data in the purchasers' questionnaires relating to distributors' inventories. We observe that the parties did not rely on the incorrect tabulation in preparing their arguments. Instead, both petitioners and respondents provided in their briefs purchaser-by-purchaser tabulations of inventories based directly on the questionnaires. See Petitioners Posthearing Brief, ex. 1C; Arcelor Respondents Posthearing Brief, Tab 1. It was through examination of the parties' tabulations that Commission staff discovered the error in the final version of the Confidential Report. That error has been corrected in the Public Report. This opinion relies on the corrected tabulation of the data provided at Table II-1 of the PR.) Monthly inventory data for structural steel compiled by the Metal Steel Service Center Institute (MSCI), which includes product other than structural steel beams, showed that inventories increased from January through March 1999, and then declined from March through October 1999, when inventories reached a period low. MSCI inventories then increased through May 2000, fluctuated through the remainder of 2000 before reaching a peak in January 2001, and declined thereafter. Arcelor Respondents Prehearing Brief, Tab 10.

[71] Commissioner Bragg does not rely on the corrected tabulation of the data at Table II-1 of the Public Report. See Separate and Dissenting Views of Commissioner Lynn M. Bragg at n.37.

[72] CR and PR at III-1, Table III-1. While Nucor and Nucor-Yamato are separate corporate entities, their beams production facilities are under common management. Tr. at 152 (Stratman).

[73] CR at III-3-4, PR at III-1, 3.

[74] Tr. at 31-32 (Nolan).

Notwithstanding the opening of new capacity, the domestic industry had difficulty supplying its customers during 1999 and the first portion of 2000. Eighteen of 45 purchasers, including 16 of 31 distributors, reported to the Commission that they were either placed on allocation sometime during 1999 and 2000 or were otherwise unable during that time to meet requirements from domestic sources.[75] Numerous contemporaneous news articles detail that domestic producers were having difficulty supplying certain beam sizes to their customers in late 1999 and early 2000.[76] Some domestic producers limited the amount of materials that distributors could purchase during this period.[77] While petitioners assert that most domestic producers did not have any limitation on what customers could purchase at any time during the period of investigation, the *** producers that petitioners acknowledge did impose restrictions on customers accounted for *** of domestic production.[78]

Imports from nonsubject sources declined from 603,784 short tons in 1999 to 482,801 short tons in 2000 and then to 164,695 short tons in 2001.[79] Most of the decline in nonsubject imports from 1999 to 2000 is attributable to declines in imports from Japan and Korea. In June 2000 imports from Japan became subject to an antidumping duty order and in August 2000 imports from Korea became subject to antidumping and countervailing duty orders.[80]

A final condition of competition concerns subject imports from Russia. A July 12, 1999, "Agreement Concerning Trade in Certain Steel Products from the Russian Federation" between Russia and the United States imposes annual limits on Russian exports to the United States on several products, including heavy structural shapes – a category that encompasses but is not limited to structural steel beams.[81] [82]

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[83]

The quantity of cumulated subject imports increased from 331,436 short tons in 1999 to 772,809 short tons in 2000, and then declined to 300,150 short tons in 2001. Measured by value, cumulated subject imports increased from $98.8 million in 1999 to $284.0 million in 2000, and then declined to

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[75] CR at II-2, PR at II-2.

[76] Arcelor Respondents Posthearing Brief, Tabs B-1, B-2, B-4, B-5. See also id., Tabs B-8, B-9 (fabricators express concern over availability of structural steel in early 2000).

[77] CR at II-2, PR at II-1.

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

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

[80] CR at I-4, IV-6, PR at I-4, IV-5.

[81] Export limits are adjusted annually pursuant to a formula that: (a) permits a three percent annual increase in exports from a 1999 baseline level, and (b) is subject to upward or downward adjustments reflecting changes in apparent U.S. consumption. For heavy structural shapes, the export limits were 68,839 metric tons in both 2001 and 2002. Tagil Posthearing Statement, ex. 2.

[82] Commissioner Bragg has made an affirmative threat determination and does not join the remainder of this opinion. See Separate and Dissenting Views of Commissioner Lynn M. Bragg.

[83] 19 U.S.C. § 1677(7)(C)(i).

$93.1 million in 2001. The market penetration of cumulated subject imports, measured by quantity, increased from 6.7 percent in 1999 to 12.4 percent in 2000, and then declined to 6.2 percent in 2001.[84]

In evaluating the significance of subject import volume, we have considered both the sharp increase in the volume and market penetration of subject imports from 1999 to 2000 and the sharp decline in volume and market penetration from 2000 to 2001. The increase in the subject import volume and market penetration from 1999 to 2000 occurred when domestic producers were having difficulty satisfying demand in the marketplace. As previously noted, a substantial number of distributors reported being unable to satisfy their purchasing requirements from domestic sources in late 1999 and the first half of 2000 and some domestic mills had "controlled order entry" mechanisms in place during this period to limit some distributors' purchases. Moreover, the lead times of *** domestic producers were at a peak during this period and their inventories were *** lower in the first half of 2000 than they would be later in the year.[85]

Petitioners argue that construction demand increases in 2000 were relatively modest and that consequently there were adequate domestic supplies to meet "real" demand throughout 2000. The record in these investigations, however, indicates that purchasers' perceptions of market conditions during late 1999 and early 2000 were different. Purchaser representatives appearing on behalf of petitioners testified that service centers must base their orders, particularly for imported product, on their own projections of market conditions several months in advance.[86] One fabricator testified that he believed that service centers' purchasing patterns in 2000 could be explained by their view that the economy would continue to perform strongly and demand for beams would be high.[87] Indeed, the "Business Barometer Report" issued by the American Institute for Steel Construction in March 2000 indicated that fabricators perceived business conditions to be "good to very good" in all regions and end use markets, that favorable trends were expected to continue for the next six months, and that "[t]here continue to be major concerns about steel availability."[88] In conditions of strong demand and uncertain or limited domestic supply, purchasers turned to imported sources for additional supplies to meet their perceived needs.

Indeed, examination of data concerning official import statistics, which are collected on a monthly basis, indicate how changes in subject import levels over the period of investigation mirror changes in the domestic supply situation. Subject import quantities increased sharply on a monthly basis beginning in March 2000. Given the three to five month lead time for subject imports, this would reflect orders made from October to December 1999 – a time when shortages of certain beam sizes from domestic producers were becoming apparent. Subject imports quantities reached their peak in August 2000 – reflecting orders made between March and May 2000, at a time when shortages of domestically produced beams persisted.[89]

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[84] CR and PR, Table IV-3.

[85] Petitioners Posthearing Brief, exs. 1C, 1N. It is true that the questionnaire data collected by the Commission show unused domestic capacity during 2000. However, this is to some extent a function of the TXI Petersburg mill being unable during 2000 to adjust its product mix to supply the products demanded by purchasers. See Petitioners Posthearing Brief, exs. 1I, 1L; Arcelor Respondents Posthearing Brief, Tab B-5. Nevertheless, TXI ***. See Petitioners Posthearing Brief, ex. 1L; Report on April 2, 2002, Staff Visit to ***.

[86] Tr. at 96-97 (Grossi), 125 (Athens).

[87] Tr. at 97 (Grossi) ("the economy was never going to turn down, that this was going to race off into never-never land and we were going to grow at 10 and 12 percent a year.").

[88] Arcelor Respondents Posthearing Brief, Tab B-8.

[89] Official Commerce import statistics. Moreover, it was not only the subject imports whose quantities increased significantly from 1999 to 2000. We also examined import trends for nonsubject imports from

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By the third quarter of 2000, the domestic industry largely had resolved its supply problems.[90] The record indicates that once there were no longer shortages in supply, orders for the subject imports fell. Subject import quantities for the fourth quarter of 2000, which would reflect orders made during the third quarter, declined significantly from those for the third quarter. Subject import quantities fell further during the first quarter of 2001.[91] Subject import volumes thus began to fall well before the filing of the petition in May 2001.[92]

We therefore find that the filing of the petition had only a limited impact on the 2001 decline in subject import volume.[93] Consequently, we do not reduce the weight we accord to the 2001 data. Instead, we conclude that the increase in subject imports in 2000 was a function of domestic supply shortages during a period of strong demand, and the decline in subject imports in 2001 was largely a function of both the resolution of those shortages and a decline in demand. In 2001, the domestic industry's share of the quantity of U.S. apparent consumption reached 90.3 percent, its peak level during the period of investigation.[94]

While we acknowledge that there was a large increase in subject imports during an earlier portion of the period of investigation, in light of the foregoing conditions of competition and the lack of price effects discussed below, we find that the volume of subject imports is not 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 –

> (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.[95]

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[89] (...continued)
countries other than Japan and Korea, which became subject to orders in 2000. Nonsubject imports from countries other than Japan and Korea increased from 129,163 short tons in 1999 to 453,318 short tons in 2000. Derived from data at CR and PR, Table IV-2, and official import statistics for Japan and Korea. Exclusion of nonsubject imports from Italy, a country previously subject to these investigations, does not change this trend.

[90] See Arcelor Respondents Posthearing Brief, Tab B-6; Petitioners Posthearing Brief, ex. 1B at 3-4.

[91] Official Commerce import statistics.

[92] We note that this is true even if monthly data are used and the data are compared to those of the same month during the prior year. On this basis, there were significant declines in subject import volumes beginning in March 2001, which was still two months prior to the filing of the petition. Official Commerce import statistics.

[93] Again, this conclusion is corroborated by an examination of nonsubject imports from countries that were subject neither to antidumping orders nor investigations. Imports from these countries, as did subject imports, fell sharply from 2000 to 2001. The quantity of imports from nonsubject sources other than Italy, Japan, and Korea declined from 361,780 short tons in 2000 to 125,143 short tons in 2001. Derived from data at CR and PR, Table IV-2, official Commerce import statistics (imports from Japan and Korea), Importers Questionnaires (imports from Italy).

[94] CR and PR, Table IV-3.

[95] 19 U.S.C. § 1677(7)(C)(ii).

As previously noted, the majority of structural steel beams sold in the United States, regardless of source, meets ASTM standards. Purchasers overwhelmingly reported that imports from each of the subject countries are comparable to the U.S.-produced product in terms of product consistency and product quality.[96] Purchasers listed price most frequently as the most important factor in their purchasing decisions, although availability also was listed frequently as an important purchasing factor.[97] Market participants also agree that, because they can deliver product more quickly and reliably, domestic mills are able to command some pricing premium for their products over imported structural steel beams.[98]

Nevertheless, the record in these investigations indicates a mixed pattern of overselling and underselling. The Commission collected pricing data on four products sold to distributors and three sold to end users. Cumulated subject imports undersold the domestic like product in 90 of 147 quarterly comparisons.[99]

We gave particular focus to pricing product 1, which included certain wide-flange beams 8 to 14 inches. This was the only product for which pricing data was available for each of the subject countries. Additionally, the data for this product yielded both the largest overall sales volumes, for both the cumulated subject imports and the domestically produced product, and the largest number of quarterly pricing comparisons. For this product, there were 22 comparisons of underselling, involving an aggregate 102,549 short tons of subject imports. There were 32 comparisons of overselling, involving an aggregate 176,937 short tons of subject imports.[100] Thus, in terms of both quarterly comparisons and tonnage involved, there was more overselling than underselling for the product where competition between the subject imports and the domestic like product was most intense.[101]

It is true that the subject imports undersold the domestic like product during discrete quarters and in particular transactions.[102] We further acknowledge that the pricing data indicate that there was a

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[96] CR and PR, Table II-6.

[97] CR and PR, Table II-5.

[98] Petitioners' witnesses characterized the premium as small, and estimated it was in the nature of $10 to $40 per ton. Tr. at 105 (Stratman), 106 (Kirksey), 108-09 (Grossi), 109 (Petitgoue). A respondent witness testified that, while the price premium was generally in the nature of $25 to $35 per ton, it could inflate to as much as $50 or $60 per ton in a weak market. Tr. at 232 (Lamesch).

[99] CR and PR, Tables V-9, V-10.

[100] CR and PR, Table V-9. In light of petitioners' argument that the pricing data collected by the Commission reflect prices at the time of delivery, but that competition in the marketplace occurs when an order is made, we also compared prices for the domestically produced product delivered in one quarter against the prices for subject imports delivered in the subsequent quarter. While this alternative analysis slightly increases the incidence of underselling for product 1, there was still more tonnage oversold than undersold. Under this analysis, there were 27 comparisons of underselling involving 129,833 short tons of subject imports and 25 comparisons of overselling involving 131,121 short tons of subject imports. Derived from CR and PR, Tables V-1-2.

Petitioners also suggest that we assess underselling by comparing price lists of domestic producers, on the one hand, with offer sheets for the subject merchandise circulated by U.S. importers, on the other. We have instead engaged in our customary analysis, focusing on prices actually charged in sales. Petitioners' proposed methodology appears particularly problematic in light of information in the record indicating that domestic producers did not necessarily charge list prices to their customers. See Petitioners Prehearing Brief, vol. II, ex. 19.

[101] There was also more subject import tonnage oversold than undersold for products 1 and 2, the two highest-volume products, combined. CR and PR, Table V-9. We observe that the parties themselves have focused their underselling analysis on the highest-volume products. See Arcelor Respondents Prehearing Brief at 13 (product 1); Petitioners Posthearing Brief, ex. 1F at 3-4 (products 1 and 2).

[102] Consequently, it is not surprising that there were some confirmed lost sales and revenues. CR and PR, Appendix E. Nevertheless, the lost sales and revenue information is anecdotal and cannot outweigh the patterns we

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greater incidence of underselling for the products other than product 1 on which the Commission collected data. Nevertheless, our review of all the pricing data collected indicates that there was frequent overselling observed and substantial tonnage involved in overselling transactions, notwithstanding that all parties agree that the domestically produced product normally receives some pricing premium over the subject imports. The pricing data further demonstrate that the increases in subject import volume and market share observed in 2000 were not, as petitioners contend, a function of subject imports sold at "attractive" prices. For the most part, subject import volumes increased notwithstanding that the subject imports more than occasionally had higher prices as compared to the domestic like product than one would expect in light of the conditions of competition. These factors all serve to diminish the significance of the underselling that was observed.

Data concerning pricing trends further show that factors other than competition from subject imports were responsible for price movements of the domestically produced product. During 2000, the year when subject import volumes were the highest, prices for both the subject imports and the domestically produced product were also the highest. For product 1, the price of the U.S.-produced product fluctuated in a narrow range during the first three quarters of 1999, then rose sharply, with peak prices occurring during the second and third quarters of 2000. Prices then declined sharply before increasing during the last two quarters of 2001. The subject imports generally showed similar trends, with prices peaking during the middle of 2000 at levels sharply higher than those of 1999 and declining in 2001.[103] The other products for which the Commission collected pricing data showed similar patterns for both the U.S.-produced product and the subject imports, with prices peaking in 2000 and declining in 2001.[104]

During the portion of 2000 when prices rose, purchasers perceived demand was increasing significantly but they were having difficulty obtaining product because of supply shortages among the larger domestic producers. Price increases are a natural function of supply shortages. Once the supply shortages abated after the second quarter of 2000, prices stabilized and then declined.[105]

As previously noted, purchase orders for subject imports declined sharply once the supply shortage abated. Thus, the sharp decline in prices observed during 2001 cannot be a function of that

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[102] (...continued)
discern from our evaluation of the pricing data overall.

We further observe that a large number of the lost revenue allegations involve sales or quotations made after January 1, 2002. CR at V-19, PR at V-10. Because these allegations concern a period later than that for which the Commission collected pricing data, the record does not indicate whether they are indicative of overall pricing or underselling trends.

[103] CR and PR, Tables V-1-2.

[104] CR and PR, Tables V-3-8.

[105] An underlying theme of petitioners' arguments is that the current investigations present essentially the same fact pattern as the Commission's 2000 investigations of structural steel beams from Japan and Korea. See, e.g., Tr. at 50-56 (Kaplan). As a legal matter, petitioners' argument does not require a response. It is well established that Commission investigations are *sui generis* and that prior investigations, even if they involve the same product, do not establish "precedents." E.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1169 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). We nevertheless observe that as a factual matter petitioners are simply wrong. In the 2000 investigations, the record showed that the subject imports undersold the domestic like product in the vast majority of pricing comparisons and were entering the U.S. market at low and declining prices even after a period when the domestic industry was having difficulty satisfying demand. Moreover, the peak subject import volume and the increase in subject import volume in those investigations was substantially greater than in the current investigations. Certain Structural Steel Beams from Japan, Inv. No. 731-TA-853 (Final), USITC Pub. 3308 at 12-14, 17-18 (June 2000). As the accompanying discussion indicates, the record in these investigations is substantially different.

year's subject import volumes, which declined sharply. The price decline also cannot be a function of subject imports entering the U.S. market in 2000 at rising prices that were sometimes above those for the domestically produced product. Instead, the decline appears to be a function of distributors increasing their purchases during the first portion of 2000 more than underlying demand conditions in the construction industry warranted. As discussed above in the section on import volume, service centers increased their purchases of product during 2000 because they perceived construction demand would increase sharply and prices would continue to rise. Instead, construction demand increased modestly in 2000 and then declined in 2001; moreover, the shortages of domestically supplied product did not persist after the second half of 2000. The record indicates that as a result of these events distributors' inventories increased during 2000.[106] This oversupply of product, in conjunction with modest declines in construction demand, appears to us to have led to the sharp price declines experienced in 2001.[107]

We cannot conclude that the record indicates that either the inventory overhang or the resulting price declines were the function of the subject imports. High and increasing subject import prices during the portion of 2000 when subject import volumes increased cannot explain subsequent price declines. Nor, in light of the subject import pricing and volume patterns, can there be any nexus between the subject imports and business decisions by steel service centers to increase purchases that proved, in retrospect, to be wrong. We consequently conclude that the subject imports did not have significant price-depressing or -suppressing effects.

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[106] End of period inventories for the 28 distributors that provided inventory data for all three years of the period of investigation in their purchasers questionnaire responses increased from 330,451 short tons in 1999 to 548,865 short tons in 2000 and then declined to 369,883 short tons in 2001. Purchasers Questionnaires.

Petitioners claim that there was a much sharper increase in distributor inventory levels from 1999 to 2000 and that most of the increase in consumption of structural steel beams by service centers during that period was a result of inventory accumulation. See Petitioners Posthearing Brief, ex. 1C. However, petitioners' conclusions are based on figures that they derived for service center inventories that show larger percentage increases in inventory levels from 1999 to 2000 than measured by either the questionnaire data or by MSCI. In light of petitioners' own admission that industry participants "consider changes in MSCI data as indicative of changes in market conditions," Petitioners Posthearing Brief, ex. 1C at 1, we do not find petitioners' derived inventory data to be more probative than the other data in the record.

Further, the rise in distributor inventory levels from 1999 to 2000, and their subsequent decline in 2001, is consistent with the trend in demand in the industry. Many market participants, particularly the service centers, increased their purchases of beams in late 1999 and early 2000 because they incorrectly perceived construction demand would increase sharply and prices would continue to rise. However, when construction demand increased moderately and domestic producers were capable of adequately supplying the market, inventories began to rise as beams that had been ordered earlier were delivered. Subsequently, the distributors worked off their inventories. Finally, we note that service centers began to purchase more beams in the final quarter of 1999 at a time when MSCI data indicate that their inventory levels were relatively low based on the number of months of shipments in inventory. See Arcelor Respondents Prehearing Brief, Tab 10.

[107] Petitioners submitted an econometric model in an effort to demonstrate the effect of subject imports on prices for domestically produced beams. See Petitioners Prehearing Brief, vol. II, ex. 8. Even assuming *arguendo* that an econometric model could aid us in analyzing the pricing data in light of the pertinent conditions of competition, the one submitted by petitioners does not do so. One of several defects in the model is that it failed to include as a variable changes in domestic producers' supply capabilities. Thus, the model disregards that domestic producers' supply capabilities were not constant during the period of investigation, and in fact played a major role in influencing price levels. Moreover, the model's conclusion that subject imports have their maximum price effects nine months after importation, id., ex. 8 at 5, does not comport with testimony from industry witnesses that price competition occurs when an order is placed. Tr. at 70-71 (Stratman), 72 (Valenta).

D. Impact of the Subject Imports on the Domestic Industry

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.[108] 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."[109] [110]

Apparent U.S. consumption of structural steel beams increased by 25.6 percent from 1999 to 2000, when subject import volumes were increasing, and declined by 22.7 percent from 2000 to 2001, when subject import volumes were declining.[111] Most output-related indicators of domestic industry performance also showed increases from 1999 to 2000 and declines from 2000 to 2001, although the declines from 2000 to 2001 were generally lower on a percentage basis than those for apparent consumption. Capacity,[112] capacity utilization,[113] production,[114] and U.S. shipments[115] all followed this

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[108] 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.).

[109] 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.

[110] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce amended dumping margins for several of the subject countries after its final dumping determinations; the Commission reopened its record to include these amended margins and permitted the parties to submit supplemental final comments concerning them. The final margins as of the time the Commission record closed, including those that were amended, are as follows:

China – 15.23 percent for Maanshan, 89.17 percent for all others.
Germany – 35.75 percent for Salzgitter, 8.09 percent for SWT and all others.
Luxembourg – 6.14 percent for ProfilARBED and all others.
Russia – 230.66 percent for Tagil and all others.
South Africa – 5.17 percent for Highveld and all others.
Spain – 5.29 percent for Aceralia and all others.
Taiwan – 5.21 percent for Tung Ho, 13.11 percent for Kuei Yi, and 10.70 percent for all others.
See INV-Z-090 (June 12, 2002).

[111] CR and PR, Table IV-3.

[112] Capacity increased from 5.7 million short tons in 1999 to 6.9 million short tons in 2000, and then declined to 6.7 million short tons in 2001. CR and PR, Table III-2.

[113] Capacity utilization increased from 72.4 percent in 1999 to 74.7 percent in 2000, and then declined to 68.5 percent in 2001. CR and PR, Table III-2.

[114] Production increased from 4.1 million short tons in 1999 to 5.2 million short tons in 2000, and then declined to 4.6 million short tons in 2001. CR and PR, Table III-2.

[115] The quantity of U.S. shipments increased from 4.0 million short tons in 1999 to 5.0 million short tons in 2000, and then declined to 4.3 million short tons in 2001. The value of these shipments increased from $1.4 billion in 1999 to $1.9 billion in 2000, and then declined to $1.5 billion in 2001. CR and PR, Table III-3.

pattern. U.S. producers' inventories, however, increased on both an absolute and relative basis during each year of the period of investigation.[116]

The domestic industry gained market share over the period of investigation. Domestic producers' share of the quantity of U.S. apparent consumption declined from 81.1 percent in 1999 to 79.8 percent in 2000, and then increased to 90.3 percent in 2001.[117] The domestic industry's modest loss of market share when subject imports increased in 2000, and its market share gain in 2001, corroborate our finding that the subject import increase in 2000 was a temporary phenomenon designed to satisfy demand during a period when domestic production and shipments increased but the supply of domestically produced beams was limited.

The number of production and related workers, hours worked, wages paid, and productivity each increased from 1999 to 2000 and declined from 2000 to 2001.[118] Hourly wages increased each year during the period of investigation.[119]

As previously noted, notwithstanding the increase in subject imports from 1999 to 2000, the domestic industry's shipments and prices both rose.[120] As a result, the domestic industry's sales revenues increased from $1.4 billion in 1999 to $2.0 billion in 2000.[121] Per unit sales values increased more than costs during this period.[122] With more beams being sold at higher margins, the industry's operating income and margins both rose. Operating income increased from $146 million in 1999 to $307 million in 2000, and the operating margin rose from 10.2 percent in 1999 to 15.6 percent in 2000.[123]

By contrast from 2000 to 2001, shipments and prices both declined. Thus in 2001 there were declines from the 2000 levels in the domestic industry's sales revenues, which were $1.5 billion, operating income, which was $100.7 million, and operating margin, which was 6.6 percent.[124]

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[116] End of period inventories reported by producers increased from 372,802 short tons in 1999 to 489,438 short tons in 2000 and then to 632,206 short tons in 2001. The ratio of inventories to total shipments was 9.0 percent in 1999, 9.7 percent in 2000, and 14.2 percent in 2001. CR and PR, Table III-4.

[117] CR and PR, Table IV-3. The U.S. producers' share of the value of U.S. apparent consumption declined from 83.6 percent in 1999 to 80.8 percent in 2000, and then increased to 91.0 percent in 2001. Id.

[118] The number of production and related workers increased from 3,176 in 1999 to 3,532 in 2000 and then declined to 3,361 in 2001. Hours worked increased from 7.4 million in 1999 to 8.1 million in 2000 and then declined to 7.3 million in 2001. Wages paid increased from $188 million in 1999 to $218 million in 2000 and then declined to $199 million in 2001. Productivity, as measured by short tons per thousand hours, increased from 555.1 in 1999 to 636.8 in 2000, and then declined to 631.0 in 2001. CR and PR, Table III-5.

[119] Hourly wages increased from $25.28 in 1999 to $26.83 in 2000 and then to $27.37 in 2001. CR and PR, Table III-5.

[120] Chairman Okun and Commissioner Miller further distinguish these current investigations from the Commission's 2000 investigations of structural steel beams from Japan and Korea (see n.105 above) in terms of the condition of the domestic industry. Contrary to petitioners' arguments that similar fact patterns exist, they note that in the 2000 cases, during the time frame when subject imports increased sharply, i.e., 1997-98, the domestic industry's capacity, capacity utilization, production and shipments all decreased, as did certain employment indicators. Certain Structural Steel Beams from Japan, USITC Pub. 3308 at Table C-1. In these current investigations, the domestic industry showed increases in all of these factors concurrent with the increase in subject imports, i.e., 1999-2000.

[121] CR and PR, Table VI-1.

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

[123] CR and PR, Table VI-1.

[124] CR and PR, Table VI-1. Our examination of the domestic beam producers' financial performance is based on data relating to the industry as a whole. Nevertheless, we observe that there were significant differences in

(continued...)

Neither of the components that led to the decline in operating performance from 2000 to 2001 is a function of the subject imports to any significant degree. As previously discussed, prices declined from 2000 to 2001 for reasons that were not significantly related to the subject imports. The decline in shipments occurred even as the subject imports were sharply reducing their presence in the U.S. market and the domestic industry was increasing its share of U.S. apparent consumption. However, apparent consumption fell significantly from 2000 to 2001, partly because of slightly reduced demand in end-use construction industries, and partly, as discussed above, because service centers miscalculated likely demand in 2000 and overpurchased product that year.

Industry capital expenditures reported in the questionnaires declined *** from 1999 to 2000, and then declined further from 2000 to 2001. The 1999 figure, however, includes *** in capital expenses from TXI, which opened its Petersburg, Virginia, mill that year.[125] Capital expenditures reported in the questionnaires understate total industry capital expenses because they do not include amounts SDI expended for its new Indiana mill. SDI stated in its 2001 10-K filing that it had incurred $230.3 million in capital costs through the end of 2001 in constructing this mill.[126] Research and development expenses increased during each year of the period of investigation.[127]

The domestic industry's overall performance improved from 1999 to 2000, when subject imports were at their peak. Although many indicia of performance subsequently declined from 2000 to 2001, these declines are not a result of the subject imports to any material extent. Accordingly, we determine that the subject imports did not have a significant adverse impact on the domestic structural steel beams industry.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[128] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.[129] In making our determination, we considered all statutory factors that are relevant to these investigations.[130]

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[124] (...continued)
operating performance among individual domestic producers. Even in 2000, when the domestic industry as a whole had a very high operating margin, three of the ten domestic producers posted operating losses. Id. We also observe that TXI's operating performance throughout the period of investigation appears to have been adversely affected by start-up difficulties at its Petersburg mill. See Petitioners' Posthearing Brief, ex. 1I.

[125] CR at III-3, Table VI-6, PR at III-1, Table VI-6.

[126] Arcelor Respondents Prehearing Brief, Tab 13, page 12 of 95. We acknowledge that, because the mill is designed to produce several products in addition to structural steel beams, the entire amount of these expenses is not likely to be attributable to beam production.

[127] CR and PR, Table VI-5.

[128] 19 U.S.C. § 1677(7)(F)(ii).

[129] 19 U.S.C. § 1677(7)(F)(ii).

[130] 19 U.S.C. § 1677(7)(F)(i). Statutory threat factor (I) is inapplicable because Commerce made no subsidy findings. Statutory threat factor (VII) also is inapplicable because these investigations do not involve imports of both raw and processed agricultural products.

A. Cumulation for Purposes of Threat

Cumulation for threat is treated in section 771(7)(H) of the Act.[131] This provision permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of imports for purposes of conducting its threat analysis.[132] The limitations concerning what imports are eligible for cumulation and the exceptions to cumulation are applicable to cumulation for threat as well as to cumulation for present material injury. In addition, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.[133]

We have exercised our discretion to cumulate imports from all subject countries for purposes of our threat analysis. Initially, there is a similarity in volume trends. Import volumes from each of the subject countries increased sharply from 1999 to 2000, and all but one of the subject countries had declining imports from 2000 to 2001.[134] Prices for imports from each of the countries showed parallel trends. For each of the subject countries, prices were generally higher in 2000 than in 1999 and lower in 2001 than in 2000.[135] We also observe that for each of the subject countries, there were instances of both underselling and overselling of the domestic like product.[136]

B. Statutory Threat Factors

The record does not indicate a significant rate of increase of the volume or market penetration of the subject imports indicating the likelihood of substantially increased imports. Although subject import volume and market penetration did show large increases in 2000, we have found that these were temporary phenomena in light of that year's strong demand and shortages in the supply of domestically produced beams. As discussed in section III.B. above, the volume of subject imports declined sharply once the domestic producers' supply difficulties were resolved and subject import volume and market share were sharply lower in 2001. These declines preceded filing of the petition and were for reasons unrelated to the petition.

There are no current shortages of domestic supply and no likelihood of shortages in the imminent future. We observe in this regard that TXI appears to have resolved start-up problems at its Petersburg mill that impaired its ability to produce product into 2000.[137] Additional U.S. capacity to produce structural steel beams will be available in the imminent future from the new SDI mill.[138] We acknowledge that the responding foreign producers projected that their exports to the United States will

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[131] 19 U.S.C. § 1677(7)(H).

[132] See Kern-Liebers v. United States, 19 CIT 87, 103-04 (1995).

[133] See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

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

[135] CR and PR, Tables V-1-8. The parallelism in pricing trends generally is corroborated by the average unit value data. CR and PR, Table IV-2.

[136] CR and PR, Tables V-9-10.

[137] Tr. at 138-39 (Allen); Petitioners Posthearing Brief, ex. 1I.

[138] See Tr. at 32 (Nolan).

increase from 2001 levels in both 2002 and 2003; however, the projected levels in each of these years is well below the level of exports these producers reported in 2000.[139] Moreover, the subject producers ship a substantial proportion of their production to their home markets and have well-established export markets in third countries.[140] Although the record shows that producers in the subject countries have some ability to shift exports from other markets to the United States, we conclude it is unlikely that subject imports will increase to significant levels in light of the nature and magnitude of the subject import declines in 2001, the availability of other markets to the subject producers, and the availability of additional capacity in the United States.[141]

The record indicates that capacity utilization in the subject countries has been at relatively high levels throughout the period of investigation. Both capacity and capacity utilization are expected to increase from 2001 levels in both 2002 and 2003.[142] However, as previously explained, even if additional capacity should become available, we do not believe it will be likely to imminently result in substantially increased imports of subject merchandise in the U.S. market.

As discussed in section III.C. above, the subject imports did not have significant price-depressing or -suppressing effects on the domestic like product during the period of investigation. Nor were the subject imports priced at levels that increased demand for further imports. Because we do not believe that there is a likelihood of substantially increased import volumes, we conclude it is likely that the subject imports will continue not to have significant price effects in the imminent future.

U.S. importers' inventories of subject merchandise in the United States increased in absolute terms but declined relative to imports and U.S. shipments of imports from 1999 to 2000. In 2001, these inventories declined from 2000 levels in absolute terms but were greater in relative terms than in either 1999 or 2000. However, the ratios of inventories to imports and to shipments of imports were at extremely low levels throughout the period of investigation.[143] Inventories in the subject countries increased on both a relative and absolute basis during the period of investigation.[144] However, beams in the subject countries are produced to several standards in addition to ASTM standards and consequently

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[139] CR and PR, Table VII-1.

[140] CR and PR, Tables II-3, VII-1. In light of this, we do not believe the fact that beams prices are higher in the United States than elsewhere in the world, see Petitioners Prehearing Brief, vol. I at 55-57, will serve as an impetus to increased imports. Beams prices in the United States traditionally have been higher than those elsewhere. Tr. at 204-05 (Lamesch). Notwithstanding this, the volume of both subject and nonsubject imports displayed considerable fluctuations over the period of investigation.

[141] In making this finding, we have considered dumping findings and antidumping remedies in markets of foreign countries against the same class of merchandise. See 19 U.S.C. § 1677(7)(F)(iii)(I). Antidumping duty orders have been imposed against beams from Russia by Korea since 1997 and by Taiwan since 1998. Also, beams from South Africa are subject to antidumping duties in Australia. Petitioners Prehearing Brief, vol. I at 58.

[142] CR and PR, Table VII-1. We acknowledge that the questionnaire data contain no information from Chinese producers. However, we are analyzing threat of material injury on a cumulated basis, as petitioners themselves requested. We do not believe that inclusion of data from Chinese producers, were it available, would materially affect any of the conclusions we are reaching on cumulated subject imports given that subject imports from China constituted a relatively modest proportion of cumulated subject imports throughout the period of investigation. See CR and PR, Table IV-2.

We additionally note that the record does not support petitioners' contentions of imminent substantial capacity increases in Germany and Luxembourg. See Tr. at 175, 201-02 (Lamesch).

[143] CR and PR, Table VII-9.

[144] CR and PR, Table VII-1.

beams in inventory are not necessarily suitable for export to the United States.[145] The available data on inventories therefore do not support an affirmative threat determination.

Most of the subject producers manufacture other steel products at the same facilities at which they produce structural steel beams. In several instances, producers manufacture products such as hot-rolled bar and certain flat-rolled products that are subject to additional tariffs in the United States because of safeguards remedies.[146] Nevertheless, as previously noted, we do not believe that the presence or potential for additional productive capacity in the subject countries is likely to lead to substantially increased imports.

Finally, the record does not indicate that the industry is currently in a vulnerable state. Although the financial performance of individual producers has varied, the industry has remained profitable overall. The industry also is characterized by the recent and imminent expansion of capacity at new and efficient production facilities.

Accordingly, we find that material injury by reason of subject imports will not occur absent issuance of antidumping orders against the subject imports. We therefore conclude that the domestic structural steel beams industry is not threatened with material injury by reason of the subject imports.

CONCLUSION

For the foregoing reasons, we determine that the domestic structural steel beams industry is neither materially injured nor threatened with material injury by reason of subject imports from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan.

[145] See Arcelor Respondents Prehearing Brief at 38; Arcelor Respondents Posthearing Brief, Tabs H-1, H-2, H-3.

[146] CR at VII-6, VII-11, VII-13, PR at VII-2-4.

SEPARATE AND DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Based upon the record in these final phase investigations, I find that an industry in the United States is threatened with material injury by reason of imports of certain structural steel beams from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan, that have been found to be sold in the United States at less than fair value ("LTFV"). I therefore dissent from the negative determination rendered by the Commission. Although I join in sections I, II, and III.A of the Views of the Commission, which address the definitions of the domestic like product and domestic industry, cumulation, and conditions of competition,[1] I provide my separate injury analysis below.

I. NO PRESENT MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[2] 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 product, but only in the context of U.S. production operations.[3] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[4] In assessing whether the domestic industry is materially injured by reason of subject imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States; 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."[5]

I note from the outset that the record in these investigations demonstrates a key condition of competition; namely, the ease and speed with which purchasers of steel products respond to price differentials in the market by shifting among alternative sources of supply. Specifically, the record evidences a surge in cumulative subject import volume between 1999 and 2000, in response to increasing demand and price levels in the U.S. market coupled with the imposition of antidumping duties on imports of structural steel beams from Japan and Korea in June and August 2000, respectively.[6] This surge demonstrates two distinct forms of shifting; first, cumulative subject imports from the seven instant countries effectively replaced much of the tonnage formerly sourced from Japan and Korea after the imposition of antidumping and countervailing duties in mid-2000. Importantly, this shift was not merely a displacement of fairly traded nonsubject imports, but instead included the displacement of import volumes that had been found injurious to the domestic industry by the Commission.[7]

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[1] I address additional conditions of competition that I find relevant in these dissenting views.

[2] 19 U.S.C. §§ 1671d(b), 1673d(b).

[3] 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).

[4] 19 U.S.C. § 1677(7)(A).

[5] 19 U.S.C. § 1677(7)(C)(iii).

[6] *See* Certain Structural Steel Beams from Japan, Inv. No. 731-TA-853 (Final), USITC Pub. 3308 (June 2000); Certain Structural Steel Beams from Korea, Inv. Nos. 701-TA-401 (Final) and 731-TA-854 (Final), USITC Pub. 3326 (August 2000).

[7] *See id.*

Second, I note that the petition in the 1999-2000 investigations covered steel beams from Germany, Japan, Korea, and Spain; however, the Commission rendered negative preliminary determinations with respect to Germany and Spain (Commissioner Bragg and Commissioner Crawford, dissenting).[8] Notably, after these negative determinations were issued, the volume of structural steel beam imports from Germany increased, resulting in a 208.9 percent annual increase between 1999 and 2000; the volume of such imports from Spain also increased, resulting in a 43.6 percent annual increase between 1999 and 2000.[9] In sum, purchasers exhibit demonstrable shifts among alternative sources of supply in response to both affirmative and negative determinations by the Commission.

Although it may be argued that, within the context of the business cycle and conditions of competition that are distinctive to the domestic industry, U.S. producers should have enjoyed even better financial returns during the period of investigation ("POI"), I do not find that the record establishes a sufficient causal nexus between subject imports and any alleged injury experienced by the domestic industry. However, I do find that the context and timing of subject import volumes evidenced during the POI, and their price levels, support an affirmative threat determination; coupled with the more recent decline in the domestic industry's profitability[10] and the current conditions of competition facing U.S. producers,[11] I am satisfied that the record establishes an imminent threat of material injury to the domestic industry by reason of subject imports.

A. Volume of the Subject Imports

Section 771(7)(C)(i) of the Tariff Act of 1930, as amended ("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."[12]

Cumulative subject import volume more than doubled between 1999 and 2000, while nonsubject import volume declined by 20.0 percent; in comparison, U.S. shipments by the domestic industry increased by 23.6 percent during this period, while at the same time apparent U.S. consumption increased by 25.6 percent.[13] As a result of the foregoing, subject imports gained market share at the expense of both nonsubject imports and the domestic like product, though the domestic industry's market share declined only modestly, from 81.1 percent in 1999 to 79.8 percent in 2000.[14] Between 2000 and 2001, cumulative subject import volume declined by 61.2 percent, while nonsubject import volume declined by 65.9 percent; in comparison, U.S. shipments by the domestic industry declined by 12.6 percent, while at

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[8] *See* Certain Structural Steel Beams from Germany, Japan, Korea, and Spain, Inv. Nos. 701-TA-401 (Preliminary) and 731-TA-852-855 (Preliminary), USITC Pub. 3225 (Sept. 1999).

[9] Confidential Report as revised by Memoranda INV-Z-085 (June 7, 2002), INV-Z-090 (June 12, 2002), and INV-Z-095 (June 17, 2002), at Table C-1 ("CR"); Public Report ("PR") at Table C-1.

[10] The domestic industry's average annual operating margin declined from 15.6 percent in 2000 to 6.6 percent in 2001. CR/PR at Table C-1.

[11] *See infra* section II.

[12] 19 U.S.C. § 1677(7)(C)(i).

[13] CR/PR at Table C-1.

[14] CR/PR at Table C-1. Again, it is important to note that in 1999 and the first half of 2000, nonsubject import volumes were comprised of both unfairly traded imports from Japan and Korea as well as fairly traded imports from other sources.

the same time apparent U.S. consumption declined by 22.7 percent.[15] As a result of the foregoing, the domestic industry gained substantial market share from both subject and nonsubject imports, increasing from 79.8 percent in 2000 to 90.3 percent in 2001.[16] Over the entire period from 1999 to 2001, subject imports and nonsubject imports each lost market share to the domestic industry.

U.S. production by the domestic industry increased by 25.3 percent between 1999 and 2000, before declining by 11.3 percent between 2000 and 2001; capacity utilization by the domestic industry increased from 72.4 percent in 1999 to 74.7 percent in 2000, before declining to 68.5 percent in 2001.[17] Given demand conditions in the U.S. market from 1999 to 2000, the domestic industry arguably should have enjoyed somewhat higher production and shipment levels; however, I do not find a significant volume effect by reason of subject imports, which largely replaced nonsubject imports during this period. Between 2000 and 2001, both subject and nonsubject imports exited the U.S. market at a substantially greater rate compared to the declines in apparent U.S. consumption and production during this period. Accordingly, I do not find the volume of subject imports to be significant relative to production or consumption in the United States. Finally, absent significant price effects by reason of subject imports (*see infra* section I.B), I do not find the absolute volume of subject imports to be significant. However, I do find that the demonstrated ability of cumulative subject imports to surge into the U.S. market is highly probative of the imminent threat posed by subject imports to the domestic industry (*see infra* section II).

B. 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 –

> (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.[18]

The Commission collected quarterly pricing data for four structural steel products; six U.S. producers and 10 importers provided usable pricing data regarding sales of these products; the data account for 36.0 percent of U.S. producers' commercial shipments during 2001, as well as *** percent of subject imports from China, *** percent of subject imports from Germany, *** percent of subject imports from Luxembourg, *** percent of subject imports from Russia, *** percent of subject imports from South Africa, *** percent of subject imports from Spain, and *** percent of subject imports from Taiwan.[19]

Quarterly pricing comparisons indicate underselling in 90 out of 147 instances, for a 61.2 percent incidence of underselling. In general, price trends for domestic producers for Products 1 and 2 appear to have tracked demand conditions in the U.S. market, with prices increasing from the first three quarters of 1999 through the first three quarters of 2000, before declining in the fourth quarter of 2000 through the

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[15] CR/PR at Table C-1.

[16] CR/PR at Table C-1.

[17] CR/PR at Table C-1.

[18] 19 U.S.C. § 1677(7)(C)(ii).

[19] CR at V-8, PR at V-7.

first half of 2001, and then increasing again at the end of 2001.[20] Petitioners state that Product 1 includes the most common sizes of structural steel beams and is a bellwether for the entire product range.[21] The evidence with regard to Product 3 is similar, as prices increased generally from the first quarter of 1999 through the fourth quarter of 2000, before declining in the first part of 2001 and then recovering during the latter part of 2001.[22] With regard to Product 4, prices fell to a period low in the second quarter of 1999, increased through the first quarter of 2000, and then declined generally through the fourth quarter of 2001.[23] Notably, price levels for Products 1, 2, and 3 were each higher in the fourth quarter of 2001 compared to the first quarter of 1999; with regard to Product 4, however, the price level in the fourth quarter of 2001 was *** percent lower compared to the first quarter of 1999.[24]

Although the probative value of average unit value ("AUV") data may be limited due to differences in product mix across sources and changes in product mix over time, such data do corroborate the foregoing price trends evidenced on the record. Specifically, the AUV data for subject imports, nonsubject imports, and U.S. shipments by the domestic industry, each evidence an increase between 1999 and 2000, before declining between 2000 and 2001, consistent with demand conditions in the U.S. market during this period.[25]

On balance, notwithstanding evidence of underselling in a majority of pricing comparisons, it does not appear that low-priced subject imports caused significant negative price effects in the U.S. market during the POI, particularly in light of prevailing demand conditions, the trend in subject import volumes, and the increase in price levels evidenced at the very end of the POI. Although I do not find evidence of underselling significant in the context of a present material analysis, I do find it highly probative of the imminent threat posed by subject imports to the domestic industry–particularly given some evidence of a recent increase in price levels in the U.S. market at the end of 2001, which creates an incentive for subject producers to direct increased exports to the United States in the imminent future (*see infra* section II).

C. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.[26] These

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[20] *See* CR/PR at Tables V-1 through V-4.

[21] Petitioners' Post-Hearing Brief at 2.

[22] *See* CR/PR at Tables V-5 through V-7.

[23] *See* CR/PR at Table V-8.

[24] *See* CR/PR at Table V-8.

[25] *See* CR/PR at Table C-1. The AUVs of subject and nonsubject imports remained well below the AUVs of U.S. shipments by the domestic industry throughout the period of investigation. Notably, the AUV of subject imports was five percent higher than the AUV of nonsubject imports in 1999, while in 2000 the AUVs of subject and nonsubject imports were roughly comparable; in 2001, however, the AUV of subject imports was over six percent lower than the AUV of nonsubject imports. *See id.* The changing relationship between the AUV of subject imports and the AUV of nonsubject imports over the POI further corroborates the price-driven shifts I have identified that reflect the behavior of purchasers in choosing among alternative sources of supply. *See supra* section I.

[26] 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

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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."[27] [28]

The record evidences general improvements in performance indicia for the domestic industry between 1999 and 2000, followed by subsequent declines between 2000 and 2001; these trends track the prevailing demand conditions in the U.S. market over the period of investigation. Notably, as the volume of cumulative subject imports surged between 1999 and 2000 and the volume of nonsubject imports declined,[29] the profitability of the domestic industry increased dramatically with average annual operating margins increasing from 10.2 percent in 1999 to 15.6 percent in 2000.[30] Subsequently, as apparent U.S. consumption declined by 22.7 percent between 2000 and 2001, the volume of cumulative subject imports declined by 61.2 percent, compared to a 12.6 percent decline in U.S. shipments by the domestic industry; during this period, the domestic industry's average annual operating margins declined from 15.6 percent in 2000 to 6.6 percent in 2001.[31]

As noted, I do not find significant volume or price effects by reason of subject imports for purposes of assessing present material injury; coupled with the foregoing data, I do not find that the domestic industry has experienced a significant adverse impact by reason of subject imports. I further find, however, that several declining trends evidenced on the record, particularly over the latter portion of the period of investigation, indicate that the domestic industry is now vulnerable to material injury.

To begin, I note that although the domestic industry as a whole remained profitable throughout the POI, the number of U.S. producers reporting operating losses doubled, from three out of nine in 1999 and three out of ten in 2000, to six out of ten in 2001.[32] This corresponds to a 67.2 percent decline in operating income for the domestic industry between 2000 and 2001.[33] The deteriorating profitability of the domestic industry has manifested two important effects. First, although the domestic industry's

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[26] (...continued)
885.).

[27] 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885.

[28] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce amended the dumping margins for several of the subject countries after its final dumping determinations; the Commission reopened its record to include these amended margins and permitted the parties to submit supplemental final comments concerning them. The final margins as of the time the Commission record closed, including those that were amended, are as follows: China (15.23 percent for Maanshan, 89.17 percent for all others); Germany (35.75 percent for Salzgitter, 8.09 percent for SWT and all others); Luxembourg (6.14 percent for ProfilARBED and all others); Russia (230.66 percent for Tagil and all others); South Africa (5.17 percent for Highveld and all others); Spain (5.29 percent for Aceralia and all others); Taiwan (5.21 percent for Tung Ho, 13.11 percent for Kuei Yi, and 10.70 percent for all others). *See* INV-Z-090 (June 12, 2002).

I further note that I do not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg *in* Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

[29] Again, it is important to note that in 1999 and the first half of 2000, nonsubject import volumes were comprised of both unfairly traded imports from Japan and Korea as well as fairly traded imports from other sources.

[30] CR/PR at Table C-1.

[31] CR/PR at Table C-1.

[32] CR/PR at Table VI-1.

[33] CR/PR at Table C-1.

capital expenditures *** in 1999, ***, with depreciation/amortization exceeding capital expenditures by over $50 million in 2000 and by almost $80 million in 2001; as a result, the capital stock of the domestic industry has been depleted over the latter portion of the POI. In addition, the domestic industry's access to capital has been limited.[34]

Similarly, the future prospects of the domestic industry do not appear bright. The 22.7 percent decline in apparent U.S. consumption between 2000 and 2001 indicates a current level of demand lower than that evidenced for 1999, and demand conditions are not likely to recover significantly in the foreseeable future.[35] In this context, Steel Dynamics is scheduled to bring new capacity online in 2002;[36] not only is this new facility vulnerable due to the additional start-up costs associated with bringing new production online, but the addition of capacity in a flat market also increases the vulnerability of the domestic industry as a whole, particularly given the recent decline in capacity utilization for the domestic industry, from 74.7 percent in 2000 to 68.5 percent in 2001. Moreover, the domestic industry has already experienced a substantial buildup in end-of-period inventories, from 372,802 short tons in 1999, to 489,438 short tons in 2000, and to 632,206 short tons in 2001; this latter figure is equivalent to 13.1 percent of apparent U.S. consumption and 14.5 percent of U.S. shipments by the domestic industry in 2001.[37]

In addition, notwithstanding some evidence of recent increases in price levels at the end of 2001, the record indicates that the domestic industry is beginning to experience a cost/price squeeze, with the ratio of COGS to sales increasing from 81.2 percent in 2000 to 89.7 percent in 2001.[38] This cost/price squeeze will only be exacerbated by the sharp increase in scrap prices that has occurred in 2002.[39]

Based upon all the foregoing, I find that the domestic industry is now vulnerable to material injury; it is in this context that I evaluate the threat of material injury posed by subject imports.

II. THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[40] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat

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[34] Northwestern Steel made numerous, unsuccessful attempts to obtain private financing even after the Emergency Steel Loan Guarantee was approved. Hearing Tr. at 67 (Vercillo). Northwestern Steel ultimately shut down due to bankruptcy on May 21, 2001. CR/PR at Table VI-3 n.2. Moody's Investors Service placed TXI on a negative credit watch in the summer of 2001 due to poor financial results and an uncertain future. Hearing Tr. at 30 (Allen).

[35] CR/PR at Table C-1; *see* Hearing Tr. at 127 (Stratman).

[36] Steel Dynamics made the decision to build a new beams mill in 1997. Hearing Tr. at 31 (Nolan).

[37] *See* CR/PR at Table C-1. I note that after completion of the Commission's report in these investigations, Commission staff learned that Table II-1 of the report incorrectly tabulated the data in the purchasers' questionnaires relating to distributors' inventories. Neither the original data nor the corrected data inform my analysis and determination in these investigations.

[38] CR/PR at Table C-1.

[39] *See* Petitioners' Post-Hearing Brief, Exhibit 1-H at 14, Chart 1.

[40] 19 U.S.C. §§ 1677d(b) and 1677(7)(F)(ii).

factors "as a whole."[41] In making my determination, I have considered all factors that are relevant to these investigations.[42]

As noted, I find that the domestic industry is vulnerable to material injury, particularly in light of flat demand in the U.S. market, bloated inventories for U.S. producers, low capacity utilization for the domestic industry, evidence that the domestic industry is experiencing a cost/price squeeze, the adverse trends in financial and performance indicia that began to emerge at the end of the period of investigation, and limitations on the availability of credit lines for U.S. producers. It is in this context that I assess the likely impact of future volumes of low priced subject imports.

As an initial matter, I note that the petition identified 11 firms producing subject merchandise in China, and that the Commission faxed foreign producer questionnaires to each of these firms; however, no responses were received.[43] China began exporting large quantities of structural steel beams to the U.S. market in 2000, and according to petitioners, one Chinese producer (*i.e.* Angang New Steel) is currently planning to construct a new 750,000 ton beam mill.[44] As discussed below, I find that the data collected on the record amply demonstrate the imminent threat posed by cumulative subject imports to a vulnerable domestic industry; my threat determination is only strengthened when current capacity and future additions to capacity in China are taken into consideration.

The behavior of subject imports during the POI evidences both a targeting of the U.S. market by subject producers as well as the ease and speed with which purchasers shift among alternative sources of supply based upon price considerations.[45] As apparent U.S. consumption increased by 25.6 percent and nonsubject import volume declined by 20.0 percent between 1999 and 2000, the volume of cumulative subject imports increased 133.2 percent; in contrast, as apparent U.S. consumption declined by 22.7 percent and nonsubject import volume declined by 65.9 percent between 2000 and 2001, the volume of cumulative subject imports declined by 61.2 percent.[46] I find these trends attributable to the increasing price levels in the U.S. market between 1999 and 2000, and the overall decline in U.S. price levels between 2000 and 2001. Importantly, the record provides some evidence of an increase in price levels at the very end of 2001,[47] as low priced subject imports exited the market at a substantially greater rate compared with the decline in apparent U.S. consumption.[48] Indeed, the data indicate that price levels in the fourth quarter of 2001 were generally comparable to, or exceeded, the price levels evident for the fourth quarter of 1999 (which directly preceded the surge in subject import volume during 2000). Moreover, petitioners introduced substantial evidence that, at present, price levels for subject merchandise in third country markets are well below U.S. price levels.[49] I find that current market conditions create a clear incentive for subject producers to increase exports of subject merchandise to the U.S. market significantly, and that such an increase is likely in the absence of antidumping duty orders.[50]

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[41] 19 U.S.C. § 1677(7)(F)(ii).

[42] 19 U.S.C. § 1677(7)(F)(i). Factor (I) involving allegations of a countervailable subsidy, and factor (VII) regarding raw and processed agricultural products, are inapplicable to the instant investigations.

[43] CR at VII-4, PR at VII-1.

[44] CR at VII-4, PR at VII-1.

[45] *See supra* section I.

[46] CR/PR at Table C-1.

[47] *See* CR/PR at Tables V-1 through V-7, *cf.* Table V-8.

[48] *See* CR/PR at Table C-1.

[49] Petitioners' Post-Hearing Brief at Exhibit 1.E; *see also* Hearing Tr. at 204-205 (Lamesch).

[50] In my view, in the absence of orders in these investigations, the import behavior witnessed by the domestic industry following the Commission's negative preliminary determinations regarding Germany and Spain in the

(continued...)

Foreign producers (except for producers in China) project that their exports of subject merchandise to the U.S. market will increase by *** percent between 2001 and 2002, and by a further *** percent between 2002 and 2003; when measured against apparent U.S. consumption in 2001, these projections equate to *** percent of the U.S. market in 2002 and *** percent of the market in 2003.[51] Even if I assume that the annual volume of subject imports from China in 2002 and 2003 remains equivalent to the volume imported in 2001, the addition of such volumes indicates that cumulative subject imports will capture *** percent of the U.S. market in 2002 and *** percent of the market in 2003.[52] Even such conservative estimates indicate a significant imminent increase in the volume of subject imports, and when coupled with the withdrawal of nonsubject imports from the U.S. market, such additional market share will come almost entirely at the expense of the domestic industry.

In addition, capacity utilization reported by foreign producers indicates an increase from *** percent in 1999 to *** percent in 2000, before declining to *** percent in 2001; according to reported projections, capacity utilization across subject countries is projected to increase to *** percent in 2002 and *** percent in 2003.[53] According to projected figures, even if I accept the *** percent level of capacity utilization evidenced in 2000 as an upper limit, an additional *** short tons remain available for export in 2002 and an additional *** short tons are available for export in 2003.[54] The addition of such volumes to the previous estimates indicates that cumulative subject imports may well capture up to *** percent of the U.S. market in 2002 and *** percent of the market in 2003;[55] these figures are *** the 12.4 percent market share captured by subject imports as they surged into the U.S. market in 2000, and neither of these figures account for any future increase in subject capacity in China.

With regard to inventories, foreign producers report a steady increase in end-of-period inventories from 1999 to 2001, and project further increases in 2002 and 2003.[56] Increasing inventory levels create another incentive for subject producers to direct additional exports to the U.S. market. The addition of projected inventories to the previous estimates results in a conservative indication that cumulative subject imports may capture as much as *** percent of the U.S. market in 2002, or *** percent of the market in 2003.[57]

The statute also directs the Commission to examine whether subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.[58] Based upon the pricing behavior evident on the record, I find that subject imports are likely to continue to predominantly undersell the domestic like product; as noted, subject imports undersold the domestic like product in well over half of the pricing comparisons available on the record, with margins of underselling ranging from 0.6 percent to as much as 39.2 percent

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[50] (...continued)
1999-2000 investigations is likely to be repeated on a much larger scale with regard to future imports from the seven instant countries subject to these investigations. *See supra* section I.

[51] *See* CR/PR at Table VII-1 and Table C-1.

[52] *See* CR/PR at Table VII-1 and Table C-1.

[53] CR/PR at Table VII-1.

[54] *See* CR/PR at Table VII-1.

[55] *See* CR/PR at Table VII-1 and Table C-1.

[56] *See* CR/PR at Table VII-1.

[57] *See* CR/PR at Table VII-1 and Table C-1. I also note the potential for product-shifting, as foreign producers in Germany, Luxembourg, Russia, Spain, and Taiwan, reported the production of nonsubject merchandise on the same equipment used to produce subject imports. 19 U.S.C. § 1677(7)(F)(i)(VI); *see* CR at VII-4 through VII-14, PR at VII-1 through VII-5.

[58] 19 U.S.C. § 1677(7)(F)(i)(IV).

during the period of investigation.[59] In addition, notwithstanding the most recent increase in U.S. price levels, the record also indicates that the domestic industry is beginning to experience a cost/price squeeze, with the ratio of COGS to sales increasing from 81.2 percent in 2000 to 89.7 percent in 2001.[60] In the context of flat demand, and given the extent of the underselling likely to prevail, I find that subject imports are likely to enter the U.S. market at prices that are likely to have a significant suppressing effect on domestic prices in the imminent future; this, in turn, will exacerbate the cost/price squeeze currently confronting the domestic industry.

Given the sustained underselling that is likely to occur, subject imports threaten to capture even greater market share from the domestic industry (compared to reported projections), the impact of which would be magnified since there is already a substantial inventory overhang for the domestic industry. Coupled with low capacity utilization and rising costs for U.S. producers (in the context of flat demand), the likely price suppressive effect of increasing volumes of subject imports will adversely impact the domestic industry's profitability in the near term. This, in turn, would likely result in continued capital depletion by U.S. producers, and threatens the viability of existing development and production efforts of the domestic industry (particularly as Steel Dynamics seeks to bring its new capacity online).

In sum, I find that the record affords ample evidence that cumulative subject import volumes will increase significantly in the absence of antidumping duty orders, and that such imports will result in material injury to a vulnerable domestic industry.

III. CONCLUSION

Based upon all the foregoing, I determine that the domestic industry producing certain structural steel beams is threatened with imminent material injury by reason of LTFV imports from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan.

[59] *See* CR/PR at Tables V-1 through V-8.

[60] CR/PR at Table C-1.