STEEL

Investigation No. TA-201-73

VOLUME I: DETERMINATIONS AND VIEWS OF COMMISSIONERS

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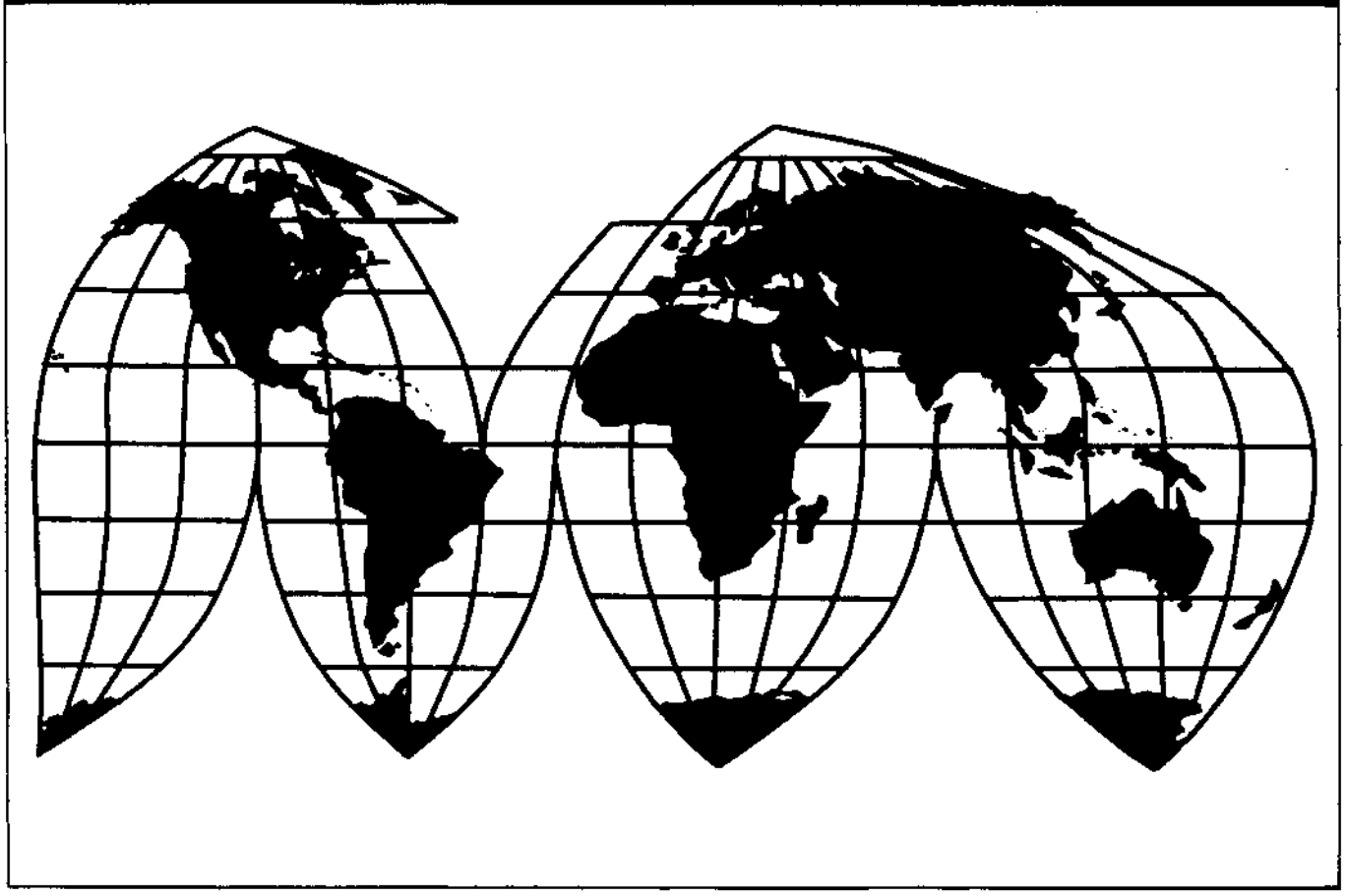
U.S. International Trade Commission



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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. TA-201-73

STEEL

DETERMINATION

On the basis of information developed in the subject investigation, the United States International Trade Commission–

(1) determines pursuant to section 202(b) of the Tariff Act of 1974, that certain steel products[1] are being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing articles like or directly competitive with the imported articles; and

(2) finds pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act, that imports of carbon and alloy steel hot bar, cold bar, welded tubular products,[2] and fittings, and stainless steel bar and fittings from Canada account for a substantial share of the total imports and contribute importantly to the serious injury or threat thereof caused by imports.[3] With regard to imports from Mexico, the Commission finds that imports of certain carbon and alloy flat-rolled steel (slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel), carbon and alloy steel fittings, and stainless steel fittings from Mexico account for a substantial share of the total imports and contribute importantly to the serious injury or threat thereof caused by imports.[4]

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[1] The Commission made affirmative determinations with regard to certain carbon and alloy steel, including (1) slabs, (2) plate, (3) hot-rolled steel, (4) cold-rolled steel, (5) coated steel, (6) hot bar, (7) cold bar, (8) rebar, (9) welded tubular products other than OCTG, and (10) fittings; and stainless steel (11) bar and (12) rod.

The Commission was equally divided in its determination with regard to (1) carbon and alloy steel tin mill products, (2) tool steel, (3) stainless steel wire, and (4) stainless steel fittings. Pursuant to section 330(d)(1) of the Tariff Act of 1930, where the Commission is equally divided, the determination of either group of Commissioners may be considered by the President to be the determination of the Commission.

The Commission made negative determinations with regard to carbon and alloy steel (1) GOES, (2) ingots, (3) rails, (4) wire, (5) rope, (6) nails, (7) shapes, (8) fabricated structural units, (9) seamless tubular products other than OCTG, (10) seamless OCTG, and (11) welded OCTG; and stainless steel (12) slabs/ingots, (13) plate, (14) cloth, (15) rope, (16) seamless tubular products, and (17) welded tubular products.

Descriptions of the products covered by the investigation and their corresponding subheadings under the Harmonized Tariff Schedule (HTS) is presented in appendix A.

A tabulation showing the individual votes of each Commissioner is presented in appendix B.

[2] The Commission was equally divided, 3-3, in its finding with regard to carbon and alloy steel welded tubular products other than OCTG from Canada.

[3] The Commission made a negative finding with regard to imports from Canada of certain carbon and alloy steel, including (1) slabs, (2) plate, (3) hot-rolled steel, (4) cold-rolled steel, (5) coated steel, (6) tin mill products, and (7) rebar; (8) tool steel; and stainless steel (9) rod and (10) wire.

[4] The Commission voted in the negative regarding imports from Mexico of carbon and alloy steel (1) tin-mill products, (2) hot bar, (3) cold bar, (4) rebar, and (5) welded tubular products other than OCTG; (6) tool steel; and stainless steel (7) bar, (8) rod, and (9) wire.

RECOMMENDATIONS WITH RESPECT TO REMEDY

The Commission[5] recommends a four-year program of tariffs and tariff-rate quotas:

Plate, hot-rolled sheet, cold-rolled sheet, coated sheet, hot-rolled bar, cold-finished bar and stainless steel rod: An additional 20 percent *ad valorem* duty in the first year of relief, to be reduced to a 17 percent *ad valorem* duty in the second year of relief, 14 percent *ad valorem* duty in the third year of relief, and 11 percent *ad valorem* duty in the fourth year of relief;

Stainless steel bar: An additional 15 percent *ad valorem* duty in the first year of relief, to be reduced to a 12 percent *ad valorem* duty in the second year of relief, 9 percent *ad valorem* duty in the third year of relief, and 6 percent *ad valorem* duty in the fourth year of relief;

Carbon and alloy steel fittings and flanges[6]: An additional 13 percent *ad valorem* duty in the first year of relief, to be reduced to a 10 percent *ad valorem* duty in the second year of relief, 7 percent *ad valorem* duty in the third of relief, and 4 percent *ad valorem* duty in the fourth year of relief;

Rebar: An additional 10 percent *ad valorem* duty in the first year of relief, to be reduced to an 8 percent *ad valorem* duty in the second year of relief, 6 percent *ad valorem* duty in the third year of relief, and 4 percent *ad valorem* duty in the fourth year of relief;

Slabs[6]: A tariff-rate quota with an additional 20 percent *ad valorem* duty on imports in excess of 7.0 million short tons in the first year of relief, 17 percent *ad valorem* duty on imports in excess of 7.5 million short tons in the second year of relief; 14 percent *ad valorem* duty on imports in excess of 8.0 million short tons in the third year of relief; and 11 percent *ad valorem* duty on imports in excess of 8.5 million short tons in the fourth year of relief;

Welded tubular products other than OCTG[6]: A tariff-rate quota with an additional 20 percent *ad valorem* duty on imports in excess of year 2000 U.S. imports[7], 17 percent *ad valorem* duty on imports in excess of the quantities noted in the second year, 14 percent *ad valorem* duty on imports in excess of the quantities noted for the third year, and 11 percent *ad valorem* duty in imports in excess of the quantities noted below.

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[5] Pursuant to section 330(d)(2) of the Tariff Act of 1930 (19 U.S.C. § 1330(d)(2)), the remedy recommendation of Chairman Koplan and Commissioners Miller and Hillman in this investigation is to be treated as the remedy finding of the Commission for purposes of section 203 of the Trade Act.

[6] Vice Chairman Okun joins in this recommended remedy for the first three years of relief only.

[7] Chairman Koplan and Commissioner Miller made affirmative determinations under Section 311 of the NAFTA with respect to imports of welded tubular products from both Canada and Mexico and therefore recommend that the additional tariffs apply to imports in excess of 2,600,000 short tons in the first year, 2,680,000 short tons in the second year, 2,760,000 short tons in the third year and 2,840,000 short tons in the fourth year.

Vice Chairman Okun and Commissioner Hillman made negative determinations under Section 311 of the NAFTA with respect to imports of welded tubular products from Canada and Mexico and therefore recommend that the additional tariffs not apply to those countries and that the tariffs apply to imports in excess of 1,400,443 short tons in the first year, 1,442,456 short tons in the second year, 1,485,730 short tons in the third year, and (Commissioner Hillman only) 1,530,302 short tons in the fourth year.

The Commission further recommends that the additional tariffs or tariff-rate quotas on slabs, plate, hot-rolled, cold-rolled and coated products be applied to imports from Mexico but not imports from Canada; that the additional tariffs on cold-finished bar and stainless steel bar be applied to imports from Canada but not imports from Mexico; that the additional tariffs on rebar and stainless steel rod not apply to imports from either Canada or Mexico; that the additional tariffs on carbon and alloy fittings and flanges apply to imports from both Mexico[8] and Canada[9]; and that the additional tariffs on hot-rolled bar apply to imports from Canada but not imports from Mexico[10]. With respect to welded tubular products other than OCTG, the Commission recommends that the additional tariff-rate quota no be applied to imports from Mexico, and was evenly split regarding Canada.[11] The Commission further recommends that none of the additional tariffs or tariff-rate quotas apply to imports from Israel, or to any imports entered duty-free from beneficiary countries under the Caribbean Basin Economic Recover Act or the Andean Trade Preference Act.[12]

The Commission also recommends that the remedy on welded tubular products other than OCTG not apply to certain large diameter welded line pipe products.

The Commission also recommends that the President continue to pursue international negotiations with the governments of all the countries that supply these steel products aimed at reducing inefficient global overcapacity to produce these steel products.

The Commission further encourages the President to consider other appropriate action to facilitate the efforts of the domestic industry to rationalize and consolidate and thus make a positive adjustment to import competition.

The Commission's remedy recommendation and the individual remedy recommendations of the Commissioners are summarized in the tabulation at Appendix C.

Commissioner Bragg recommends the following:

(1) A duty, in addition to the current rate of duty, for a four-year period on imports of carbon and alloy steel imports and for a three-year period on imports of stainless and tool steel that are within the scope of this investigation, as follows:

Flat Products (including slabs, cut-to-length plate, hot-rolled sheet and strip, cold-rolled sheet and strip, corrosion resistant flat products, and tin mill products): 40 percent *ad valorem* in the first year of relief; 38 percent *ad valorem* in the second year of relief; 36 percent *ad valorem* in the third year of relief; and 31 percent *ad valorem* in the fourth year of relief.

Long Mill Products (including hot bar, cold bar, and rebar): 35 percent *ad valorem* in the first year of relief; 33 percent *ad valorem* in the second year of relief; 31 percent *ad valorem* in the third year of relief; and 26 percent *ad valorem* in the fourth year of relief.

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[8] Chairman Koplan, Vice Chairman Okun and Commissioner Miller determined that the additional duties on fittings and flanges should apply to imports from Mexico.

[9] Vice Chairman Okun and Commissioners Miller and Hillman determined that the additional duties on fittings and flanges should apply to imports from Canada.

[10] Chairman Koplan and Commissioner Miller recommend that the additional duties apply to imports of hot-rolled bar from Mexico.

[11] Chairman Koplan and Commissioner Miller recommend that the additional tariff-rate quota apply to imports from Mexico.

[12] To the extent that the U.S.-Jordan Free Trade Area Implementation Act applies to this investigation, the Commission further recommends that none of the additional tariffs be applied to imports from Jordan.

Tubular Products (including welded tubular other than OCTG, and fittings, flanges, and tool joints): 30 percent *ad valorem* in the first year of relief; 28 percent *ad valorem* in the second year of relief; 26 percent *ad valorem* in the third year of relief; and 21 percent *ad valorem* in the fourth year of relief.

Stainless and Tool Steel Flat and Long Products (including stainless bar, stainless rod, and tool steel): 25 percent *ad valorem* in the first year of relief; 20 percent *ad valorem* in the second year of relief; and 15 percent *ad valorem* in the third year of relief.

Stainless Wire: 15 percent *ad valorem* in the first year of relief; 10 percent *ad valorem* in the second year of relief; and 5 percent *ad valorem* in the third year of relief.

Stainless Fittings and Flanges: 30 percent *ad valorem* in the first year of relief; 25 percent *ad valorem* in the second year of relief; and 20 percent *ad valorem* in the third year of relief.

(2) Based on her negative injury findings under section 311(a) of the NAFTA Implementation Act, with respect to imports from Canada of carbon and alloy flat products, carbon and alloy long products, stainless flat and long products, and stainless wire products, as well as imports from Mexico of carbon and alloy long products, carbon and alloy welded tubular other than OCTG, stainless and tool steel flat and long products, and stainless wire, Commissioner Bragg recommends that such imports not be subject to the increased duties.

(3) Based on her affirmative injury findings under section 311(a) of the NAFTA Implementation Act, with respect to imports from Canada of carbon and alloy welded tubular other than OCTG, carbon and alloy fittings, flanges, and tool joints, and stainless fittings and flanges, as well as imports from Mexico of carbon and alloy flat products, carbon and alloy fittings, flanges, and tool joints, and stainless fittings and flanges, Commissioner Bragg recommends that such imports be subject to the increased duties.

(4) Commissioner Bragg also recommends that the increased duties not apply to imports of covered steel entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, the U.S.-Israel Free Trade Agreement Act, or the U.S.-Jordan Free Trade Area Implementation Act.

(5) In the consideration of administrative efficiency and past Commission experience, these remedy recommendations do not address the issue of specific product exclusions. Nonetheless, Commissioner Bragg recommends that the President review the record regarding the issues presented by the interested parties to the U.S. Trade Representatives' Trade Policy Staff Committee.[13] Her remedy recommendation for tariffs applies across a broad category of products; tariffs, unlike quotas and tariff-rate quotas, do not operate to exclude products or to encourage circumvention or product shifting.

(6) Commissioner Bragg also indicates her support for the President's pursuit of international negotiations to address the underlying causes of the increase in imports, such as global overcapacity and production, as well as implement any other action authorized under law that is likely to facilitate positive adjustment to import

[13] Although I have reviewed each of the numerous exclusion requests for specialty products, I make no recommendation on this issue. I note that the Office of the U.S. Trade Representative has established a mechanism to consider product exclusion requests. 66 Fed. Reg. No. 208, at 54,321-24 (Oct. 26, 2001).

competition, including Trade Adjustment Assistance to aid the numerous dislocated workers of the U.S. steel industries.

Vice Chairman Okun recommends a three-year program of quotas, tariff-rate quotas, and tariffs:

Plate, hot-rolled sheet, cold-rolled sheet, coated sheet, hot-rolled bar, cold-finished bar, rebar, stainless steel bar, and stainless steel rod: Quantitative restrictions on imports of the following categories, in the following amounts in the first year, to be increased by three percent in each subsequent year that the action is in effect: plate – 1,232,260 short tons, hot-rolled sheet – 4,928,712 short tons, cold-rolled sheet – 2,796,196 short tons, and coated sheet – 1,683,282 short tons, hot-rolled bar – 1,961,648 short tons, cold-finished bar – 246,033 short tons, rebar – 1,054,266 short tons, stainless steel bar – 109,440 short tons, and stainless steel rod – 62,573 short tons;

Slab:[14] A tariff-rate quota with an additional 20 percent *ad valorem* tariff on imports in excess of 7.0 million short tons in the first year of relief, an additional 17 percent *ad valorem* tariff on imports in excess of 7.5 million short tons in the second year of relief; and an additional 14 percent *ad valorem* tariff on imports in excess of 8.0 million short tons in the third year of relief;

Welded tubular products other than OCTG:[14] A tariff-rate quota with an additional 20 percent *ad valorem* tariff on imports in excess of 1,400,443 short tons in the first year of relief, an additional 17 percent *ad valorem* tariff on imports in excess of 1,442,456 shot tons in the second year, and an additional 14 percent *ad valorem* tariff on imports in excess of 1,485,730 short tons in the third year of relief;

Carbon and alloy steel fittings and flanges:[14] An additional 13 percent *ad valorem* tariff in the first year of relief, to be reduced to an additional 10 percent *ad valorem* tariff in the second year of relief, and to be reduced to an additional 7 percent *ad valorem* tariff in the third year of relief.

Vice Chairman Okun recommends that the quotas or tariff-rate quotas on slab, plate, hot-rolled sheet, cold-rolled sheet and coated sheet products be applied to imports from Mexico but not imports from Canada; that the quotas on hot-rolled bar, cold-finished bar and stainless steel bar be applied to imports from Canada but not imports from Mexico; that the quotas on rebar, welded tubular products and stainless steel rod not apply to imports from either Canada or Mexico; that the additional tariffs on carbon and alloy fittings and flanges apply to imports from both Canada and Mexico. Vice Chairman Okun further recommends that none of the import restrictions applies to imports from Israel, or to any imports entered duty-free from beneficiary countries under the Caribbean Basin Economic Recover Act or the Andean Trade Preference Act.[15]

Vice Chairman Okun does not recommend that these remedies apply in their entirety to certain large diameter welded line pipe, nor to tool joints included within the fittings and flanges category.

Vice Chairman Okun also recommends that the President administer quotas and tariff-rate quotas on a quarterly basis, with country-specific allocations, and a short-supply mechanism, with the exception of welded tubular products (recommending that the President administer the remedy globally, on an annual basis, with a partial product exclusion).

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[14] Vice Chairman Okun joins the Commission's recommended remedy for the first three years of relief only.

[15] To the extent that the U.S.-Jordan Free Trade Area Implementation Act applies to this investigation, Vice Chairman Okun further recommends that none of the import restrictions applies to imports from Jordan.

Vice Chairman Okun also recommends that the President continue to pursue international negotiations with the governments of all the countries that supply these steel products aimed at reducing global inefficient or excess capacity to produce these steel products.

Vice Chairman Okun also recommends that the President utilize all trade adjustment assistance programs.

Vice Chairman Okun further urges the President to consider solutions to address legacy costs and other impediments to the rationalization and consolidation of the domestic industries producing steel.

Commissioner Devaney recommends:

As to Carbon and Alloy Flat Products:

(1) I recommend that the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of flat products that are the subject of the remedy phase of this investigation as follows: 40 percent *ad valorem* in the first year of relief; 38 percent *ad valorem* in the second year of relief; 36 percent *ad valorem* in the third year of relief and 31 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of flat products from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

(3) I recommend that the increase in duty described above apply to imports of flat products from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of flat products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Carbon and Alloy Long Products:

(1) I recommend that the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of carbon bar and rebar as follows: 35 percent *ad valorem* in the first year of relief; 33 percent *ad valorem* in the second year of relief; 31 percent *ad valorem* in the third year of relief and 26 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of carbon bar and rebar from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

(3) I recommend that the increase in duty described above apply to imports of carbon bar and rebar from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of long products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Carbon and Alloy Tubular Products:

(1) I recommend that the President impose a duty, in addition to the current rate of duty, for a four year period, on all imports of tubular products that are the subject of the remedy phase of this investigation as follows: 30 percent *ad valorem* in the first year of relief, 28 percent *ad valorem* in the second year of relief, 26 percent *ad valorem* in the third year of relief, and 21 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of tubular products from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

(3) I recommend that the increase in duty described above apply to imports of tubular products from beneficiary countries under the Caribbean Basin Economic Recovery Act,

but not apply to imports of tubular products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Stainless Steel Products except Fittings and Flanges:

(1) I recommend that the President impose quotas in the amount equal to the respective average quantities during the period 1996 to 1998, which I find to be the most recent representative period, on imports of stainless steel bar, stainless steel rod, tool steel, and stainless steel wire for a three year period. In addition, I recommend that during the first year of the quotas, a 15 percent *ad valorem* duty be placed on these products. I recommend that the quota be administered on a quarterly and country-by-country basis;

(2) Having made a negative finding with respect to these products from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended quotas and duty increases;

(3) I recommend that this quota and duty increase apply to stainless bar imports from beneficiary countries under the Carribean Basin Recovery Act, but not apply to imports entered from beneficiary countries under the Andean Trade Preference Act, imports from Jordan, or imports from Israel. These quotas and duty increases should not apply to imports of stainless steel rod, tool steel or stainless steel wire from Israel, Jordan, beneficiary countries under the Carribean Basin Recovery Act, or beneficiary countries under the Andean Trade Preference Act.

As to Stainless Steel Fittings and Flanges:

(1) I recommend that the President impose a quota in the amount equal to the average quantity during the period 1996 to 1998, which I find to be the most recent representative period, on imports of stainless steel fittings and flanges for a four year period. I recommend that the quota be administered on a quarterly and country-by-country basis;

(2) Should the President determine that the Commission reached an affirmative determination with respect to stainless steel fittings and flanges from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be subject to the quota recommended.

(3) I recommend that this quota not apply to imports from Israel, Jordan, beneficiary countries under the Carribean Basin Recovery Act, or beneficiary countries under the Andean Trade Preference Act.

Further, the Commission has taken large amounts of evidence on exclusion requests over the course of this investigation, and the United States Trade Representative has gathered information regarding such requests. I therefore believe it helpful to the President and USTR to make a recommendation regarding these requests. I have determined that several specialty or niche products should be excluded from the remedy recommended for the product category to which they belong.

BACKGROUND

Following receipt of a request from the United States Trade Representative on June 22, 2001, the Commission instituted investigation No. TA-201-73, *Steel*, under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) to determine whether certain steel products[16] are being imported into the United States

[16] The June 22, 2001, request letter from the United States Trade Representative and the accompanying annexes (continued...)

in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[17]

Notice of the institution of the Commission's investigation was given by posting a copy of the notice on the Commission's website (*www.usitc.gov*), and by publishing the notice in the Federal Register of July 3, 2001 (66 FR 35267). The public hearings in connection with the injury phase of the investigations were held between September 17, 2001 and October 5, 2001 in Washington, D.C. and Merrillville, IN. The public hearings in connection with the remedy phase of the investigations were held between November 6, 2001 and November 9, 2001 in Washington, D.C.

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[16] (...continued)
listing the covered products by HTS categories are on the Commission's website (*http://www.usitc.gov*).

[17] On July 26, 2001, the Commission received a resolution from the Committee on Finance of the United States Senate for an investigation of the same scope. Pursuant to section 603 of the Trade Act, the Commission consolidated the investigation requested by the Committee with the ongoing investigation.

APPENDIX A

CARBON AND ALLOY STEEL FLAT PRODUCTS

SLABS

A slab is a semifinished steel product produced by continuous casting or by hot-rolling or forging. Slabs of carbon steel have a rectangular cross-section with a width at least two times the thickness. Slabs of other alloy steel have a width at least four times the thickness. Carbon and alloy steel slabs are provided for in the following *HTS* subheadings: 7207.12.0010, 7207.12.0050, 7207.20.0025, 7207.20.0045, and 7224.90.0055.

PLATE

This category includes both cut-to-length ("CTL") plate and clad plate. CTL plate is a flat-rolled product of rectangular cross-section, having a thickness of 4.75 mm or more and a width which exceeds 150 mm and measures at least twice the thickness. It is flat, *i.e.*, not in coil,[1] and may be of any shape (rectangular, circular, or other). It may have patterns-in-relief derived directly from rolling (floor plate). It may be perforated, corrugated, or polished. Plate may also have been subjected to heat-treatment and may have been descaled or pickled. Clad plate is a flat-rolled product of more than one metal layer, of which the predominating metal is non-alloy steel, and the layers are joined by molecular interpenetration of the surfaces in contact. The metal other than non-alloy steel used for clad plate may be stainless steel, titanium, or any other metal. The clad plate may be in the form of a flat plate or a coiled plate, may be of any thickness, and may be either hot- or cold-rolled. Products in this category are provided for in the following *HTS* subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.90.0000, 7210.90.1000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.3005, 7225.40.3050, 7225.50.6000, and 7226.91.5000.

HOT-ROLLED STEEL

Products in this category are hot-rolled sheet and strip, as well as plate in coils. These are carbon and alloy steel flat-rolled products of rectangular cross-section, produced by hot-rolling on hot-strip (continuous) mills, reversing mills, or Steckel mills. If the product is in coils, it may be of any thickness. If it is in straight lengths, it must be of a thickness of less than 4.75 mm and a width measuring at least 10 times the thickness. It may have patterns-in-relief derived directly from rolling (floor plate). It may be perforated, corrugated, or polished. It may be either unpickled or pickled. It may have been subjected to various processing steps after hot reduction, including pickling or descaling, rewinding, flattening, temper rolling, or heat treatment, and it may have been cut into shapes other than rectangular. Products in this category are provided for in the following *HTS* subheadings: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.30.3005, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7226.91.7000, and 7226.91.8000.

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[1] Plate in coil, which is not included in this category, is included in the hot-rolled category.

COLD-ROLLED STEEL

Products in this category include cold-rolled sheet and strip other than GOES. These are carbon and alloy steel flat-rolled products of rectangular cross-section, produced by cold- rolling. If the product is in coils, it may be of any thickness. If it is in straight lengths, it must be of a thickness of less than 4.75 mm and a width measuring at least 10 times the thickness. The product may have patterns-in-relief derived directly from rolling. It may be perforated, corrugated, or polished. It may have been subjected to various processing steps after cold reduction, including flattening, temper rolling, or heat treatment, and it may have been cut into shapes other than rectangular. Products in this category are provided for in the following *HTS* subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7225.19.0000, 7225.50.7000, 7225.50.8010, 7225.50.8015, 7225.50.8085, 7226.92.7050, 7226.92.8005, 7226.92.8050, 7226.19.1000, 7226.19.9000, 7226.92.5000, and 7226.92.7005.

GOES

Grain-oriented electrical steel ("GOES") includes low-carbon, silicon-iron alloys with a silicon content of approximately 3.2 percent, in which low core loss and high permeability in the direction of rolling have been achieved by appropriate metallurgical processing. It is a flat-rolled cold-rolled steel product sold in sheet or strip form and has a grain structure that permits it to conduct a magnetic field with a high degree of efficiency. Products in this category are provided for in the following *HTS* subheadings: 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060.

COATED STEEL

Products in this category include corrosion-resistant and other coated sheet and strip. These products are flat-rolled products of carbon or alloy steel with a metallic or nonmetallic coating, other than tin mill products, and other than clad. The category includes steel that is galvanized (*i.e.*, coated with zinc), aluminized, coated with zinc-aluminum alloy, galvannealed (heat-treated after coating), coated with a mixture of lead and tin (*i.e.*, terne plate and terne coated sheets), painted, and coated with plastic. Products in this category are provided for in the following *HTS* subheadings: 7210.20.0000, 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.3000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7225.91.0000, 7225.92.0000, 7225.99.0010, 7225.99.0090, 7226.93.0000, 7226.94.0000, and 7226.99.0000.

TIN MILL PRODUCTS

Tin mill products are flat-rolled products of carbon or alloy steel, plated or coated with tin or with chromium oxides or with chromium and chromium oxides (tin-free steel). The products may be either in coils or in straight lengths. Tin products are made by electrolytically coating flat-rolled steel with tin or chromium. Products in this category are provided for in the following *HTS* subheadings: 7210.11.0000, 7210.12.0000, 7210.50.0000, and 7212.10.0000.

CARBON AND ALLOY STEEL LONG PRODUCTS

INGOTS

This category includes ingots, blooms, and billets. Ingots are the primary form into which molten steel is cast when produced by other than continuous casting. Blooms and billets are semifinished products of rectangular cross-section with a width less than two times the thickness if of carbon steel, or less than four times the thickness if of other alloy steel. This category includes other products of solid section, which have not been further worked than subjected to primary hot-rolling or roughly shaped by forging, including tube rounds and blanks for angles, shapes, or sections. Ingots are provided for in the following *HTS* subheadings: 7206.10.0000, 7206.90.0000, 7207.11.0000, 7207.19.0030, 7207.19.0090, 7207.20.0075, 7207.20.0090, 7224.10.0005, 7224.10.0075, 7224.90.0005, 7224.90.0045, 7224.90.0065, and 7224.90.0075.

HOT BAR

Carbon and alloy hot-rolled bar and light shapes ("hot bar") are products which have a solid cross-section in the shape of circles, segments of circles, ovals, triangles, rectangles (including squares), or other convex polygons including flattened circles and modified rectangles of which two opposite sides are convex arcs and the other two sides are straight, of equal length, and parallel. This category includes the following: bars of a diameter of 19 mm or more in irregularly wound coils; free-machining carbon steel and high-nickel alloy steel bars and rods of any diameter; angles, shapes, and sections (such as U, I, or H sections) not further worked than hot-rolled, hot-drawn, or extruded, of a height of less than 80 mm; and hollow drill bars and rods of which the greatest external dimension of the cross-section exceeds 15 mm but does not exceed 52 mm, and of which the greatest internal dimension does not exceed one half of the greatest external dimension. This category excludes carbon and alloy (including free-machining alloy steel) wire rod having a diameter of 5 mm or more but less than 19 mm (which are covered by a section 201 relief on wire rod) and hollow bars and rods of iron or steel not conforming to this definition (which are included in the pipe and tubing product categories). Hot bars are provided for in the following *HTS* subheadings: 7213.20.0000, 7213.99.0060, 7213.99.0090, 7214.10.0000, 7214.30.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0015, 7214.99.0030, 7214.99.0045, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.1000, 7215.90.5000, 7216.10.0010, 7216.10.0050, 7216.21.0000, 7216.22.0000, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7227.20.0000, 7227.20.0010, 7227.20.0090, 7227.90.1030, 7227.90.2030, 7227.90.6005, 7227.90.6058, 7228.20.1000, 7228.30.2000, 7228.30.8005, 7228.30.8050, 7228.40.0000, 7228.60.1030, 7228.60.6000, 7228.70.3020, 7228.70.3040, 7228.70.3060, 7228.70.3080, 7228.70.6000, and 7228.80.0000.

COLD BAR

Carbon and alloy cold-finished bar ("cold bar") are products defined by shape in the hot bar category, not in coils, which have been subjected to a cold-finishing operation such as cold-rolling, cold-drawing, grinding, or polishing. Cold bars are provided for in the following *HTS* subheadings: 7215.10.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.3000, 7228.20.5000, 7228.50.1010, 7228.50.5005, 7228.50.5050, and 7228.60.8000.

REBAR

Carbon and alloy rebar are hot-rolled steel products which have a solid cross-section (as described for hot bars) and contain indentations, ribs, grooves, or other deformations produced during the

rolling process or by twisting after rolling, for the purpose of improving the bond with concrete. Rebar is provided for in *HTS* subheadings 7213.10.0000 and 7214.20.0000.

RAILS

Carbon and alloy rails and railway products are railway and track construction material including rails, check-rails and rack-rails, sleepers (cross-ties), fish-plates, and sole-plates (base plates). The bulk of the products in this category are produced in dedicated facilities. Rails are provided for in the following *HTS* subheadings: 7302.10.1010, 7302.10.1015, 7302.10.1025, 7302.10.1035, 7302.10.1045, 7302.10.5020, 7302.10.1055, 7302.20.0000, and 7302.40.0000.

WIRE

Carbon and alloy wire are cold-formed products in coils, of any uniform solid cross-section along their entire length, which do not conform to the definition of flat-rolled products. Wire is provided for in the following *HTS* subheadings: 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.4030, 7217.10.4090, 7217.10.5030, 7217.10.5090, 7217.10.6000, 7217.10.7000, 7217.10.8010, 7217.10.8020, 7217.10.8025, 7217.10.8030, 7217.10.8045, 7217.10.8060, 7217.10.8075, 7217.10.8090, 7217.10.9000, 7217.20.1500, 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, 7217.20.4580, 7217.20.6000, 7217.20.7500, 7217.30.1530, 7217.30.1560, 7217.30.3000, 7217.30.4510, 7217.30.4520, 7217.30.4530, 7217.30.4540, 7217.30.4550, 7217.30.4560, 7217.30.4590, 7217.30.6000, 7217.30.7500, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7229.20.0000, 7229.90.1000, 7229.90.5015, 7229.90.5030, 7229.90.5050, and 7229.90.9000.

ROPE

Carbon and alloy strand, rope, cable, and cordage ("rope") are stranded wire (two or more wires twisted closely together), ropes, and cables, not electrically insulated. Rope is provided for in the following *HTS* subheadings: 7312.10.3005, 7312.10.3010, 7312.10.3012, 7312.10.3020, 7312.10.3045, 7312.10.3065, 7312.10.3070, 7312.10.3074, 7312.10.3080, 7312.10.8000, 7312.10.9030, 7312.10.9060, and 7312.10.9090.

NAILS

Carbon and alloy nails, staples, and woven cloth ("nails") are woven cloth of carbon or alloy steel wire and nails, tacks, drawing pins, corrugated nails, staples, and similar articles of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper. Nails are provided for in the following *HTS* subheadings: 7314.19.0000, 7317.00.5504, 7317.00.5506, 7317.00.5510, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, 7317.00.7500, and 8305.20.0000.

SHAPES

Carbon and alloy heavy structural shapes and sheet piling ("shapes") are angles, shapes, and sections (such as U, I, or H sections) of a height equal to or more than 80 mm. The markets for shapes include distributors, fabricators, and end users. Shapes are provided for in the following *HTS* subheadings: 7216.31.0000, 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.40.0010, 7216.40.0050, 7301.10.0000, 7301.20.1000, and 7301.20.5000.

FABRICATED STRUCTURAL UNITS

Carbon and alloy fabricated structural units are structures (excluding prefabricated buildings) and parts of structures (*i.e.*, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, pillars, and columns) made from iron or steel plates, rods, angles, shapes, sections, tubes, and the like. This category includes sheet-metal roofing, siding, flooring, and roofing drainage equipment and excludes doors, windows, their frames and thresholds, and architectural and ornamental work. Fabricated products are provided for in the following *HTS* subheadings: 7308.10.0000, 7308.20.0000, 7308.40.0000, 7308.90.3000, 7308.90.6000, 7308.90.7000, 7308.90.9530, and 7308.90.9590.

CARBON AND ALLOY STEEL TUBULAR PRODUCTS

SEAMLESS TUBULAR PRODUCTS OTHER THAN OCTG

Carbon and alloy seamless tubular products are tubular products that have no joint, whether welded or not, along the longitudinal axis of the product. OCTG and cast iron pipe, tube, hollow profiles, hollow drill bars, fittings, flexible tubing, and insulated electrical conduit tubing are excluded from this category. Seamless tubular products are provided for in the following *HTS* subheadings: 7304.10.1020, 7304.10.1030, 7304.10.1045, 7304.10.1060, 7304.10.1080, 7304.10.5020, 7304.10.5050, 7304.10.5080, 7304.31.3000, 7304.31.6010, 7304.31.6050, 7304.39.0002, 7304.39.0004, 7304.39.0006, 7304.39.0008, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.51.1000, 7304.51.5005, 7304.51.5015, 7304.51.5045, 7304.51.5060, 7304.59.1000, 7304.59.2030, 7304.59.2040, 7304.59.2045, 7304.59.2055, 7304.59.2060, 7304.59.2070, 7304.59.2080, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7304.90.1000, 7304.90.3000, 7304.90.5000, and 7304.90.7000.

SEAMLESS OCTG

Carbon and alloy seamless oil country tubular goods ("seamless OCTG") are produced by the seamless processes described above but are used below ground in the drilling and completion of oil or gas wells. Seamless OCTG consist of casing, which is the structural retainer for the walls of oil and gas wells; tubing, which is used within casing to convey oil or gas to ground level; and drill pipe, which is used to convey power to a rotary drilling tool below ground level. Seamless OCTG are provided for in the following *HTS* subheadings: 7304.21.3000, 7304.21.6030, 7304.21.6045, 7304.21.6060, 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3010, 7304.29.3020, 7304.29.3030, 7304.29.3040, 7304.29.3050, 7304.29.3060, 7304.29.3080, 7304.29.4010, 7304.29.4020, 7304.29.4030, 7304.29.4040, 7304.29.4050, 7304.29.4060, 7304.29.4080, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6015, 7304.29.6030, 7304.29.6045, 7304.29.6060, 7304.29.6075, and 8431.43.8040.

WELDED TUBULAR PRODUCTS OTHER THAN OCTG

Carbon and alloy welded tubular products are produced by bending flat-rolled steel products to form a hollow product with overlapping or abutting seams. These products are then fastened along the

seam by welding, although clipping, riveting, and forging are also used to fasten a seam. The seam produced by the fastening method may run either longitudinally or spirally along the length of the product. The welded tubular goods covered in this category do not include OCTG and carbon quality steel welded line pipe of an outside diameter that does not exceed 406.7 mm (the latter product is covered by a prior section 201 relief request on line pipe (*see Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, publication No. 3261, December 1999). Welded tubular products are provided for in the following *HTS* subheadings: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.2000, 7305.31.4000, 7305.31.6000, 7305.39.1000, 7305.39.5000, 7305.90.1000, 7305.90.5000, 7306.30.1000, 7306.30.3000, 7306.30.5010, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5035, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.3000, 7306.50.5010, 7306.50.5030, 7306.50.5050, 7306.50.5070, 7306.60.1000, 7306.60.3000, 7306.60.5000, 7306.60.7060, 7306.90.1000, and 7306.90.5000.

WELDED OCTG

Carbon and alloy welded oil country tubular goods ("welded OCTG") are produced by forming a flat-rolled product into a tubular shape and then welding the seam. Welded OCTG are used below ground in the drilling and completion of oil or gas wells, and consist of casing, which is the structural retainer for the walls of oil and gas wells, and tubing, which is used within the casing to convey oil or gas to ground level. Welded OCTG do not include drill pipe. Welded OCTG are provided for in the following *HTS* subheadings: 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.20.1030, 7306.20.1090, 7306.20.2000, 7306.20.3000, 7306.20.4000, 7306.20.6010, 7306.20.6050, 7306.20.8010, and 7306.20.8050.

FITTINGS

Carbon and alloy fittings and flanges ("fittings") are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. This category also includes tool joints for welding onto lengths of unfinished drill pipe to produce finished drill pipe. Fittings do not include valves or articles used for installing pipes and tubes but which do not form an integral part of the bore, *e.g.*, hangers, stays, and similar supports, clamping or tightening bands, or collars used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc. Fittings are provided for in the following *HTS* subheadings: 7307.91.5010, 7307.91.5030, 7307.91.5050, 7307.91.5070, 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.93.3000, 7307.93.6000, 7307.93.9030, 7307.93.9060, 7307.99.5015, 7307.99.5045, 7307.99.5060, and 8431.43.8020.

STAINLESS AND TOOL STEEL PRODUCTS

SLABS/INGOTS

Slabs, blooms, billets, and ingots ("slabs/ingots") are the most common forms of semi-finished stainless steel. Following the production of molten steel with the desired properties, the stainless steel is cast into a form that can enter the rolling process. This category includes other products of solid section that have not been further worked than primary hot-rolling or roughly shaped by forging, including tube rounds. Slabs/ingots are provided for in the following *HTS* subheadings: 7218.10.0000, 7218.91.0015, 7218.91.0030, 7218.91.0060, 7218.99.0015, 7218.99.0030, 7218.99.0045, 7218.99.0060, and 7218.99.0090.

PLATE

The production of stainless steel CTL plate is commonly achieved by the uncoiling of flat-rolled stainless steel and cutting it to a desired length. It may be of any shape (rectangular, circular, or other) and be produced by rolling on a sheared-plate mill or by flattening and cutting to length from a coiled plate. It may be perforated, corrugated, or polished; subjected to heat-treatment; and descaled or pickled. Plate in coil form is included if under 600 mm in width and 4.75 mm or more in thickness. Plate is provided for in the following *HTS* subheadings: 7219.21.0005, 7219.21.0020, 7219.21.0040, 7219.21.0060, 7219.22.0005, 7219.22.0015, 7219.22.0020, 7219.22.0025, 7219.22.0035, 7219.22.0040, 7219.22.0045, 7219.22.0070, 7219.22.0075, 7219.22.0080, 7219.31.0050, and 7220.11.0000.

BAR

Stainless steel bars are articles of stainless steel in straight lengths having a uniform solid cross-section in the shape of circles, segments of circles, ovals, rectangles, squares, triangles, or other convex polygons. Also included are angles, shapes, and sections (such as U, I, or H sections) not further worked than hot-rolled, hot-drawn, or extruded and concrete rebar, which has indentations, ribs, grooves, or other deformations produced during the rolling process. Bar is provided for in the following *HTS* subheadings: 7221.00.0045, 7222.11.0005, 7222.11.0050, 7222.19.0005, 7222.19.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, 7222.30.0000, 7222.40.3025, 7222.40.3045, 7222.40.3065, 7222.40.3085, and 7222.40.6000.

ROD

Stainless steel rod is an intermediate stainless steel product that is produced in a wide variety of sizes and grades with a solid cross-section. Rod covered by this investigation includes rod of circular cross-section having a diameter of less than 19 mm and if containing alloy then containing 24 percent or more of nickel, by weight, or of a shape other than circular, may be of any size. Rod is provided for in the following *HTS* subheadings: 7221.00.00.05, 7221.00.00.15, 7221.00.00.30, and 7221.00.00.75.

TOOL STEEL

Tool steel includes tool steel in all product forms. Tool steel is provided for in the following *HTS* subheadings: 7224.10.0045, 7224.90.0015, 7224.90.0025, 7224.90.0035, 7225.20.0000, 7225.30.1000, 7225.30.5060, 7225.40.1090, 7225.40.5060, 7225.50.1060, 7226.20.0000, 7226.91.0500, 7226.91.1560, 7226.91.2560, 7226.92.1060, 7226.92.3060, 7227.10.0000, 7227.90.1060, 7227.90.2060, 7228.10.0010, 7228.10.0030, 7228.10.0060, 7228.30.4000, 7228.30.6000, 7228.50.1020, 7228.50.1040, 7228.50.1060, 7228.50.1080, 7228.60.1060, and 7229.10.0000.

WIRE

Stainless steel wire is a cold-formed product in coils, of any uniform solid cross-section along its whole length, which does not conform to the definition of flat-rolled products. Wire is provided for in the following *HTS* subheadings: 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, 7223.00.1075, 7223.00.5000, and 7223.00.9000.

CLOTH

Woven cloth of stainless steel wire is an article of stainless steel in which wire is interwoven to produce a fabric. Cloth is provided for in the following *HTS* subheadings: 7314.14.1000, 7314.14.2000, 7314.14.3000, 7314.14.6000, and 7314.14.9000.

ROPE

Stainless steel rope includes stranded wire (two or more wires twisted closely together), ropes, cables, and cordage which are not electrically insulated. Wire strand is two or more wires twisted together precisely around a center so that all the wires in the strand can move in unison in order to equally distribute load and bending stresses. Rope is provided for in the following *HTS* subheadings: 7312.10.1030, 7312.10.1050, 7312.10.1070, 7312.10.6030, and 7312.10.6060.

SEAMLESS TUBULAR PRODUCTS

Stainless steel seamless tubular products have no joint, whether welded or not, along the longitudinal axis of the product and may be formed by several methods, including hot- rolling, hot-extrusion, deep drawing of a disc, forging, and casting. Seamless tubular products are provided for in the following *HTS* subheadings: 7304.41.3005, 7304.41.3015, 7304.41.3045, 7304.41.6005, 7304.41.6015, 7304.41.6045, 7304.49.0005, 7304.49.0015, 7304.49.0045, and 7304.49.0060.

WELDED TUBULAR PRODUCTS

Stainless steel welded tubular products are produced by bending flat-rolled steel products to form a hollow product with overlapping or abutting seams. The seam is then generally fastened together by welding, although clipping, riveting, and forging are also used to fasten a seam. The seam may run either longitudinally or spirally along the length of the product. Welded tubular products are provided for in the following *HTS* subheadings: 7306.40.1010, 7306.40.1015, 7306.40.1090, 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5042, 7306.40.5044, 7306.40.5062, 7306.40.5064, 7306.40.5080, 7306.40.5085, 7306.40.5090, and 7306.60.7030.

FITTINGS

Stainless steel flanges and fittings are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. This category does not include valves or articles used for installing pipes and tubes but which do not form an integral part of the bore, *e.g.*, hangers, stays, and similar supports, clamping or tightening bands, or collars (hose clips) used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc. Fittings are provided for in the following *HTS* subheadings: 7307.21.1000, 7307.21.5000, 7307.22.1000, 7307.22.5000, 7307.23.0000, 7307.29.0030, and 7307.29.0090.

Appendix B

Commissioner	Carbon & Alloy Flat Products							Carbon & Alloy Long Products										Carbon & Alloy Tubular Products					Stainless & Tool Steel Products										
	Slabs	Plate	Hot-rolled	Cold-rolled	GOES	Coated	Tin	Ingots	Hot bar	Cold bar	Rebar	Rails	Wire	Rope	Nails	Shapes	Fabricated units	Seamless	Seamless OCTG	Welded	Welded OCTG	Fittings	Slabs/ingots	Plate	Bar	Rod	Tool steel	Wire	Cloth	Rope	Seamless pipe	Welded pipe	Fittings
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33
Koplan	A	A	A	A	N	A	N	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	A	A	N	N	N	N	A
Canada	N	N	N	N		N			A	A	N									A		N			A	N	N	N					N
Mexico	A	A	A	A		A			A	N	N									A		A			N	N	N	N					N
Okun	A	A	A	A	N	A	N	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	N	N	N	N	N	N	N
Canada	N	N	N	N		N			A	A	N									N		A			A	N							
Mexico	A	A	A	A		A			N	N	N									N		A			N	N							
Bragg	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	N	A	A	A	A	A	A	A	A	A	A	A	N	A	N	N	A
Canada	N	N	N	N	N	N	N	N	N	N	N	N	A	A	A	N		N	N	A	A	A	N	N	N	N	N	N		N			A
Mexico	A	A	A	A	A	A	A	N	N	N	N	N	A	A	A	N		N	N	N	A	A	N	N	N	N	N	N		N			A
Miller	A	A	A	A	N	A	A	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	N	N	N	N	N	N	N
Canada	N	N	N	N		N	A		A	A	N									A		A			A	N							
Mexico	A	A	A	A		A	N		A	N	N									A		A			N	N							

Continued on next page

Commissioner	Carbon & Alloy Flat Products							Carbon & Alloy Long Products										Carbon & Alloy Tubular Products					Stainless & Tool Steel Products										
	Slabs	Plate	Hot-rolled	Cold-rolled	GOES	Coated	Tin	Ingots	Hot bar	Cold bar	Rebar	Rails	Wire	Rope	Nails	Shapes	Fabricated units	Seamless	Seamless OCTG	Welded	Welded OCTG	Fittings	Slabs/ingots	Plate	Bar	Rod	Tool steel	Wire	Cloth	Rope	Seamless pipe	Welded pipe	Fittings
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33
Hillman	A	A	A	A	N	A	N	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	N	N	N	N	N	N	N
Canada	N	N	N	N		N			A	A	N									N		A			A	N							A
Mexico	A	A	A	A		A			N	N	N									N		N			N	N							A
Devaney	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	N	A	A	A	A	A	A	A	A	A	A	A	N	A	N	N	A
Canada	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N		N			A
Mexico	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		N	N	N	N	N	N	N	N	N	N	N		N			A
Commission	A	A	A	A	N	A	TIE	N	A	A	A	N	N	N	N	N	N	N	N	A	N	A	N	N	A	A	TIE	TIE	N	N	N	N	TIE
Canada	N	N	N	N		N	N		A	A	N									TIE		A			A	N	N	N					A
Mexico	A	A	A	A		A	N		N	N	N									N		A			N	N	N	N					A

Note:–With regard to welded tubular products other than OCTG, Chairman Koplan, Vice Chairman Okun, Commissioner Miller, and Commissioner Hillman made an affirmative determination based on threat of serious injury. With regard to carbon and alloy wire, rope, and nails and stainless wire and rope, Commissioner Bragg made affirmative determinations based on threat of serious injury.

Appendix C

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings[1]
Carbon and alloy steel slabs	Koplan, Okun, Miller, Hillman[2]	Tariff-rate quota	20% tariff on covered imports in excess of 7,000,000 short tons	17% tariff on covered imports in excess of 7,500,000 short tons	14% tariff on covered imports in excess of 8,000,000 short tons	11% tariff on covered imports in excess of 8,500,000 short tons[3]	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
Carbon and alloy steel plate	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	1,232,260 short tons	1,269,227 short tons	1,307,304 short tons		Mexico
Carbon and alloy steel hot-rolled flat products	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	4,928,712 short tons	5,076,573 short tons	5,228,871 short tons		Mexico
Carbon and alloy steel cold-rolled flat products	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	2,796,196 short tons	2,880,082 short tons	2,966,485 short tons		Mexico
Carbon and alloy steel coated products	Koplan, Miller, Hillman[2]	Tariff	20%	17%	14%	11%	Mexico
	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[4] CBERA[5]
	Okun	Quota	1,683,282 short tons	1,733,781 short tons	1,785,794 short tons		Mexico

[1] Imports from Canada, Mexico, Israel, Jordan, and beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act are excluded unless specifically noted in this column.

[2] Pursuant to section 330(d)(2) of the Tariff Act of 1930, this remedy recommendation is to be treated as the remedy finding of the Commission.

[3] Chairman Koplan and Commissioners Miller and Hillman only.

[4] Commissioner Bragg only.

[5] Commissioner Devaney only.

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings
Carbon and alloy steel tin products	Bragg, Devaney	Tariff	40%	38%	36%	31%	Mexico[6] CBERA[7]
	Miller	Tariff	20%	17%	14%	11%	Canada
Carbon and alloy steel hot-rolled bar	Koplan, Miller, Hillman[8]	Tariff	20%	17%	14%	11%	Canada Mexico[9]
	Bragg, Devaney	Tariff	35%	33%	31%	26%	CBERA[7]
	Okun	Quota	1,961,648 short tons	2,020,497 short tons	2,081,112 short tons		Canada
Carbon and alloy steel cold-finished bar	Koplan, Miller, Hillman[8]	Tariff	20%	17%	14%	11%	Canada
	Bragg, Devaney	Tariff	35%	33%	31%	26%	CBERA[7]
	Okun	Quota	246,033 short tons	253,414 short tons	261,016 short tons		Canada
Carbon and alloy steel rebar	Koplan, Miller, Hillman[8]	Tariff	10%	8%	6%	4%	
	Bragg, Devaney	Tariff	35%	33%	31%	26%	CBERA[7]
	Okun	Quota	1,054,266 short tons	1,085,894 short tons	1,118,470 short tons		
Carbon and alloy steel welded tubular products other than OCTG	Koplan, Miller	Tariff-rate quota	20% tariff on covered imports in excess of 2,600,000 short tons	17% tariff on covered imports in excess of 2,680,000 short tons	14% tariff on covered imports in excess of 2,760,000 short tons	11% tariff on covered imports in excess of 2,840,000 short tons	Canada Mexico
	Okun, Hillman	Tariff-rate quota	20% tariff on covered imports in excess of 1,400,443 short tons	17% tariff on covered imports in excess of 1,442,456 short tons	14% tariff on covered imports in excess of 1,485,730 short tons	11% tariff on covered imports in excess of 1,530,302 short tons[10]	
	Bragg, Devaney	Tariff	30%	28%	26%	21%	Canada[6] CBERA[7]

[6] Commissioner Bragg only.

[7] Commissioner Devaney only.

[8] Pursuant to section 330(d)(2) of the Tariff Act of 1930, this remedy recommendation is to be treated as the remedy finding of the Commission.

[9] Chairman Koplan and Commissioner Miller only.

[10] Commissioner Hillman only.

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings
Carbon and alloy steel fittings and flanges	Koplan, Okun, Miller, Hillman[11]	Tariff	13%	10%	7%	4%[12]	Canada[13] Mexico[14]
	Bragg, Devaney	Tariff	30%	28%	26%	21%	Canada[15] Mexico[15] CBERA[16]
Stainless steel bar	Koplan, Miller, Hillman[11]	Tariff	15%	12%	9%	6%	Canada
	Okun	Quota	109,440 short tons	112,724 short tons	116,106 short tons		Canada
	Bragg	Tariff	25%	20%	15%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		CBERA
Stainless steel rod	Koplan, Miller, Hillman[11]	Tariff	20%	17%	14%	11%	
	Okun	Quota	62,573 short tons	64,451 short tons	66,385 short tons		
	Bragg	Tariff	25%	20%	15%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		
Tool steel	Koplan	Tariff	10%	8%	6%	4%	
	Bragg	Tariff	25%	20%	15%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		

[11] Pursuant to section 330(d)(2) of the Tariff Act of 1930, this remedy recommendation is to be treated as the remedy finding of the Commission.

[12] Chairman Koplan and Commissioners Miller and Hillman only.

[13] Vice Chairman Okun and Commissioners Miller and Hillman only.

[14] Chairman Koplan, Vice Chairman Okun, and Commissioner Miller only.

[15] Commissioner Bragg only.

[16] Commissioner Devaney only.

Product	Commissioner/Remedy Recommendation		Year 1	Year 2	Year 3	Year 4	Special Findings
Stainless steel wire	Koplan	Tariff	8%	7%	6%	5%	
	Bragg	Tariff	15%	10%	5%		
	Devaney	Quota and tariff	Average quantity of imports during 1996-98 plus 15%	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98		
Stainless steel fittings and flanges	Koplan	Tariff	15%	12%	9%	6%	
	Bragg	Tariff	30%	25%	20%		Canada Mexico
	Devaney	Quota	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98	Average quantity of imports during 1996-98	Canada Mexico

PREFACE

As provided for in section 202 of the Trade Act of 1974, as amended, this investigation was conducted in two parts, an injury phase and a remedy phase. This report first provides the views of the Commission on injury, and then additional and dissenting views on injury of individual Commissioners. The report then provides the views of the Commission on remedy, and then additional and dissenting views on remedy of individual Commissioners.

This investigation was structured by four broad product groups: certain carbon and alloy flat products, certain carbon and alloy long products, certain carbon and alloy pipe and tube products, and certain stainless steel and alloy tool steel products. As a result, the injury and remedy views are similarly structured along these broad product categories, although some Commissioners have grouped products differently in reaching their injury determinations and remedy recommendations.

VIEWS ON INJURY OF THE COMMISSION

I. INTRODUCTION

Pursuant to section 202(b) of the Trade Act of 1974 ("Trade Act") (19 U.S.C. § 2252(b)), the Commission determines that certain carbon flat-rolled products, including slab, hot-rolled sheet and strip (including plate in coils), plate (including cut-to-length plate and clad plate), cold-rolled sheet and strip (other than grain-oriented electrical steel), and corrosion-resistant and other coated sheet and strip, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry.[1] The Commission also determines that grain-oriented electrical steel ("GOES") is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry.[2] Chairman Koplan, Vice Chairman Okun, and Commissioner Hillman determine that carbon and alloy tin mill products are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry; Commissioners Bragg, Miller, and Devaney make an affirmative determination regarding imports of carbon and alloy tin mill products.[3]

The Commission further determines that the following products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the pertinent domestic industry: (1) carbon and alloy hot-rolled bar and light shapes; (2) carbon and alloy cold-finished bar; and (3) carbon and alloy rebar.[4] [5] The Commission unanimously determines that fabricated

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[1] Pursuant to section 311(a) of the North American Free Trade Agreement ("NAFTA") Implementation Act (19 U.S.C. § 3371(a)), the Commission unanimously makes negative findings with respect to Canada and makes affirmative findings (5-1 vote) with respect to Mexico regarding these imports (Commissioner Devaney dissenting with respect to Mexico).

[2] Commissioner Bragg and Commissioner Devaney make affirmative determinations regarding imports of grain-oriented electrical steel. *See* Separate Views of Commissioner Lynn M. Bragg, and Separate and Dissenting Views of Commissioner Dennis M. Devaney.

[3] Pursuant to 19 U.S.C. § 3371(a), Commissioners Bragg and Devaney make negative findings with respect to Canada regarding these imports; Commissioner Miller makes an affirmative finding with respect to Canada. Commissioners Miller and Devaney make negative findings with respect to Mexico regarding these imports; Commissioner Bragg makes an affirmative finding with respect to Mexico. *See* Separate Views of Commissioner Lynn M. Bragg, Separate and Dissenting Views of Commissioner Marcia E. Miller, and Separate and Dissenting Views of Commissioner Dennis M. Devaney.

[4] Commissioner Bragg determines that certain carbon and alloy long mill products, including billets, ingots, and blooms; hot-rolled bar and light shapes; cold-finished bar; rebar; rails and railway products; and heavy structural shapes and sheet piling are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry. She also determines that carbon and alloy wire products, including wire; strand, rope, cable, and cordage; and nails, staples, and woven cloth are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry.

Commissioner Devaney determines that certain carbon and alloy long products, including hot-rolled bar and light shapes; cold-finished bar; rebar; rails and railway products; heavy structural shapes and sheet piling; wire; strand, rope, cable, and cordage; and nails, staples, and woven cloth are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry.

[5] Pursuant to 19 U.S.C. § 3371(a), the Commission has made affirmative findings for Canada for hot-rolled bar (Commissioners Bragg and Devaney dissenting) and cold-finished bar (Commissioners Bragg and Devaney dissenting) and a negative finding for Canada for rebar. The Commission has made negative findings for Mexico for all three products (Chairman Koplan and Commissioner Miller dissenting with respect to hot-rolled bar).

structural units are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. The Commission additionally determines that the following products are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the pertinent domestic industry: (1) carbon and alloy billets, ingots, and blooms; (2) carbon and alloy rails and railway products; (3) carbon and alloy heavy structural shapes and sheet piling; (4) carbon and alloy wire; (5) carbon, alloy, and stainless rope, strand, cable, and cordage; (6) carbon and alloy nails, staples, and cloth.[6]

The Commission[7] further determines that: (1) welded pipe other than OCTG is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry;[8] and (2) fittings, flanges, and tool joints are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry.[9] The Commission[10] additionally determines that: (1) seamless pipe other than OCTG and (2) welded and seamless OCTG are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the pertinent domestic industry.

The Commission further determines that stainless steel bar and light shapes and stainless steel rod are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry.[11] The Commission also determines that semifinished stainless steel products, stainless cut-to-length plate, stainless woven cloth, seamless stainless tubular products, and welded stainless tubular products are not being imported into the United States in such increased

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[6] Commissioners Bragg and Devaney dissenting concerning these products per their determinations referenced above.

[7] *See* Separate Views of Commissioner Lynn M. Bragg and Separate and Dissenting Views of Commissioner Dennis M. Devaney.

[8] Pursuant to 19 U.S.C. § 3371(a), the Commission was equally divided 3-3 in its findings for Canada, (Chairman Koplan and Commissioners Bragg and Miller made affirmative findings, and Vice Chairman Okun and Commissioners Hillman and Devaney made negative findings); and made a negative finding (4-2) for Mexico (Chairman Koplan and Commissioner Miller dissenting).

[9] Pursuant to 19 U.S.C. § 3371(a), the Commission made an affirmative finding for Canada (Chairman Koplan and Commissioner Devaney dissenting), and made an affirmative finding for Mexico (Commissioners Hillman and Devaney dissenting).

[10] Commissioners Bragg and Devaney determine that (1) seamless pipe, including seamless OCTG, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the pertinent domestic industry, and (2) welded pipe, including welded OCTG, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the pertinent domestic industry. *See* Separate Views of Commissioner Lynn M. Bragg and Separate and Dissenting Views of Commissioner Dennis M. Devaney.

[11] Pursuant to 19 U.S.C. §3371(a), Chairman Koplan, Vice Chairman Okun, and Commissioners Miller and Hillman make an affirmative finding with respect to imports of stainless steel bar and light shapes from Canada. They make negative findings with respect to imports of stainless bar and light shapes from Mexico and imports of stainless wire rod from Canada and Mexico. Commissioners Bragg and Devaney found that semifinished stainless steel products, stainless cut-to-length plate, stainless bar and light shapes, stainless rod, and tool steel were one like product and make an affirmative finding for that like product. Pursuant to 19 U.S.C. §3371(a), they made a negative finding with respect to imports of this like product for imports from Canada and Mexico.

quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries.[12] Chairman Koplan and Commissioners Bragg and Devaney determine that tool steel,[13] stainless steel wire,[14] and stainless steel fittings and flanges are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.[15] Vice Chairman Okun and Commissioners Miller and Hillman determine that tool steel, stainless steel wire, and stainless steel fittings and flanges are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

In making determinations in safeguard actions, the Commission has traditionally divided the statutory standard into three criteria. Specifically, to make an affirmative determination, the Commission must find that:

(1) imports of the subject article are in *increased quantities* (either actual or relative to production);

(2) the domestic industry producing an article that is like or directly competitive with the imported article is *seriously injured or threatened with serious injury*; and

(3) the article is being imported in such increased quantities as to be a *substantial cause* of serious injury or threat of serious injury to the domestic industry.[16]

The Commission must find that all three criteria are satisfied to make an affirmative determination. In a recent section 201 determination, and in this action, the Commission has considered the second and third criteria together with respect to its threat of serious injury analysis.[17]

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[12] Commissioners Bragg and Devaney dissenting with respect to semifinished stainless steel products and stainless cut-to-length plate. As discussed above, pursuant to 19 U.S.C. §3371(a), Commissioners Bragg and Devaney make negative findings with respect to imports of semifinished stainless steel products and stainless cut-to-length plate from Canada and Mexico.

[13] Commissioners Bragg and Devaney found that semifinished stainless steel products, stainless cut-to-length plate, stainless bar and light shapes, stainless rod, and tool steel were one like product and make an affirmative finding for that like product. Pursuant to 19 U.S.C. §3371(a), they made a negative finding with respect to imports of this like product for imports from Canada and Mexico.

[14] Commissioners Bragg and Devaney found that stainless steel wire and stainless steel rope were one like product and made an affirmative finding for this like product. Pursuant to 19 U.S.C. §3371(a), they made a negative finding for imports of this like product from Canada and Mexico.

[15] Pursuant to 19 U.S.C. §3371(a), Chairman Koplan makes negative findings with respect to imports of tool steel and stainless steel wire from Canada. Commissioners Bragg and Devaney make an affirmative finding with respect to imports of stainless steel fittings from Canada and Mexico and Chairman Koplan makes a negative finding with respect to imports of stainless steel fittings from Canada and Mexico.

[16] *See, e.g.*, *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-3 (Dec. 2000); *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 at I-5 (Mar. 1998).

[17] *See Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 (Dec. 2000).

II. BACKGROUND

The Commission instituted this investigation effective June 22, 2001, following receipt of a request from the United States Trade Representative ("USTR").[18] On July 26, 2001, the Commission received a resolution from the Committee on Finance of the United States Senate requesting that the Commission conduct a safeguard investigation of the same steel products. The Commission exercised its authority under section 603 of the Trade Act and consolidated the investigation requested by the Senate Committee on Finance with the Commission's previously-instituted investigation requested by the USTR. The Commission was requested to determine whether certain steel products are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat of serious injury, to the domestic industries producing like or directly competitive products.[19] The imported steel products covered by the request and the subject of this investigation include: certain carbon and alloy flat products, certain carbon and alloy long products, certain carbon and alloy pipe and tube products, and certain stainless steel and alloy tool steel products. The accompanying annexes to the request listed the merchandise subject to investigation by Harmonized Tariff Schedule of the United States ("HTS") categories.[20] At the outset of its investigation, the Commission delineated the subject merchandise into 33 categories for the purpose of its data collection.

The Commission has investigated imports of certain steel products on numerous prior occasions. Specifically, in the safeguard context, the Commission has conducted four investigations covering merchandise subject to this investigation.[21]

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[18] Letter from Robert B. Zoellick, USTR, to Chairman Koplan, dated June 22, 2001 at 1.

[19] Letter from Robert B. Zoellick, USTR, to Chairman Koplan, dated June 22, 2001 at 1.

[20] Letter from Robert B. Zoellick, USTR, to Chairman Koplan, dated June 22, 2001, Attachment 1 at Annexes 1 and 2. The subject merchandise in the request listed 612 HTS categories.

[21] *Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-5, USITC Pub. 756 (Jan. 1976); *Round Stainless Steel Wire*, Inv. No. TA-201-13, USITC Pub. 779 (June 1976); *Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-48, USITC 1377 (May 1983); *Carbon and Certain Alloy Steel*, Inv. No. TA-201-51, USITC Pub. 1553 (July 1984). The Commission also conducted two other safeguard investigations on steel products that are not subject to this investigation. *See Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999); *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999).

III. LEGAL STANDARDS

The legal standards discussed below apply to all our determinations in this proceeding.[22] Our determinations for each of the four broad product categories are found in the following sections: Section IV, Certain Carbon and Alloy Flat products; Section V, Certain Carbon and Alloy Long products; Section VI, Certain Carbon and Alloy Pipe and Tube products; and Section VII, Certain Stainless Steel and Alloy Tool Steel products.

A. Domestic Industry Producing Like or Directly Competitive Article

Statutory Framework and Commission Practice. To determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat thereof, the Commission first defines "the domestic industry producing an article that is like or directly competitive with the imported article."[23] The statute defines the term "domestic industry" to mean "the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article."[24] The Commission defines the domestic industry in terms of each like or directly competitive article and evaluates the impact of the pertinent imports on the facilities and workers producing each article.[25]

The legislative history to the Trade Act defines the term "like" to mean those articles which are "substantially identical in inherent or intrinsic characteristics (*i.e.*, materials from which made, appearance, quality, texture, etc.)" and the term "directly competitive" to mean those articles which are "substantially equivalent for commercial purposes, that is, are adapted to the same uses and are

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[22] Vice Chairman Okun, Commissioner Miller, and Commissioner Hillman note that a number of parties, both in testimony and in their briefs, argued that the Commission should consider national security concerns in this analysis. *See, e.g.*, 9/17/01 Injury Hearing Transcript at 52, 58, 87-88; 9/24/01 Injury Hearing Transcript at 1273. They also note that although section 203 of the statute mandates that the President consider the national security interests of the United States in determining whether to take action, the Commission's mandate is far narrower under section 202. Indeed, the statute is silent as to whether the Commission should consider national security issues when it is very explicit on the areas the Commission should take into account. Moreover, there are separate statutes addressing national security concerns and trade, namely section 232 of the Trade Expansion Act of 1962. Finally, although the Commission received anecdotal information regarding the importance of steel products in general to national security, there was no attempt to quantify such information, nor to identify which steel products are most critical to our national security. Moreover, parties were not specifically asked to address this issue in response to questionnaires. Therefore, Vice Chairman Okun, Commissioner Miller, and Commissioner Hillman have not considered national security concerns in making their injury determination.

[23] 19 U.S.C. § 2252(b)(1)(A).

[24] 19 U.S.C. § 2252(c)(6)(A)(i).

[25] *Extruded Rubber Thread*, USITC Pub. 3375 at I-8 (Dec. 2000); *Crabmeat from Swimming Crabs*, USITC Pub. 3349 at I-8-9 (Aug. 2000); *Circular Welded Carbon Quality Line Pipe*, USITC Pub. 3261 at I-12-13 (Dec. 1999); *Certain Steel Wire Rod*, USITC Pub. 3207 at I-10, I-36 (July 1997).

essentially interchangeable therefor."[26] The decision regarding the like or directly competitive article is a factual determination.[27]

In determining what constitutes the like product, the Commission traditionally has taken into account such factors as the physical properties of the product, its customs treatment, its manufacturing process (*i.e.*, where and how it is made), its uses, and the marketing channels through which the product is sold. These are not statutory criteria and do not limit what factors the Commission may consider in making its determination. No single factor is dispositive and the weight given to each individual factor will depend upon the facts in the particular case. The Commission traditionally has looked for clear dividing lines among possible products and has disregarded minor variations.[28]

The Commission has broad discretion to determine what constitutes the domestic industry producing a like or directly competitive article in a section 201 investigation and generally has adhered to the principal that "[t]he industry should be defined in a manner which allows for a meaningful analysis of the statutory criteria in light of the legislative history of section 201."[29] In particular, the Commission has recognized that the concept of industry employed in section 201 may be more broadly defined and is not the same as that used in countervailing and antidumping duty provisions of title VII. As the Commission has stated:

> Title VII is narrowly aimed at remedying the specific advantages imports may be receiving from unfair trade practices. The purpose of section 201 either is to prevent or remedy serious injury to domestic productive resources from all imports. In light of the purpose of section 201 and in contrast to title VII, the sharing of productive processes and facilities is a fundamental concern in defining the scope of the domestic industry under section 201.[30]

The legislative history to the 1974 Trade Act indicates that the concern for the Commission in a safeguard investigation is "the question of serious injury to the productive resources (*e.g.*, employees, physical facilities, and capital) employed in the divisions or plants in which the article in question is produced."[31] [32] The Commission highlighted this fundamental concern in defining its like products and domestic industries in the 1984 Steel safeguard case, where the imports involved a diversity of products

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[26] H.R. Rep. No. 93-571, at 45 (1973); S. Rep. No. 93-1298, at 121-122 (1974). The Commission also may consider whether there are directly competitive products pursuant to 19 U.S.C. § 2482(5) ("section 601(5)"). Under that provision, the Commission may consider whether there are directly competitive products by analyzing what products may be commercial equivalents for the subject imports and/or if earlier or later processed domestic products are suffering the "comparable" economic effects of imports.

[27] *See, e.g., Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-6 (Dec. 2000); *Crabmeat from Swimming Crabs*, Inv. No. TA-201-71, USITC Pub. 3349 at I-6 (Aug. 2000); *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 at I-10 (Dec. 1999); *Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 at I-9 (July 1999).

[28] *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-6 (Dec. 2000); *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 at I-10 (Dec. 1999).

[29] *Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-48, USITC Pub. 1377 at 12 (May 1983).

[30] *Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-48, USITC Pub. 1377 at 16, n.21 (May 1983).

[31] H.R. Rep. 93-571, at 46 (1973).

[32] The 1988 amendments to the Trade Act reinforced the objective of protecting the productive resources of domestic producers. H.R. Rept. 100-576, at 661-662 (1988); S. Rept. 100-71, at 46-47 (1987); H.R. Rept. 100-40, at 86-96 (1987).

and in which the Commission found nine products that were like or directly competitive with the imported articles.[33] The Commission stated:

> The breadth of this investigation, covering such a diversity of products, requires the Commission to define like or directly competitive in a manner that reflects the realities of the market and at the same time accomplishes the fundamental purpose of section 201, protection of the productive resources of domestic producers. Thus, the Commission considers both the productive facilities and processes and the markets for these products in determining those articles that may be considered like or directly competitive within the meaning of section 201.[34]

The starting point for the Commission's analysis of the domestic industry producing a like or directly competitive article is with the imported product or products included within the investigation that is set forth in the request or petition.[35] While the Commission begins with the universe of imports identified in the request, the Commission only is required to define or identify the domestic article or articles like or directly competitive with the imported product or products in the petition or request and is not required to consider, in the first instance, whether and how to subdivide the imported article or articles.[36] The Commission has recognized that the like or directly competitive article, and thus the domestic industry, are not necessarily coterminous with the description of the imported articles subject to investigation.[37] As noted above, the decision regarding the like or directly competitive product is a factual determination.

The President's request (as well as the Senate Committee on Finance's request) in this safeguard investigation grouped the wide array of steel products into four general categories: (1) certain carbon and alloy flat products, (2) certain carbon and alloy long products, (3) certain carbon and alloy pipe and

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[33] For example, one of the nine like products defined in 1984 Steel encompassed hot-rolled, cold-rolled, and coated products, each of which has been defined as a separate domestic like product in Title VII investigations. *See, e.g., Carbon and Certain Alloy Steel Products*, Inv. No. TA-201-51, USITC Pub. 1553 at Appendix C (July 1984) ("1984 Steel"). *See also Bolts, Nuts, and Large Screws of Iron or Steel*, Inv. No. TA-201-37, USITC Pub. 924 at 4 (Nov. 1978); *Certain Headwear*, Inv. No. TA-201-23, USITC Pub. 829 at 5 (Aug. 1977).

[34] *Carbon and Certain Alloy Steel Products*, Inv. No. TA-201-51, USITC Pub. 1553 at 12-13 (July 1984).

[35] This is evident in the statute, 19 U.S.C. § 2252(b)(1)(A), which indicates that the Commission shall conduct an investigation to consider "the domestic industry producing an article like or directly competitive with the imported article."

[36] *Compare* 19 U.S.C. § 1673(1)("the administering authority determines that a class or kind of foreign merchandise . . . ."). The statute, however, directs the Commission in a safeguard investigation to define the domestic industry in order to conduct its analysis and make its determination regarding that industry. 19 U.S.C. §§ 2252(b)(1)(A) and (c)(4). *Contra* Joint Respondents' Carbon Flat Posthearing Brief, Vol. I at 22-26 and Vol. II.B. (Response to Vice Chairman Okun's Questions) at 10-11; USWA's Posthearing Brief at 4-5; Schagrin's Overview Posthearing Brief at 3-4.

[37] *See, e.g., Fresh Winter Tomatoes*, Inv. No. TA-201-64 (Provisional Relief Phase), USITC Pub. 2881 at I-7 (April 1995)("The domestic industry or industries are not necessarily coterminous in scope with the imported articles– there may be more than one industry, and/or the industry or industries may encompass a broader or narrower array of products than that identified in the notice of investigation."). *See generally, Certain Cameras*, Inv. No. TA-201-62, USITC Pub. 2315 at 7 (Sept. 1990); *Certain Metal Castings*, Inv. No. TA-201-58, USITC Pub. 1849 at 7-8 (June 1986); *Carbon and Certain Alloy Steel Products*, Inv. No. TA-201-51, USITC Pub. 1553 at 12-13 (July 1984); *Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-48, USITC Pub. 1377 at 15-16 (May 1983).

tube products, and (4) certain stainless steel and alloy tool steel products.[38] While the Commission is not bound in any way by these groupings, we found that they provide a useful starting point for our analysis of what is a like or directly competitive product since the broad array of products in each of the four groupings tend to share some common properties and uses, and share distinct differences from products in the other groupings.[39] Finally, we note that while 33 product categories were established by the Commission for the collection of data, these categories are not the starting point for and do not control the Commission's analysis.[40]

B. Increased Imports

Statutory Framework and Commission Practice. The first of the three statutory criteria for an affirmative determination in a safeguard investigation is that imports must be in "increased quantities." Under 19 U.S.C. § 2252(c)(1)(C), imports are considered to have increased when the increase is "either actual or relative to domestic production."[41] In determining whether imports have increased, the Commission considers imports from all sources. The Commission traditionally has considered import

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[38] Several requests to exclude niche or specialty products encompassed within the Presidential or Congressional request from any injury determination were made on the grounds that these products are not produced or available domestically and hence cannot be a cause of serious injury to the domestic industry. A few of these "exclusion" requests were evaluated in the context of a like product argument below, if appropriate. There is no statutory provision directing the Commission to exclude products within the request from its injury determination in safeguard investigations on the basis that the products are not produced domestically. *See* 19 U.S.C. § 2252. The Commission, however, considered these "exclusion" requests in the context of its remedy determinations, as discussed in the Commission's separate remedy opinions.

[39] The Commission considered and rejected the argument raised by the United Steelworkers of America ("USW") that the Commission should define a single like product consisting of all steel products under investigation. USW Prehearing Brief at 5. Although a class of products approach may be appropriate for certain discrete categories of related products, we find that the diversity of products under investigation is too broad to encompass a single like product defined as all steel products. The record demonstrates that the similarities (all made of steel) are outweighed by the differences (different types of steel, physical properties, shapes, sizes, uses, production processes, equipment, facilities, and marketing channels) and therefore does not support defining all steel products as a single like product.

[40] Some parties appear to argue that these data collection categories are akin to the Department of Commerce class or kind findings in a Title VII case and therefore control the Commission's analysis. However, these parties fail to recognize that even in a Title VII proceeding, the Commission is not bound by class or kind findings. *See, e.g.,* Hosiden Corp. v. Advanced Display Manufacturers, 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). Moreover, parties' arguments that the use of the singular rather than plural for "an article" in the statute prohibits definition of a class of products fails to recognize that each of the supposedly separate articles, *i.e.*, the 33 product categories which were created by the Commission, themselves consist of pools of products of different grades, sizes, etc. as evident by the numerous requests regarding niche products. *See, e.g.,* Joint Respondents' Carbon Flat Posthearing Brief at 22-23. *Compare Certain Cameras*, Inv. No. TA-201-62, USITC Pub. 2315 at 9 (Sept. 1990) (five like products defined) ***with*** *Circular Welded Carbon Quality Line Pipe,* Inv. No. TA-201-70, USITC Pub. 3261 at I-10-11 (Dec. 1999)(various sizes and grades defined as one like product) ***and*** *Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 at I-9-10 and I-35 (July 1999).

[41] 19 U.S.C. § 2252(c)(1)(C).

trends over the most recent five-year period as a framework for its analysis, but can consider longer or shorter periods and may focus on the most recent period, as it deems appropriate.[42]

C. Serious Injury Or Threat Thereof

Statutory Framework and Commission Practice. The second of the three statutory criteria concerns whether the domestic industry is seriously injured or threatened with serious injury. The statute defines "serious injury" as being "a significant overall impairment in the position of a domestic industry."[43] The term "threat of serious injury" is defined as "serious injury that is clearly imminent."[44]

In determining whether serious injury or threat exists, the Commission considers "all economic factors which it considers relevant, including (but not limited to)" the following–

(A) with respect to serious injury –

(i) the significant idling of productive facilities in the domestic industry,[45]

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury --

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development, and

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.[46]

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[42] *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-8 (Dec. 2000).

[43] 19 U.S.C. § 2252(c)(6)(C).

[44] 19 U.S.C. § 2252(c)(6)(D).

[45] In this regard, the statute provides that the term "significant idling of productive facilities" includes the "closing of plants or the underutilization of production capacity." 19 U.S.C. § 2252(c)(6)(B).

[46] 19 U.S.C. § 2252(c)(1)(A) and (B).

The presence or absence of any of these factors is not "necessarily dispositive" of whether increased imports are a substantial cause of serious injury, or the threat of serious injury, to the industry."[47] In addition, the Commission must "consider the condition of the domestic industry over the course of the relevant business cycle."[48]

D. Substantial Cause

Statutory Framework and Commission Practice. The third statutory criterion concerns whether the subject article is being imported in such increased quantities as to be a "substantial cause" of serious injury or threat.[49] The statute defines "substantial cause" as meaning "a cause which is important and not less than any other cause."[50] Thus, increased imports must be both an important cause of the serious injury or threat *and* a cause that is equal to or greater than any other cause.

In determining whether increased imports are a substantial cause of serious injury or threat of serious injury, the statute directs that the Commission take into account all economic factors that it considers relevant, including but not limited to ". . . an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers."[51] The statute further directs that the Commission consider "the condition of the domestic industry over the course of the relevant business cycle," but provides that the Commission "may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury."[52]

Moreover, the statute directs that the Commission "examine factors other than imports" that may be a cause of serious injury or threat of serious injury to the domestic industry and include the results of its examination in its report.[53] Neither the statue nor the legislative history rules out consideration of any other possible causes of injury.[54] Thus, the statute directs the Commission to (1) examine possible causes of serious injury other than increased imports, and (2) to make findings with respect to these other causes. According to the legislative history, the purpose of this provision "is to assure that all factors injuring the domestic industry are identified."[55]

E. Findings Regarding NAFTA Imports

Statutory Framework and Commission Practice. Section 311(a) of the NAFTA Implementation Act (19 U.S.C. § 3371(a)) provides that if the Commission makes an affirmative injury determination in

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[47] 19 U.S.C. § 2252(c)(3).

[48] 19 U.S.C. § 2252(c)(2)(A).

[49] 19 U.S.C. § 2252(b)(1)(A).

[50] 19 U.S.C. § 2252(b)(1)(B).

[51] 19 U.S.C. § 2252(c)(1)(C).

[52] 19 U.S.C. § 2252(c)(2)(A).

[53] 19 U.S.C. § 2252(c)(2)(B).

[54] The legislative history of the Trade Act includes examples of these types of other causes "such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management," which if found to be more important causes of injury than increased imports, would require a negative determination. S. Rept. No. 93-1298, at 121 (1974).

[55] S. Rept. No. 100-71, at 50 (1987).

a safeguard investigation (or is equally divided with respect to injury), the Commission must find whether:

(1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and

(2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.[56] [57]

Under 19 U.S.C. § 3371(b)(1), imports from a NAFTA country "normally shall not be considered to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period."[58] The statute also indicates that imports from a NAFTA country are considered to "contribute importantly to the serious injury or threat thereof" when they are "an important cause, but not necessarily the most important cause."[59] In determining whether such imports have contributed importantly to the serious injury or threat thereof, the Commission is directed to consider "such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports of such country or countries."[60] Imports from a NAFTA country or countries "normally shall not be considered to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from such country or countries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period."[61]

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[56] 19 U.S.C. § 3371(a).

[57] The Commission considered and rejected Russian Respondents' request to create an exception for imports from Russia equivalent to the exception for NAFTA countries. While various steel products from Russia are subject to quantitative restraints and/or suspension agreements entered pursuant to 19 U.S.C. § 1673c(l), there is nothing within any of these agreements that indicates an intention that the Commission treat imports from Russia in a safeguard proceeding as *per se* non-injurious or in the same manner that it treats NAFTA imports. A specific statutory provision instructs the Commission to accord special treatment to NAFTA countries in injury determinations in safeguards investigations. Moreover, the legislative history of the NAFTA provision indicates that one of the reasons legislation was necessary was because Commission safeguards investigations encompass imports from all sources. H.R. Rep. 103-361(I) at 57, 59 (1993). There is no comparable provision concerning imports from Russia, imports subject to quantitative restrictions, or imports subject to suspension agreements. Furthermore, as discussed below, the existence of orders or suspension agreements under the antidumping and countervailing duty laws, of which 19 U.S.C. § 1673c(l) is a part, does not preclude the Commission from determining in a safeguards investigation that increased imports are a substantial cause of serious injury or threat of serious injury. Consequently, we see no basis to accord special treatment to imports from Russia by administrative fiat. Nevertheless, if the facts warrant, we may consider such agreements or restrictions as a condition of competition in our analysis.

[58] 19 U.S.C. § 3371(b)(1).

[59] 19 U.S.C. § 3371(c).

[60] 19 U.S.C. § 3371(b)(2).

[61] 19 U.S.C. § 3371(b)(2).

IV. CERTAIN CARBON AND ALLOY FLAT PRODUCTS

A. Domestic Industry Producing a Like or Directively Competitive Article

As discussed in Section III.A. above, the starting point for the Commission's analysis of the domestic industry producing a like or directly competitive article is with the imported product or products subject to investigation as set forth in the request. The President's request (as well as the Senate Committee on Finance's request) in this safeguard investigation grouped the wide array of steel products into four general categories: (1) certain carbon and alloy flat products, (2) certain carbon and alloy long products, (3) certain carbon and alloy pipe and tube products, and (4) certain stainless steel and alloy tool steel products. While the Commission is not bound by these groupings, we found them to provide a useful starting point for our analysis of what is a like or directly competitive article since the broad array of products in each of the four groupings tend to share some common properties and uses, and also exhibit distinct differences from products in the other groupings.[62] Thus, our analysis in this section covers the range of products broadly categorized as certain carbon and alloy flat products.[63]

For the reasons discussed below, we find: (1) one domestic industry producing slab, hot-rolled steel, plate, cold-rolled steel, and coated steel, which is the article, "certain carbon flat-rolled steel,"[64] that is like the imported certain carbon flat-rolled steel; (2) one domestic industry producing the article, grain-oriented electrical steel ("GOES"), that is like the imported GOES; and (3) one domestic industry producing the article, tin mill products, that is like the imported tin mill products.[65]

1. Domestic Industry Producing Certain Carbon Flat-Rolled Steel

We find that domestic certain carbon flat-rolled steel is like the imported certain carbon flat-rolled steel that is the subject of this investigation and that there is one domestic industry producing certain carbon flat-rolled steel. In terms of physical properties, imported and domestic certain carbon flat-rolled steel share the same basic physical attributes and are generally interchangeable.[66] The evidence indicates that imported certain carbon flat-rolled steel consists mainly of the same range of

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[62] Finally, as discussed above, we note that while the 33 product categories, seven of which pertain to carbon and alloy flat products, were established by the Commission for the collection of data, these categories are not the starting point and do not control the Commission's analysis.

[63] As discussed above, in assessing what constitutes the like product, the Commission traditionally has taken into account such factors as the physical properties of the product, its customs treatment, its manufacturing process (*i.e.*, where and how it is made), its uses, and the marketing channels through which the product is sold. The Commission may consider other factors it deems relevant and the weight given to each individual factor will depend upon the facts in the particular case. The Commission traditionally has looked for clear dividing lines among possible products and has disregarded minor variations. The firms producing the like or directly competitive article constitute the domestic industry. *See, e.g., Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-6 (Dec. 2000); *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 at I-10 (Dec. 1999).

[64] The article defined as certain carbon flat-rolled steel is comprised of data collection categories slab, hot-rolled steel, plate, cold-rolled steel, and coated steel.

[65] Commissioner Devaney has applied the same basic analysis as the majority. However he finds a single like product consisting of all flat products. His rationale for this approach is further explained at footnotes 83, 126, 137, 141, 163, 180, 188, and 224.

[66] CR at FLAT-68 and 72, PR at FLAT-54 and 58.

carbon steel as the domestic certain carbon flat-rolled steel.[67] Moreover, the uses for the domestic article are similar to those for the imported article with the same metallurgic composition, thickness, width, and amount of processing.[68] The production process for making carbon flat-rolled steel generally is not significantly different between mills in the United States and in other countries.[69] While the relative mix differs, there is an overlap in the marketing channels for domestic and imported certain carbon flat-rolled steel in that both are sold to end-users and to distributors/service centers.[70] In view of the above, we find that the domestic article, certain carbon flat-rolled steel, is like the imported certain carbon flat-rolled steel.[71]

We considered whether to analyze specific types of certain carbon flat-rolled steel separately or as a whole. Certain carbon flat-rolled steel at different stages of processing share certain basic physical properties and are interrelated to a certain degree. This steel has a common metallurgical base, with desired properties and essential characteristics embodied in the steel prior to the casting or semifinished stage.[72] Carbon steel generally is defined as a combination of carbon and iron that is usefully malleable as first cast, and in which iron predominates, by weight, over each of the other contained elements and the carbon content is two percent or less, by weight.[73] Certain carbon flat-rolled steel includes traditional nonalloy steel and newer classes of carbon steels that have been modified through the addition of small amounts of alloying elements (microalloyed).[74] Carbon steel includes most common grades of steel and generally is less expensive to produce than the various grades of alloy steels, due primarily to the cost of

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[67] CR and PR at Tables FLAT- 4-7, FLAT-9, FLAT-12-15, and FLAT-17.

[68] CR and PR at FLAT-68, PR at FLAT-54.

[69] *See, e.g., Hot-Rolled Steel Products from Argentina and South Africa*, Inv. Nos. 701-TA-404 and 731-TA-898 and 905 (Final), USITC Pub. 3446 at I-6 (Aug. 2001). For example, continuous casting is used by most steelmakers world wide, including the vast majority of U.S. steelmakers, although some steel still is cast into ingots before being processed into semifinished forms. CR and PR at OVERVIEW-8.

[70] *Compare* CR and PR at Tables FLAT-12-15 and FLAT-17 to USITC Pub. 3446 at I-10 and Table I-1 (Aug. 2001), USITC Pub. 3142 at Table I-2 (Nov. 1998),USITC Pub. 3283 at I-9 (Mar. 2000), and USITC Pub. 3181 at Table I-1 (Apr. 1999).

[71] We did not find consideration of customs treatment to be a useful factor for the carbon and alloy flat products in this investigation, given the large number of classification categories (55) applicable to these products.

[72] CR and PR at OVERVIEW-8.

[73] *Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia*, Inv. Nos. 701-TA-384 and 731-TA-806-808 (Preliminary), USITC Pub. 3142 at I-3 (Nov. 1998). The chemical composition of carbon steel traditionally has been defined as:

> steel for which no minimum content is specified or required for chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, vanadium, or zirconium, or any other element added to obtain a desired alloying effect; when the specified minimum for copper does not exceed 0.40 percent; or when the maximum content specified for any of the following elements does not exceed the percentages noted: manganese 1.65, silicon 0.60 and copper 0.60.

Id. at I-3 and I-4, *citing to* HTS, chap. 72, notes 1(d) and 1(f).

[74] *Hot-Rolled Steel Products from Argentina and South Africa*, USITC Pub. 3446 at I-5 (Aug. 2001). New classes of microalloy steels include: interstitial-free or "IF" steels, which are recognized as low-carbon steels with microalloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements; and high strength low alloy or "HSLA" steels, which are recognized as steels with microalloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. USITC Pub. 3142 at I-2, n. 7.

the alloying elements.[75] The alloying elements, the weight of which exceed limits imposed in the HTS and traditional industry definitions of nonalloy steels, include titanium (to make certain interstitial-free or "IF" steels); copper (to enhance the weathering ability of certain carbon steels); and niobium, vanadium, and boron (to enhance the hardenability and strength of nonalloy steels).[76]

All certain carbon flat-rolled steel originally is made of raw materials that include carbon and iron. The mix in metallurgy depends on the requirements of the end-use, whether the end-use is at the same or different stages of processing. Thus, the chemical content of such steel essentially is determined at the melt stage of processing with some reductions in carbon content possible through subsequent hydrogen annealing.[77]

Certain carbon flat-rolled steel includes steel at any of the following five stages of processing: slab, hot-rolled steel, cut-to-length ("CTL") plate, cold-rolled steel, and coated steel. Steel at one stage of processing generally is feedstock for the next stage of processing.[78] The interrelationship between the products is prominent at the earlier stages. For example, slab is dedicated for use in producing the next stage steel, hot-rolled steel, whether produced as sheet, strip, or plate.[79] The majority of hot-rolled steel is further processed into cold-rolled steel.[80] The remaining hot-rolled steel is about equally divided between being further processed into CTL plate or pipe and tube, and used in the manufacture of structural parts of automobiles and appliances.[81] The majority of cold-rolled steel also is used as the feedstock for further processing into coated steel, with smaller amounts further processed into tin mill products or GOES.[82] [83]

Since earlier processed carbon flat-rolled steel is the feedstock for further processed steel, such steel is produced using essentially the same production processes at least at the initial stages, with downstream steel merely employing later stages of processing.[84] For example, all certain carbon flat-

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[75] *Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia*, USITC Pub. 3142 at I-3 (Nov. 1998).

[76] *Hot-Rolled Steel Products from Argentina and South Africa*, USITC Pub. 3446 at I-5 (Aug. 2001), *citing to* HTS, chap. 72.

[77] CR and PR at OVERVIEW-8.

[78] For example, slab is feedstock for hot-rolled steel (sheet, strip, and plate); hot-rolled steel is feedstock for cold-rolled steel and cut-to-length plate; and cold-rolled steel is feedstock for coated steel.

[79] CR and PR at FLAT-1.

[80] More than half of hot-rolled steel is further processed into cold-rolled steel. Calculated from CR and PR at Table FLAT-1. *See also Hot-Rolled Steel Products from Argentina and South Africa*, USITC Pub. 3446 at I-9 and I-10, and Table I-1.

[81] CR and PR at FLAT-2 and Table FLAT-1. *See also Hot-Rolled Steel Products from Argentina and South Africa*, USITC Pub. 3446 at Table I-1 and *Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia*, USITC Pub. 3142 at Table I-2.

[82] Calculated from CR and PR at Table FLAT-1. *See also Certain Carbon Steel Products (Review)*, USITC Pub. 3364 at COLD-I-13 (Nov. 2000); *Hot-Rolled Steel Products from Argentina and South Africa*, USITC Pub. 3446 at Table I-1 and *Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia*, USITC Pub. 3142 at Table I-2. As discussed below, we have found a clear dividing line between certain carbon flat-rolled steel and both tin mill products and GOES.

[83] Commissioner Devaney notes that the record evidence indicates that cold rolled steel, as noted by the majority, is the feedstock for GOES. GOES is manufactured from the inception of its processing to stringent standards. Cold rolled steel also is the feedstock for tin mill products, which are likewise dedicated by manufacturers at the inception of production as tin mill steel. This is a continuous manufacturing process for both products beginning at the time ore is actually placed into the furnace.

[84] *See, e.g.*, USITC Pub. 3364 at COLD-I-13 and USITC Pub. 3337 at I-6 (Aug. 2000).

rolled steel is produced from slab, with the majority of such steel further processed into hot-rolled steel on hot strip or Steckel mills.[85] While the production processes vary depending on the stage of processing, there is substantial vertical integration in the industry and commonality of facilities.

The vast majority of certain carbon flat-rolled steel is produced by firms that are involved in a number of the stages of processing and these firms internally transfer substantial quantities of earlier processed steel for their production of further processed steel. Virtually all U.S.-produced slab is internally consumed by the domestic slab producers in their production of hot-rolled steel (sheet, strip, or plate), with large shares of hot-rolled and cold-rolled steel also internally transferred. During the year 2000, 99.4 percent of the quantity of domestic producers' total U.S. shipments of slab were internally transferred, as were 66 percent of the quantity of domestic producers' total U.S. shipments of hot-rolled steel, and 58.7 percent of the quantity of total U.S. shipments of domestically-produced cold-rolled steel.[86] This tends to blur product distinctions until the processing reaches its final stages since earlier stages simply are feedstock for the next stage.

The substantial internal transfers of feedstock underscore the fact that domestic producers are highly integrated, with *** percent of total production of certain carbon flat-rolled steel made by producers of at least 4 of the 5 types of certain carbon flat-rolled steel.[87] Domestic producers of hot-rolled steel shipped 94.7 percent of U.S. shipments of cold-rolled steel and 84.8 percent of coated steel in 2000.[88] Conversely, domestic producers of cold-rolled/coated steel shipped 89.1 percent of U.S. shipments of hot-rolled steel in 2000.[89]

The manufacturing processes for carbon steel involve three distinct stages that include: (1) melting or refining raw steel; (2) casting molten steel into semifinished form, such as slab; and (3) performing various stages of finishing operations, including hot-rolling, cold-rolling, and/or coating.[90] Carbon steel is produced either by the integrated or nonintegrated process.[91] Regardless of whether the integrated or nonintegrated process is used, a secondary steelmaking stage or ladle metallurgy station is utilized to refine and improve the steel.[92] Adjustments can be made to the chemical content of the steel, by adding alloying elements or by lowering the carbon content (de-carburization), and to the temperature

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[85] USITC Pub. 3446 at I-8. Some plate also is hot-rolled on reversing plate mills. *See* USITC Pub. 3364 at PLATE-I-26 (Nov. 2000).

[86] CR and PR at FLAT-1 and 3, nn. 4 and 5.

[87] Calculated from INV-Y-190 at Table 1.

[88] INV-Y-207 at Table X-1; INV-Y-200 at Table X-1.

[89] INV-Y-207 at Table X-2; INV-Y-200 at Table X-2.

[90] CR and PR at OVERVIEW-7.

[91] CR and PR at OVERVIEW-8. The nonintegrated or scrap-based process (often referred to as the "minimill" process) produces molten steel by melting scrap or scrap substitutes in an electric arc furnace. The integrated process typically smelts iron ore and coke in a blast furnace to produce molten iron, which is subsequently poured into a steelmaking furnace (generally a basic oxygen furnace) together with a lesser amount of scrap metal. The hot metal is processed into steel when oxygen is blown into the metal bath. The molten steel is poured or tapped from the furnace to a ladle to be transported to a ladle metallurgy station and then to casting. *Id.* It should be noted that some producers using the minimill process describe themselves as integrated producers.

[92] CR and PR at OVERVIEW-8. The secondary steelmaking stage is utilized to control gases, reduce sulfur, remove or change undesirable nonmetallic inclusions such as oxides and sulphides, and improve the mechanical properties of the finished steel. *Id.* at n.11.

of the steel for optimum casting.[93] The essential characteristics of the steel are established at this point prior to the casting stage.[94]

Following the production of molten steel with the desired properties, the steel is cast into a form that can enter the rolling process. The vast majority of carbon flat-rolled steel currently produced in the United States is continuously cast either through the conventional process used by most U.S. and foreign integrated producers or through the thin- or thinner-slab casting process used by all of the greenfield minimill facilities.[95]

All slab is further processed into hot-rolled steel, including sheet, strip, and plate. The semifinished product is transferred to a rolling mill where it is heated prior to rolling and then passed through one or more sets of revolving rolls that reduce its thickness and/or change its shape in a process known as "hot-rolling."[96] The same or similar production processes are used for hot-rolling. Hot-strip mills [97] and Steckel mills[98] produce sheet, strip and plate, but reversing mills only produce plate.[99] Hot-strip mills increasingly are being equipped with coilboxes, which reduce the length of a hot-strip mill, lower operating costs, and offer improvements in product quality.[100] Steckel mills share certain common features with both reversing and hot-strip mills.[101]

Advances in technology have blurred the former differences in hot-rolled production processes for sheet/strip and plate.[102] The Steckel mills permit rolling to thinner gauges than a traditional reversing

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[93] CR and PR at OVERVIEW-8.

[94] CR and PR at OVERVIEW-8.

[95] CR and PR at OVERVIEW-8; USITC Pub. 3446 at I-7. Differences between thin-slab casting and conventional continuous-strand slab casting include the shape of the casting mold, the desired thickness of the slab, and the linkage of steel casting with direct hot-rolling in thin-slab facilities. USITC Pub. 3446 at I-7. *See* pages 32-33 *infra* for a discussion of some technological changes in the production of slab.

[96] CR and PR at OVERVIEW-8. During the hot-rolling process, a process known as pickling, which involves passing the hot-rolled product through a series of acid baths, is used to remove the formation of oxides on the steel from exposure to water and the atmosphere, and a process known as annealing is used for controlled reheating and cooling. *Id.* and USITC Pub. 3446 at I-8, n.17.

[97] Hot-strip mills consist of a scalebreaker, a roughing train consisting of four or five rolling stands that reduce the slab or a single reversing stand in which the slab is passed back and forth through the stand, and a finishing train with four to seven stands to reduce the transfer bar to the desired thickness of the hot-rolled steel. The flat-rolled product exits the finishing train, where it is subjected to a combination of water sprays, laminar jets and/or air cooling, and then the steel is coiled. USITC Pub. 3446 at I-8.

[98] In the Steckel mill process, the slab is passed through a scalebreaker and reduced to the desired intermediate thickness. It is then fed back and forth through the reversing mill from one coilbox to the other. The series of passes through the rolling stand reduces the steel to the desired final thickness. USITC Pub. 3446 at I-8.

[99] USITC Pub. 3364 at PLATE-I-26 and USITC Pub. 3446 at I-8.

[100] USITC Pub. 3446 at I-8.

[101] USITC Pub. 3446 at I-8. The primary distinction for the Steckel mill compared to the hot-strip mill lies in the placement of a heated coilbox on either side of a single strand reversing mill. Slab can also be rolled back and forth without using the heated coilboxes, in which case the Steckel mill operates like a conventional reversing plate mill. *Id.*

[102] The data for plate are included in both the hot-rolled data collection category, if in coil form, and the CTL plate category, if flat. CR and PR at FLAT-1-2. While recent Title VII investigations conducted by the Commission have included plate in coil form as a hot-rolled product and only included cut-to-length plate and discrete plate in the CTL plate category, these distinctions have been based on the scope of investigation presented to the Commission. *See Certain Flat-Rolled Carbon Steel Products*, USITC Pub. 2664 at 12-14; *Certain Carbon*

mill thus permitting a producer to switch production between sheet and plate.[103] Steckel mills also allow steelmakers to coil the finished plate, as on a hot-strip mill.[104] Moreover, the addition of temper mills to CTL lines has made heavy gauge hot-rolled interchangeable with discretely produced plate.[105] Without the temper mill process, coils cut into lengths tend to retain memory and "snap back" or bend after the initial flattening.[106] While plate in coils can only be produced in thicknesses up to 3/4 inch and thus can only be substituted for CTL plate up to 3/4 inch thick, this portion of the CTL plate market is large.[107] Thus, the share of the CTL plate market which can be, and is being, supplied with plates cut from coil is substantial.[108]

The majority of hot-rolled steel is feedstock for cold-rolled steel and thus is subjected to the further processing of cold-rolling. Cold-reduction rolling involves a fairly large reduction in the thickness of the hot-rolled material, typically ranging from 25 to 90 percent.[109] Cold-rolled steel that will be used as a feedstock for hot-dipped galvanized steel usually is not annealed or temper rolled since those operations are included on the continuous galvanizing lines, while cold-rolled steel used as a feedstock for electrolytically galvanized steel or tin plate usually is annealed and temper rolled.[110] Cold-

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Plate from China, Russia, South Africa, and Ukraine, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076 at 7 (Dec. 1997). In 1984 Steel, the Commission defined separate like products for plate and sheet/strip due to differences in production processes, uses, and thickness. At that time, sheet/strip was produced on a continuous process while the production of plate generally was rolled piece by piece on reversing mills. USITC Pub. 1553 at 20.

[103] Dewey/Skadden Prehearing Brief at 23-24.

[104] USITC Pub. 3446 at I-8. Plate in coils is made on both Steckel mills and the hot strip mills, with sheet/strip also produced on these mills. Injury Tr. at 693-694 and 749-753.

[105] Dewey/Skadden Posthearing Brief, Exhibit A at 27, n.49.

[106] Temper rolling produces a flat plate by removing the memory of steel that has been wound in coils. Domestic producers estimate that the capacity for cutting heavy gauge hot-rolled coil (*i.e.*, plate in coil) into cut-to-length plate has increased dramatically from only six temper-pass-cut-to-length lines existing in 1998 to 16 temper-pass CTL lines operating in North America by the end of 2000. Dewey/Skadden Posthearing Brief, Exhibit A at 27 and n. 49.

[107] There is evidence that some mills can produce plate in coils in gauges up to one inch. Injury Tr. at 751. AISI surveys indicate that 54-63 percent of the U.S. market for CTL plate is in thicknesses 5/8 inch and under. Dewey/Skadden Posthearing Brief, Exhibit A at 28 and Appendix 12.

[108] For example, one respondent acknowledged that both cut-to-length plate and coil plate "are sold in the merchant market and are also captively consumed to make large diameter pipe." Injury Tr. at 562 (Oregon Steel Mills). Another domestic producer, IPSCO, noted at the hearing that the overlap between products has resulted in their investing "in both cut-to-length processing lines, as well as mills that produce plate in both coil form and directly as cut-to-length plate. The coil plate produced in our Mobile and Montpelier facilities can be cut to length and temper leveled and competes directly with domestically produced cut-to length plate and imported cut-to-length plate." Injury Tr. at 694 (IPSCO).

[109] USITC Pub. 3446 at I-8, n.18. The hot-rolled steel is pickled, treated with an oil, and then processed through a cold-rolling mill, which is typically a continuous or tandem mill having four to six roll stands. USITC Pub. 3364 at COLD-I-13. Since the cold-rolling process hardens steel, it usually is annealed to make it more formable, and then followed by rolling on a temper mill to produce the desired hardness, flatness, and surface quality. Temper rolling involves a very light reduction in thickness and is not cold-rolling. *Id.*

[110] USITC Pub. 3364 at COLD-I-13-14.

rolling is performed for a variety of reasons, including a desired reduction in product thickness, a need to impart specific mechanical properties, or to impart a specific surface texture.[111]

A large portion of cold-rolled steel is subjected to an additional further process by applying a coating to produce a corrosion-resistant steel.[112] There are seven alternative processes for applying coatings. The two principal processes are hot-dipped galvanizing and electrolytic galvanizing.[113] Galvanizing is the process of coating a steel substrate with zinc.[114] The hot-dipped process involves immersion of cold-rolled steel in a bath of molten metal, such as hot zinc, with the coating solidifying as it cools.[115] The electrogalvanizing process involves passing the cold-rolled steel through a solution containing dissolved zinc, which is deposited on the steel by an electrolytic reaction.[116] Certain carbon flat-rolled steel is coated with metals or nonmetallic substances to improve its aesthetics, reduce final product cost, improve corrosion resistance, and anticipate the requirements of downstream forming operations.[117]

The interrelationship between the production processes and integration of the producers demonstrates that the market for each type of certain carbon flat-rolled steel is not isolated, but directly affected by the markets across the spectrum of types of certain carbon flat-rolled steel. Most producers can vary their product mix based on demand conditions and capacity. For example, in response to increased demand for cold-rolled steel, a firm could make the decision to sell less hot-rolled steel on the commercial market and internally transfer more hot-rolled steel to be further processed at its cold-rolling mill. The basic flow of the production process means that a change in supply or demand for any type of certain carbon flat-rolled steel may affect the production volumes and ultimately the financial performance of all of the other types of such steel, whether upstream or downstream. Thus, the overall financial performance of each producer may be directly affected by the relative levels of production and sales of each type of certain carbon flat-rolled steel.

The record reflects that firms allocate productive resources within a facility depending in part on the profitability of the different types of certain carbon flat-rolled steel. For example, domestic producer IPSCO provided the Commission information on its optimum output computer program used to allocate production and sales across its range of flat-rolled products.[118] IPSCO's model seeks to *** for the types of flat-rolled steel that it produces.[119] Thus, ***.[120] Other evidence indicates some firms track performance by divisions that combine performance for groupings of types of steel, such as all certain carbon flat-rolled steel, on the same business plans.[121]

Moreover, there is evidence of a close relationship in the prices of hot-rolled, plate, cold-rolled and coated steel. Not surprisingly, pricing correlations are most evident between products from one

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[111] USITC Pub. 3446 at I-8, n.18.

[112] CR and PR at Table FLAT-1 and USITC Pub. 3364 at COLD-I-13.

[113] USITC Pub. 3364 at CORROSION-I-17 and I-18.

[114] USITC Pub. 3364 at CORROSION-I-17.

[115] CR and PR at OVERVIEW-10 and USITC Pub. 3364 at CORROSION-I-17 and I-18.

[116] CR and PR at OVERVIEW-10 and USITC Pub. 3364 at CORROSION-I-17 and I-18.

[117] USITC Pub. 3446 at I-8, n.19.

[118] Schagrin's (Minimill) Posthearing Brief on General Issues, Exhibit 2.

[119] Schagrin's (Minimill) Posthearing Brief on General Issues, Exhibit 2 at 3.

[120] According to IPSCO, ***. Schagrin's (Minimill) Posthearing Brief on General Issues, Exhibit 2 at 3.

[121] *See, e.g.*, Dewey/Skadden Posthearing Brief at Appendix 16. Business plans from ***. *Id.*

stage of processing to an adjacent stage.[122] Some parties, both domestic producers and respondents, acknowledge that there are at least some cross-price effects between steel at different stages of processing.[123] Indeed, domestic slab importers acknowledged that slab prices are solely a function of downstream prices for hot-rolled steel and cold-rolled steel, which would suggest a strong cross-price effect between these types of steel.[124] We have recognized the interrelationship between the price of hot-rolled and cold-rolled steel in the recent Title VII investigation on *Cold-Rolled Steel*.[125] [126]

The primary end-use applications for commercial shipments of certain carbon flat-rolled steel are the automotive and construction industries.[127] Thus, while hot-rolled steel may not be substituted for a coated sheet in a car fender, all certain carbon flat-rolled steel is directly affected by the demand for automobiles, since all types are used in the production of automobiles, albeit in different applications.

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[122] *See* CR and PR at Tables FLAT-66-71, and FLAT-73-74; EC Chart: Price correlations among products in flat-rolled steel (excluding GOES).

[123] *See, e.g.*, Dewey/Skadden Prehearing Brief at 15-17 and Exh. 4 (alleging cross-price effects between various combinations of types of certain carbon flat-rolled steel; Slab Purchaser Posthearing Brief at 52-54 and Attachments B and C; Jt. Respondents' Posthearing Brief, Vol. III, Tab C at 22-24 (adjusting domestic producers' analysis to arrive at a lower level of cross-price effects); Injury Tr. at 412-421 587-591, 606-607, 638-645.

[124] Slab Purchaser Posthearing Brief at 52-54 ("Competitive conditions in the markets for the downstream steel products become a primary determinant of prices in the slab market. . . . [and] current downstream product prices have a statistically significant effect on future slab prices. . . ." *Id.* at 52 and 53) and Attachment B, Affidavit of Ernie Rummler of AK Steel Corporation at 5 and 6 ("the prices that we expect to receive from our future sales of downstream products made from slabs strongly influence what we are willing to pay for slabs. The prices we receive for cold-rolled sheet, for example, are dictated by supply-demand conditions for cold-rolled sheet, not what we paid for the slabs used to make the cold-rolled sheet. . . . finished product prices determine what we can pay for slabs because our finished steel markets are competitive, we are price takers, and slab suppliers follow the prices for the finished flat-rolled steel products.") and Attachment C, Affidavit of Vicente Wright of California Steel Industries at 6-7 ("the prices that we expect to receive from our future sales of downstream products made from slabs strongly influence what we are willing to pay for slabs.").

[125] *Certain Cold-Rolled Steel Products*, USITC Pub. 3283 at 20 and 23 (Mar. 2000)("the decline in hot-rolled prices likely put downward pressure on the domestic industry's cold-rolled prices. This downward pressure is likely not only because of the presence of re-rollers but also because of the historic relationship between hot-rolled costs and prices and cold-rolled prices, whereby the market has tolerated only modest deviations from a fairly steady price margin between hot-rolled and cold-rolled steel products." *Id.* at 23) *See also* Dewey/Skadden's Posthearing Brief on General Issues at 19 (Domestic producers noted that Respondents' economic consultant Professor Prusa recognized the economic interdependence of flat-rolled production in the 1999-2000 cold-rolled investigations where he stated that "a decrease in the price of hot-rolled will intensify the incentive to push product downstream to the cold-rolled and galvanized markets. But this simply intensifies competition on the cold-rolled market and pushes the cold-rolled prices down." *Id. citing to* Joint Prehearing Brief of Respondents in the Matter of Cold-Rolled Carbon Steel Flat Products, at Volume II: Econometric Study of Thomas J. Prusa, Ph.D. at 10.).

[126] Commissioner Devaney notes that the record evidence shows that GOES and tin mill products are subject to similar pricing correlations as noted here. The appropriate feedstock for each downstream derivative is a part of the flat products industry.

[127] CR and PR at Table OVERVIEW-2; USITC Pub. 3446 at I-9; USITC Pub. 3364 at COLD-I-13, CORROSION at I-17, and PLATE at I-25. Data provided by respondents show that the single largest end-user for certain carbon flat-rolled steel was the automotive sector, accounting for 20.1 percent of 2000 shipments, followed by construction applications, accounting for 11.3 percent of 2000 shipments. Calculated from Minimill Coalition - Long Products Posthearing Brief, Vol. 2, Appendix 2 at Table 12. Indeed, these numbers may understate the shipments of certain carbon flat-rolled steel to these sectors, because these sectors also may be purchasing such steel from steel service centers and distributors.

Similarly, but to a lesser extent, all types of such steel are used for end-use applications in the construction industries. Thus, all types of certain carbon flat-rolled steel are substantially affected by the collective demand of these two markets.

Moreover, while the vertical nature of the relationship between certain carbon flat-rolled steel at different stages limits interchangeability between products, nevertheless, in some situations, there may be some substitution for use between products from one stage to another, *e.g.*, coated steel can be adapted for use in applications that typically use cold-rolled steel and vice versa. Limited interchangeability is also possible between hot-rolled and cold-rolled steel.[128] Specifically, several U.S. companies produce hot-rolled sheet in thicknesses (*i.e.*, light-weight gauges) that have been more typically characteristic of and competitive with cold-rolled sheet.[129] Although the overlap between hot-rolled steel and cold-rolled steel has traditionally been considered to begin at approximately 2 mm and thinner, improvements in hot-rolling have allowed mills to hot-roll below 2 mm.[130] In addition, while cold-rolled steel generally is used as the feedstock for coated steel, coated hot-rolled sheet is a growing product niche.[131]

As discussed above, the majority of certain carbon flat-rolled steel overall, and specifically for feedstocks products -- slab, hot-rolled, and cold-rolled -- is internally transferred. Moreover, when certain carbon flat-rolled steel enters the commercial market, the primary marketing channel generally is directly to end-users. In 2000, the marketing channels for certain carbon flat-rolled steel, except for CTL plate, ranged from 60 percent to 99.6 percent to end-users.[132]

We note that the 1984 Steel case involved carbon flat steel at various stages of processing similar to those in this investigation.[133] In 1984 Steel, the Commission recognized the "[d]iversity of products and types of firms producing steel and steel products in the United States" that characterized its investigation.[134] The Commission rejected defining one like product for all steel, but found "a 'class of products' approach is appropriate for the individual nine product groups that we have identified" as discrete categories of closely-related products; three of these broad categories involved carbon flat

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[128] Domestic producers note that some commercial substitution occurs among different flat-rolled products. Dewey/Skadden Posthearing Brief, Exh. A at 11-12.

[129] USITC Pub. 3446 at I-8, n.18.

[130] USITC Pub. 3446 at I-8.

[131] USITC Pub. 3446 at I-8, n.19.

[132] CR and PR at Tables FLAT 12-15 and FLAT-17. In 2000, the marketing channels for commercial shipments for products at specific stages of processing were: slab, 99.6 percent to end-users and 0.4 percent to distributors; hot-rolled, 60.0 percent to end-users and 40.0 percent to distributors; cold-rolled, 71.3 percent to end-users and 28.7 percent to distributors; and coated, 64.3 percent to end-users and 35.7 percent to distributors. *Id.* The marketing channels for CTL plate were more evenly split with 45.2 percent to end-users and 54.8 percent to distributors. *Id.* at Table FLAT-13.

[133] The 1984 Steel investigation included such carbon flat products as slab, hot-rolled, plate, as well as billets/blooms, wire rod, wire, railway-type products, bars, structural shapes, and pipes and tubes. USITC Pub. 1553 at 10. The domestic producers urged the Commission to define one like product and a single domestic industry for all basic steel mill products and certain first tier finished products under investigation.

[134] USITC Pub. 1553 at 15-18. The Commission recognized the common characteristics of the steel products, but focused on the differences in production facilities and processes for many of these products and the wide variance in U.S. markets in defining separate like products and industries.

products: semifinished, which included slabs as well as ingots, blooms, billets, and sheet bars; plate; and sheet and strip.[135]

As described above, there have been a number of technological changes in the steel industry since the 1984 Steel case. The advent of the continuous casting process for the production of slab rather than the ingot teeming process has resulted in less similarity among the semifinished products (slabs, ingots, blooms, and billets) and processes and more continuity in the production processes between slab and hot-rolled products.[136] Moreover, the distinction between the production of a semifinished and hot-rolled product is further blurred due to the increased use of electric arc furnaces that use a non-integrated process to produce "thin slabs" that continue immediately into hot-rolled production.

In defining separate like products for plate and sheet/strip, the Commission in 1984 Steel focused in part on differences in production. As discussed above, production of plate, similar to the production of sheet/strip, has become more continuous, as the same or similar hot-strip or Steckel mills are often used to make both. Thus, the production processes and equipment for plate and sheet/strip products have become similar and slab production is less distinct with more continuity in the processing to the next hot-rolling stage.

Certain carbon flat-rolled steel presents the unique circumstances of a convergence of a high level of overlap in markets and very high overlap in domestic production among the ranges of steel types that comprise this article. Where the markets are strongly interrelated across the spectrum of types of certain carbon flat-rolled steel and the imports of the same range of steel types affect a single common production base, we find it is appropriate to find a single industry producing that article in the context of this section 201 investigation.[137] We thus find that certain carbon flat-rolled steel[138] is like the corresponding imported certain carbon flat-rolled steel. Accordingly, we define the domestic industry as the producers as a whole of certain carbon flat-rolled steel like the imported certain carbon flat-rolled steel.[139] [140] [141]

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[135] USITC Pub. 1553 at 10 and 18-23. Further processed products, such as cold-rolled, coated, and clad, were included in the sheet/strip categories in 1984 Steel. *Id.* at 19-20.

[136] CR and PR at OVERVIEW-8-9.

[137] Commissioner Devaney finds that it is appropriate to find a single industry producing all flat rolled steel products based on an analysis focusing on the continuity of the production process and the correlation of pricing effects across product lines, noted above.

[138] As noted above, the article defined as certain carbon flat-rolled steel is comprised of data collection categories slab, hot-rolled product, plate, cold-rolled product, and coated product.

[139] Domestic producers argued that types of certain carbon flat-rolled steel are "directly competitive," within the meaning of the statute, 19 U.S.C. § 2581(5). Having identified domestic producers of an article that is like the imported article, we are not required to, and do not in this case, look further for an industry producing articles that are directly competitive but not like the imported article.

[140] Chairman Koplan, Vice Chairman Okun, Commissioner Miller, and Commissioner Hillman note that counsel for the domestic integrated producers argued, in the first instance, that the Commission should apply Section 601(5) of the Trade Act, and find a single domestic industry producing flat-rolled products which are directly competitive with the imported flat-rolled article. Dewey/Skadden Prehearing Brief at 17-19. They considered and rejected this approach after reviewing the arguments of the parties, the definition of "directly competitive" offered in the legislative history to the 1974 Act, H.R. Rep. No. 93-571, at 45(1973); S. Rep. No. 93-1298, at 121-22 (1974), the definition of "directly competitive" in Section 601(5), the accompanying legislative history, H.R. Rep. No 87-1818, at 24 (1962), and previous section 201 investigations involving steel products. They note that parties could point to no instance where the Commission has relied upon section 601(5) in reviewing manufactured products, and, in fact, in 1984 Steel, the Commission chose not to rely on this analysis for a similarly large number of steel products in part because it greatly expanded the concept of earlier or later stages of processing. They believe that a more

2. Domestic Industry Producing Grain-Oriented Electrical Steel ("GOES")[142]

GOES is a cold-rolled specialty steel produced from steel that has been refined to have very low levels of carbon and high levels of silicon.[143] Silicon is added to the molten steel to create an alloy with about three percent silicon.[144] The addition of the silicon creates a steel with excellent magnetic properties.[145] Its specialized grain structure permits it to conduct a magnetic field with a high degree of efficiency.[146] In addition to variations in thickness, GOES is produced in at least two levels of magnetic permeability, "conventional" and "high permeability."[147] High-permeability product also is produced as a domain-refined type that has even lower core loss at high flux density.[148] These characteristics distinguish GOES from all other carbon flat-rolled steel.

While GOES shares common manufacturing processes with certain carbon flat-rolled steel,[149] the cold-rolled feedstock generally is more extensively processed to produce GOES than is required to produce other finished products such as coated steel. Specifically, to produce GOES, the hot-rolled feedstock is cold-reduced twice, continuously annealed two times, and decarburized and coated (to prevent sticking and to reduce current flow between steel layers in a transformer core).[150] GOES is high-temperature batch annealed to promote grain growth and the formation of a glass-like insulating

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appropriate application of the provision may be in considering whether to include upstream or downstream articles which are outside the scope of an investigation. Based on this review, and because they have found a domestic industry producing certain carbon flat-rolled steel like the imported article, they declined to apply section 601(5).

[141] Commissioner Devaney defines the domestic industry as the producers as a whole of certain carbon flat products like the certain imported carbon flat products as defined in footnote 65.

[142] Commissioner Devaney does not join this section.

[143] CR and PR at OVERVIEW-10.

[144] CR and PR at OVERVIEW-10. GOES generally contains by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel characteristics of another alloy steel. *Grain-Oriented Electrical Steel from Italy and Japan*, Inv. Nos. 701-TA-355 and 731-TA-659-660 (Review), USITC Pub. 3396 at I-9 (Feb. 2001).

[145] CR and PR at OVERVIEW-10.

[146] CR and PR at FLAT-3. For GOES, the grain of the steel runs parallel within the steel, permitting easy magnetization along the length of the steel. Its magnetic directional characteristics enable power transformers made from GOES to absorb less energy during operation, although it may be twice as expensive to produce as non-grain-oriented silicon electrical steel (NOES) another type of electrical steel. Because there is no preferential direction for magnetization, NOES is best used in rotating apparatus such as electric motors. GOES also undergoes a special annealing (heat treatment) process after cold-rolling that is not done to NOES. *Id.* at n. 7. *See also* USITC Pub. 3396 at I-9.

[147] USITC Pub. 3396 at I-10. The high-permeability product allows the operation of a transformer at a higher level of flux density than does the conventional product, thus permitting a transformer to be smaller and have lower operating losses. *Id.*

[148] USITC Pub. 3396 at I-10. Domain refinement is accomplished by scribing thin lines on the surface of the steel. There are several methods of domain refinement available, including laser scribing, mechanical scribing, and electrolytic etching. *Id.*

[149] GOES shares some common production processes with stainless steel as well in that it can be melted in the same furnace and hot-rolled on the same hot-strip mill. *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Inv. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Pub. 2778 at II-6 (May 1994).

[150] *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Inv. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Pub. 2778 at II-6 (May 1994).

coating.[151] GOES is then thermal flattened and may be laser scribed to improve the steel's magnetic properties; a second coating may be applied to improve electrical resistance.[152] There are only two producers of GOES in the United States, only one of which produces other carbon flat products.[153]

GOES is used in the manufacture of power and distribution transformers as well as specialty transformers because of its superior magnetic properties, chiefly its low core loss and high permeability characteristics.[154] In sharp contrast to the carbon flat-rolled feedstocks, such as slab, hot-rolled steel and cold-rolled steel, but as would be expected from a finished steel product, *** of the domestically-produced GOES is internally consumed.[155] GOES primarily is sold directly to end users, manufacturers of transformers, with some sales to slitters and laminators or stampers who then sell to transformer manufacturers.[156] None of the types of certain carbon flat-rolled steel can substitute for GOES, and there are effectively no commercially viable substitutes for GOES.[157] The lack of a significant overlap in general use and the differences in physical attributes clearly set GOES apart from certain carbon flat-rolled steel. [158]

Domestic and imported GOES share the same physical attributes and generally are interchangeable.[159] Imported GOES generally is produced using similar processes to that used by the domestic industry.[160] Moreover, both domestic and imported GOES are primarily sold to end-users for the same uses.[161]

Based on the foregoing, we find that there is a clear dividing line between GOES and other certain carbon flat-rolled steel, as well as tin mill products, which are discussed below. Therefore, we define a separate domestic article, GOES, that is like the corresponding imported GOES. Accordingly, we define the domestic industry as producers as a whole of GOES like the imported GOES.[162]

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[151] USITC Pub. 2778 at II-6.

[152] USITC Pub. 2778 at II-6. Laser scribing is a process by which a laser etches tiny lines into the surface of the steel to reduce grain size. *Id.* at II-6, n. 25.

[153] CR and PR at Table FLAT-1. One domestic producer *** produces GOES and stainless steel products but not other carbon flat products. *Id.*

[154] CR and PR at FLAT-3. U.S. producer AK Steel has stated that distribution transformers account for about 60 percent of U.S. GOES use, generating and transmission transformers each account for about 10 percent, and small power transformers, specialty transformers, and generators account for the remaining 20 percent. USITC Pub. 3396 at II-1 (Feb. 2001).

[155] CR and PR at Table FLAT-16.

[156] *Grain-Oriented Electrical Steel from Italy and Japan*, Inv. Nos. 701-TA-355 and 731-TA-659-660 (Review), USITC Pub. 3396 at II-4 (Feb. 2001). In 2000, the marketing channels for commercial shipments for GOES were: ***. CR and PR at Table FLAT-16.

[157] CR and PR at FLAT-74.

[158] As stated above, we did not find consideration of customs treatment to be a useful factor for the carbon and alloy flat products in this investigation.

[159] USITC Pub. 3396 at II-4, II-11, and II-18-21.

[160] USITC Pub. 3396 at I-11.

[161] USITC Pub. 3396 at II-4 and II-11.

[162] Having identified domestic producers of an article that is like the imported article, we are not required to, and do not in this case, look further for an industry producing articles that are directly competitive but not like the imported article.

3. Domestic Industry Producing Tin Mill Products[163]

Tin mill products are cold-rolled steel that have been coated with tin or chromium or chromium oxides.[164] While tin mill products share common manufacturing processes with certain carbon flat-rolled steel and GOES, the cold-rolled feedstock used to make tin mill products generally is more extensively further processed than is required to produce other finished products such as coated steel. Specifically, to produce tin mill products, the cold-rolled feedstock is annealed and then temper-rolled or cold-rolled again, followed by a cleaning in a dilute acid solution and finally electroplating with tin or chromium.[165] Moreover, tin mill products are produced from black plate -- a very thin cold-rolled steel, have an exceedingly thin gauge and are coated with tin or chromium on both sides.[166] Tin plate and chromium-coated steel are produced in varying coating weights.[167] These characteristics distinguish tin mill products from other corrosion-resistant products.

While most U.S. producers manufacture both tin and chromium mill products in the same mill, there is less integration between the producers and commonality in the production of tin mill products than with other carbon flat products.[168] For example, of the 51 carbon flat producers who responded to the Commission's questionnaire, only *** produce tin mill products.[169] Moreover, while domestic tin mill producers shipped 53.3 percent of U.S. shipments of hot-rolled steel in 2000, domestic producers of cold-rolled/coated steel shipped 89 percent.[170] In sharp contrast to the carbon flat-rolled feedstocks, such as slab, hot-rolled steel and cold-rolled steel, but as would be expected from a finished steel product, less than 10 percent of domestically-produced tin mill products are internally consumed.[171] Tin mill products are overwhelmingly sold directly to end users, and tin mill products are sold almost exclusively by long-term contract to those end users.[172]

Tin mill products are used almost exclusively in the production of containers, such as food and beverage cans, packaging and shipping materials.[173] They are unsuitable for other end uses.[174] The lack

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[163] Commissioner Devaney does not join this section.

[164] CR and PR at FLAT-4.

[165] CR and PR at OVERVIEW-11 and *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731-TA-860 (Final), USITC Pub. 3337 at I-7-8 (Aug. 2000).

[166] USITC Pub. 3337 at I-5-8; Joint Respondents' Posthearing Brief, Vol. I, Exh. 2 at 3.

[167] Tin and chromium plated sheet also can be differentially coated, where the heavier coated surface is employed as the more protected inside of the container and the lighter coated surface is employed as the exterior of the container to conserve raw materials and to lower container costs. USITC Pub. 3337 at I-8.

[168] USITC Pub. 3337 at I-8.

[169] CR and PR at Table FLAT-1.

[170] INV-Y-207 at Table X-2. In 2000, *** percent of U.S. shipments of tin mill products were made by producers who did not produce hot-rolled steel, up from *** percent in 1996. *Id.* at Table X-1.

[171] CR and PR at Table FLAT-18.

[172] USITC Pub. 3337 at I-8, II-1, and V-3; Joint Respondents' Posthearing Brief, Exh. 2 at 14; Can Manufacturers' Prehearing Brief at 15. In 2000, the marketing channels for commercial shipments for tin mill products were: 75.4 percent to end-users and 24.6 percent to distributors. CR and PR at Table FLAT-18.

[173] CR and PR at OVERVIEW-Table 2 and at FLAT-4. Major end-uses of tin-plate are in the manufacture of welded food, beverage, aerosol, and paint cans. Chromium-coated steel sheet is used primarily for beer and soft drink two-piece drawn cans and ends, as well as ends for food cans and caps and crowns for glass containers. Tin-plate is used for the can itself because it imparts a shinier surface than chromium coating while chromium-coated steel sheet, with its duller surface finish, is considered adequate for use in the ends of cans. According to AISI,

of any broad overlap in use clearly sets tin mill products apart from certain carbon flat-rolled steel which, regardless of stage of processing, primarily enters similar commercial markets, such as the automotive and construction industries.[175] [176] By contrast, demand for food and beverage cans is related to the amount of food harvested and is seasonally affected by canning operations.

Domestic and imported tin mill products share the same physical attributes and generally are interchangeable.[177] Moreover, both domestic and imported tin mill products are primarily sold to end-users under contract for the same uses.[178]

Based on the foregoing, we find that there is a clear dividing line between tin mill products and certain carbon flat-rolled steel and GOES. Therefore, we define a separate domestic article, tin mill products, that is like the corresponding imported tin mill products. Accordingly, we define the domestic industry as producers as a whole of tin mill products like the imported tin mill products.[179]

B. Certain Carbon Flat-Rolled Steel

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.[180] We find that total imports of certain carbon flat-rolled steel, including slabs, plate, hot-rolled, cold-rolled, and coated steel increased in both actual terms and relative to domestic production. In actual terms, total imports increased from 18.4 million short tons in 1996 to 20.9 million short tons in 2000, an increase of 13.7 percent.[181] Total imports declined from 11.5 million short tons in interim 2000 to 6.9 million short tons in interim 2001.[182] The ratio of imports to domestic production (including production for captive

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nearly 90 percent of all U.S. shipments of chromium-coated steel sheet in 1998 were used in container and packing applications, including cans, crown caps, and other closures. USITC Pub. 3337 at I-6.

[174] Joint Respondents contend that in Title VII proceedings domestic producers have urged the Commission to consider the tin mill industry separately, acknowledging that the product itself and the market conditions it faces are different from that of other flat steel products. Joint Respondents' Prehearing Brief on Tin Mill Products, Exh. 1 at 2, 6-7.

[175] While 76.2 percent of shipments of tin mill products were for containers, packaging and shipping materials in 2000, only 2.5 percent and 1.5 percent of shipments of tin mill products were for automotive and construction purposes, respectively. Calculated from Minimill Coalition – Long Products' Posthearing Brief, Vol. 2, Appendix 2 at Table 12.

[176] As stated above, we did not find consideration of customs treatment to be a useful factor for the carbon and alloy flat products in this investigation.

[177] USITC Pub. 3337 at I-6 and II-7-8.

[178] USITC Pub. 3337 at I-8, II-1 and II-7-9.

[179] Having identified domestic producers of an article that is like the imported article, we are not required to, and do not in this case, look further for an industry producing articles that are directly competitive but not like the imported article.

[180] Commissioner Devaney joins in the analysis of the majority, related to increased imports, as presented here. He further finds that if the analysis is performed over the entire industry as he has defined it, the result is the same, *i.e.*, the statutory criterion of increased imports is met.

[181] INV-Y-209 at Table FLAT-ALT7.

[182] INV-Y-209 at Table FLAT-ALT7.

consumption) also increased during the POI, from 10.0 percent in 1996 to 10.5 percent in 2000.[183] Imports also increased relative to domestic commercial shipments. Total imports were equivalent to 32.6 percent of domestic commercial shipments in 2000, up from 31.5 percent in 1996.[184] In interim 2001 total imports were equivalent to 22.7 percent of domestic commercial shipments.[185]

We note that in 1998, the midpoint of the full five-year period examined, there was a rapid and dramatic increase in imports, as import volumes both in absolute terms and as a percentage of U.S. production peaked. Imports of certain carbon flat-rolled steel were 25.3 million short tons, an increase of 37.5 percent over 1996 levels. While the volume of imports declined in 1999 and 2000 from this peak, the absolute volume and ratio of imports to U.S. production were still significantly higher in 1999 and 2000 than at the beginning of the period. The significance of this trend in imports to the domestic industry's performance is discussed below under Substantial Cause of Serious Injury.

2. Serious Injury

Finding. We find that the domestic industry producing certain carbon flat-rolled steel is seriously injured; that is, we find that there has been a "significant overall impairment in the position" of the domestic industry.[186]

a. Overview of the Certain Carbon Flat-Rolled Steel Industry

There are *** producers of certain carbon flat-rolled steel in the United States.[187] The industry ranges from integrated producers utilizing blast furnaces and basic oxygen furnaces to produce all five categories of flat-rolled steel, such as ***, to firms utilizing electric arc furnace technology (commonly referred to as "minimills") to produce the full line of certain carbon flat-rolled steel, such as ***, to producers who buy flat-rolled steel as feedstock and produce only one type of carbon flat-rolled steel, such as ***.[188] Many producers use imported feedstock, such as slabs, at least occasionally. The domestic industry also includes producers who look to imports to supply a significant portion, if not all, of their raw material requirements. While minimill technology was first used well before the beginning of the period of investigation (POI), the POI did see the first large-scale production of cold-rolled and coated steel by minimills, although hot-rolled steel remained the primary commercial flat product of minimills.[189]

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[183] INV-Y-209 at Table FLAT-ALT7.

[184] CR and PR at Tables FLAT-12 to FLAT-15, FLAT-17, FLAT-C-2 to FLAT-C-5 and FLAT-C-7.

[185] CR and PR at Tables FLAT-12 to FLAT-15, FLAT-17, FLAT-C-2 to FLAT-C-5 and FLAT-C-7.

[186] Commissioner Devaney joins in the analysis of the majority, related to injury, as presented here. He further finds that if the analysis is performed over the entire industry as he has defined it, the result is the same, *i.e.* the industry is seriously injured.

[187] CR and PR at Table FLAT-1.

[188] CR and PR at Table FLAT-1.

[189] Joint Respondents' Prehearing Brief on Product Group 4, Cold-Rolled Steel at 49 and 54-55.

b. Analysis

i. Summary

In 1996 and 1997, the domestic industry earned reasonable operating profits and made substantial capital investments in a growing domestic market. In subsequent years, domestic consumption continued to grow, and the industry was able to steadily increase capacity, production and shipments. However, domestic prices began to fall markedly beginning in 1998, and were at much lower levels in 1999 and 2000 than earlier in the period. As a result, industry profits turned to losses in 1999 and 2000, as well as in the first six months of 2001. Industry investments dropped significantly and employment declined. Several firms, including some of the industry's largest, sought protection from creditors under U.S. bankruptcy procedures. Much of the industry found itself unable to raise new capital. This financial tailspin, together with the other facts discussed below, which occurred despite conditions of record high domestic demand, lead us to conclude that the domestic industry producing certain carbon flat-rolled steel is seriously injured.

ii. Analysis

The evidence shows a significant idling of the domestic industry's productive facilities during the period of investigation. We note as an initial matter that ten certain carbon flat-rolled steel producers sought the protection of bankruptcy proceedings and some ceased operations altogether during the period examined. These producers included integrated producers producing most or all of the types of flat-rolled steel (*e.g.*, Gulf States, LTV, Geneva, Wheeling-Pitt), minimills (*e.g.*, Trico), and more specialized producers (*e.g.*, Acme Metals, Heartland Steel, Great Lakes Metals, WorldClass Processing).[190] The industry's capacity utilization also declined. Although capacity utilization peaked in 1996 at 91.0 percent and remained high in 1997 at 89.5 percent, in subsequent years capacity utilization steadily declined to reach 85.1 percent in 2000.[191] This decline continued into the interim period, and capacity utilization in interim 2001 fell to 81.0 percent, compared to 90.8 percent for the same period in 2000.[192] The decline in capacity utilization during the most recent years of the POI was apparent in each of the specific types of certain carbon flat-rolled steel as well.[193]

[190] CR and PR at Table OVERVIEW-11. We note that integrated producer Bethlehem also sought bankruptcy protection after the POI but before the vote in our injury investigation. Remedy Tr. of 11/06/01 at 85 (Mr. Miller).

[191] INV-Y-209 at Table FLAT-ALT7.

[192] INV-Y-209 at Table FLAT-ALT7.

[193] Throughout our analysis, we generally rely on combined data for the five types of certain carbon flat-rolled steel. However, we also recognize that some combined data—for production and capacity, for example—may involve double-counting, and we therefore cite data for the separate types of certain carbon flat-rolled steel where appropriate. Separate data also show trends similar to those for the industry as a whole in most cases.

Capacity Utilization[194]

	1996	2000	Interim 2000	Interim 2001
Certain Carbon Flat-Rolled	91.0	85.1	90.8	81.0
Slabs	94.8	89.0	94.5	84.8
Plate	80.7	60.7	71.4	63.7
Hot-rolled	91.7	86.4	92.1	82.9
Cold-rolled	87.5	83.9	89.1	79.3
Coated	86.7	82.2	86.5	73.8

We recognize that the industry's production and capacity both increased from 1996 to 2000, as did total apparent domestic consumption. Total apparent domestic consumption increased 7.8 percent between 1996 and 2000.[195] Total domestic production, including production for captive consumption, rose 8.4 percent between 1996 and 2000. The sum of all productive capacity for slab, plate, hot-rolled, cold-rolled, and coated steel increased by 15.9 percent between 1996 and 2000.[196] The sum of all productive capacity for slab, plate, hot-rolled, cold-rolled, and coated steel fell by 0.8 percent between interim 2000 and interim 2001.[197]

On balance, we find that, despite increases in capacity and production, there was a significant idling of the domestic industry's productive facilities during the period, given the numerous bankruptcies and the shut-down of some facilities, as well as decreased capacity utilization.

In addition to a significant idling of the domestic industry's productive facilities, a significant number of firms were unable to carry out domestic production operations at a reasonable level of profit. Despite sustained growth in demand during the POI, average unit values for domestically-produced certain carbon flat-rolled steel typically fell by a substantial amount during the POI.

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[194] CR and PR at Tables FLAT-C-2-FLAT-C-5 and FLAT-C-7.

[195] INV-Y-209 at Table FLAT-ALT7.

[196] INV-Y-209 at Table FLAT-ALT7.

[197] INV-Y-209 at Table FLAT-ALT7. Slab-making capacity increased by 12.2 percent between 1996 and 2000, rising from 66.9 million short tons in 1996 to 75.1 million short tons in 2000. CR and PR at Table FLAT-C-2. Slab-making capacity declined by 2.4 percent between interim 2000 and interim 2001. CR and PR at Table FLAT-C-2. Combined domestic production capacity for hot-rolled and plate increased by 16.9 percent, rising from 76.6 million short tons in 1996 to 89.5 million short tons in 2000. CR and PR at Tables FLAT-C-3 and FLAT-C-4. Some domestic producers suggested that aggregating hot-rolled and plate capacity is an appropriate measure of domestic capacity. Dewey/Skadden Posthearing Brief at 18. Combined domestic production capacity for hot-rolled and plate increased by 1.6 percent between interim 2000 and interim 2001, rising from 44.5 million short tons to 45.2 million short tons. CR and PR at Tables FLAT-C-3 and FLAT-C-4. Capacity for cold-rolled steel production rose by 14.4 percent between 1996 and 2000, but declined 4.3 percent between interim 2000 and interim 2001. CR and PR at Table FLAT-C-5. Domestic capacity for coated steel production rose by 28.1 percent between 1996 and 2000 and rose by 1.8 percent between interim 2000 and interim 2001. CR and PR at Table FLAT-C-7.

Average Unit Values for Commercial Shipments of
Domestically-Produced Certain Carbon Flat-Rolled Steel[198]

	1996	2000	Interim 2000	Interim 2001
Certain Carbon Flat-Rolled	$470	$418	$428	$373
Slabs[199]	$248	$214	$224	$205
Plate	$482	$401	$400	$379
Hot-Rolled	$348	$312	$329	$257
Cold-Rolled	$492	$445	$452	$409
Coated	$616	$544	$553	$508

Mainly due to falling prices, a significant number of certain carbon flat-rolled firms have been unable to operate at a reasonable level of profit. After attaining positive levels of operating income, at 4.3 and 6.1 percent of sales respectively, in 1996 and 1997, operating incomes on certain carbon flat-rolled steel declined to 4.0 percent in 1998. After 1998, operating income for domestic producers became operating losses, at a loss of 0.7 percent of sales in 1999 and a loss of 1.4 percent of sales in 2000.[200] Operating losses for domestic producers were 11.5 percent of sales in interim 2001, compared with operating income of 3.6 percent in interim 2000.[201] This pattern generally held true for each of the types of certain carbon flat-rolled steel, with the highest levels of operating income achieved in the early portion of the POI, followed by declines as imports increased and prices fell.[202]

Operating Income as a Percentage of Sales[203]

	1996	1997	1998	1999	2000	Interim 2000	Interim 2001
Certain Carbon Flat-Rolled	4.3	6.1	4.0	-0.7	-1.4	3.6	-11.5
Slabs[204]	-3.9	-11.2	-1.5	-23.3	-8.2	-4.9	-12.7
Plate	5.3	4.2	5.8	-6.8	-5.7	-1.1	-9.3
Hot-Rolled	-0.5	4.1	0.2	-5.3	-3.0	4.3	-19.9
Cold-Rolled	4.5	5.3	2.5	-2.5	-1.7	2.3	-13.3
Coated	7.5	9.0	7.0	4.9	1.1	5.0	-5.5

[198] CR and PR at Tables FLAT-12 to FLAT-15 and FLAT-17.

[199] Between 1996 and 2000, commercial shipments of slabs accounted for only 0.9 percent of total shipments of domestically produced slab. CR and PR at Table FLAT-12.

[200] INV-Y-209 at Table FLAT-ALT7.

[201] INV-Y-209 at Table FLAT-ALT7.

[202] CR and PR at Tables FLAT-C-2-FLAT-C-5 and FLAT-C-7.

[203] CR and PR at Tables FLAT-C-2-FLAT-C-5 and FLAT-C-7.

[204] Between 1996 and 2000, commercial shipments of slabs accounted for only 0.9 percent of total shipments of domestically produced slab. CR and PR at Table FLAT-12.

This decline in operating income occurred despite persistent declines both in the cost of raw materials and in the overall cost of goods sold. The cost of raw materials per unit sold declined 5.4 percent between 1996 and 2000 and declined 7.5 percent between interim 2000 and interim 2001.[205] The overall cost of goods sold per unit declined 5.7 percent between 1996 and 2000 and rose 1.0 percent between interim 2000 and interim 2001.[206] Additionally, these declines occurred as productivity increased sharply, rising by 13.2 percent between 1996 and 2000.[207]

As the domestic industry's income position worsened, capital expenditures declined sharply in the latter portion of the POI. Capital expenditures in 2000 were 35.0 percent below the 1996 level.[208] Capital expenditures declined 24.5 percent between interim 2000 and interim 2001.[209]

Similar deterioration in financial performance occurred in each of the types of certain carbon flat-rolled steel. Plate producers had operating losses in 1999 and 2000, despite a strong increase in commercial sales in 2000 and a consistent decline in the cost of goods sold.[210] For hot-rolled steel producers, operating income was at its highest level in 1997 at 4.1 percent of sales but then fell consistently in subsequent years, despite increased sales in 1999 and 2000 and a consistent decline in costs.[211] Hot-rolled steel producers incurred operating losses in both 1999 and 2000.[212] Cold-rolled steel producers experienced their best year in 1997, when operating income was 5.3 percent of sales. Although commercial shipments increased in each subsequent year, operating income declined after 1997 and became losses in both 1999 and 2000, although the unit cost of goods sold declined from $452 per short ton in 1996 to $435 per short ton in 2000.[213] Coated steel producers fared somewhat better, but experienced the same trend, with operating income peaking in 1997 and falling off thereafter, despite continued growth in sales and declines in cost. Operating income as a percentage of sales fell from 9.0 percent in 1997 to 1.1 percent in 2000, notwithstanding the fact that commercial sales increased from 17.0 million short tons in 1997 to 19.2 million short tons in 2000.[214] The poor financial performance of the industry is further evidenced by the ten firms that have either shut down or have sought bankruptcy protection, as noted above, the industry's inability to attract equity or debt capital,[215] and its high debt to equity ratio.[216]

The evidence further shows significant unemployment or underemployment in the domestic industry during the POI. The number of production workers was steady from 1996 to 1998, but then declined sharply between 1998 and 1999, when the number of production and related workers dropped by over 4,000 workers, or 4.2 percent.[217] The number of hours worked also declined, with a sharp

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[205] INV-Y-212 at STL201FT.WK4.

[206] INV-Y-212 at STL201FT.WK4.

[207] INV-Y-209 at Table FLAT-ALT7.

[208] INV-Y-209 at Table FLAT-ALT7.

[209] INV-Y-212 at STL201FT.WK4.

[210] CR and PR at Table FLAT-21.

[211] CR and PR at Table FLAT-22.

[212] CR and PR at Table FLAT-23.

[213] CR and PR at Table FLAT-23.

[214] CR and PR at Table FLAT-25.

[215] Injury Tr. at 712-718 (Mr. Dunham, Mr. Walker, Mr. Busse, Mr. Valdiserri, Mr. Cain, and Mr. Tulloch).

[216] Injury Tr. at 988-89 (Dr. Kothari).

[217] INV-Y-209 at Table FLAT-ALT7.

decline occurring between 1998 and 1999.[218] Both the number of production workers and the number of hours worked were significantly lower in interim 2001 than in interim 2000.[219] The number of production workers declined by 4.4 percent between 1996 and 2000 and declined 7.1 percent between interim 2000 and interim 2001.[220] The number of hours worked also declined, by 3.5 percent, between 1996 and 2000, and declined 10.5 percent between interim 2000 and interim 2001.[221]

We recognize that certain indicators of the industry's condition remained relatively stable or improved during the period. For example, the domestic industry's share of total domestic consumption, including production for captive consumption, was 91.0 percent in 1996 and 90.5 percent in 2000, and was 93.1 percent in interim 2001, as compared to 90.2 percent in interim 2000. As a share of total commercial shipments, the domestic industry's share was 76.0 percent in 1996 and 75.4 percent in 2000; it was 81.5 percent in interim 2001, as compared to 75.0 percent in interim 2000.[222] Net sales increased by 10.9 percent, and domestic shipments, including those for captive consumption, rose 7.2 percent from 184.8 million short tons in 1996 to 198.1 million short tons in 2000.[223] However, in our view, the improvements in these indicia do not offset the significant declines exhibited by other indicia of the industry's condition with respect to the issue of whether the industry is suffering serious injury.

In view of the significant idling of productive facilities, the sharp deterioration in the financial performance of the domestic industry, and significant unemployment or underemployment within the domestic industry, we find that the domestic industry producing certain carbon flat-rolled steel is seriously injured.

3. Substantial Cause

Finding. We find that the increased imports of certain carbon flat-rolled steel are an important cause, and a cause not less than any other cause, of serious injury to the domestic industry.[224] In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, capital expenditures, and research and development expenditures. Accordingly, we find that increased imports are a substantial cause of serious injury to the domestic industry producing certain carbon flat-rolled steel.

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[218] INV-Y-209 at Table FLAT-ALT7.

[219] INV-Y-209 at Table FLAT-ALT7. We note that productivity in the certain carbon flat-rolled steel industry increased by *** percent between 1996 and 2000, which may have offset to some degree the declines in employment. *Id.*

[220] INV-Y-209 at Table FLAT-ALT7.

[221] INV-Y-209 at Table FLAT-ALT7.

[222] INV-Y-209 at Table FLAT-ALT7.

[223] INV-Y-209 at Table FLAT-ALT7.

[224] Commissioner Devaney joins in the analysis of the majority, related to causation, as presented here. He further notes that when the analysis is performed over the entire industry as he has defined it, the result is the same, *i.e.* imports are a substantial cause of serious injury.

a. Conditions of Competition

We take into account a number of factors that affect the competitiveness of domestic and imported certain carbon flat-rolled steel in the U.S. market, including factors related to the product itself, the degree of substitutability between the domestic and imported articles, changes in world capacity and production, and market conditions. These factors affect prices and other considerations taken into account by purchasers in determining whether to purchase domestic or imported articles.

Producers generally agree that there are few or no substitutes for certain carbon flat-rolled steel.[225] Certain carbon flat-rolled steel may represent a relatively high share of the cost of downstream certain carbon flat-rolled steel, but typically represents a relatively small share of the value of finished products.[226]

Demand for certain carbon flat-rolled steel depends upon the demand for a variety of end-use applications.[227] A significant percentage of certain carbon flat-rolled steel is consumed in the production of other downstream certain carbon flat-rolled steel.[228] All slabs are consumed in the production of downstream steel, and steelmakers themselves are the only purchasers of slab. Slab is not a rolled product and requires additional processing before it may be incorporated into a finished product. As expected for feedstock products, the majority of domestically-produced hot-rolled and cold-rolled steel are consumed in the production of further processed steel, although a merchant market exists for both hot-rolled and cold-rolled steel.[229] On the other hand, a majority of domestically-produced plate and coated steel, which are further processed steel, is sold on the merchant market, with relatively small shares of these steels being devoted to the production of downstream products.[230] Construction and automotive applications are significant end-uses for plate, hot-rolled, cold-rolled, and coated steel.[231]

By any measure, the period of investigation saw significant growth in U.S. demand for certain carbon flat-rolled steel.[232] Apparent domestic consumption of certain carbon flat-rolled steel, including internally consumed production, climbed steadily during the period, from 203.2 million short tons in 1996 to 219.0 million short tons in 2000, an increase of 7.8 percent.[233] Apparent domestic consumption of certain carbon flat-rolled steel, including internally consumed production, declined 14.9 percent from

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[225] CR at FLAT-67 and PR at FLAT-53. There are few or no substitute products for each of the product categories included in our certain carbon flat-rolled products class. CR at FLAT-67-68 and PR at FLAT-53-FLAT-54.

[226] CR at FLAT-68 and PR at FLAT-54.

[227] CR at FLAT-66 and PR at FLAT-51.

[228] CR and PR at OVERVIEW-10 and Table OVERVIEW-2.

[229] CR and PR at Tables FLAT-14 and FLAT-15.

[230] CR and PR at Tables FLAT-13 and FLAT-16.

[231] CR and PR at Table OVERVIEW-2.

[232] We are cognizant of the difficulty of measuring consumption, production, capacity, and import penetration in a product for which a significant portion of production is consumed in the production of other, downstream materials also included in the like product. Adding figures for each of the product categories would tend to overstate domestic capacity and production and understate the true impact of imports, while concentrating solely on commercial shipments would be inconsistent with available capacity data. *See* CR at FLAT-18 n.11, FLAT-34 n.13, and FLAT-60 n.14, PR at FLAT-15 n.11, FLAT-30 n.13, and FLAT-44 n.14. We have considered the arguments of both domestic producers and respondents regarding the appropriate method for determining these indicators, and we have considered a variety of different measurements in reaching our determination. In general, however, we found that the same conclusions were warranted regardless of which measurement was used.

[233] INV-Y-209 at Table FLAT-ALT7.

interim 2000 to interim 2001.[234] Net sales of certain carbon flat-rolled steel increased from 58.8 million short tons in 1996 to 65.2 million short tons in 2000, an increase of 10.9 percent.[235] Net sales of certain carbon flat-rolled steel declined 11.7 percent between interim 2000 and interim 2001.[236] A decline in demand, however, can be seen at the end of the period examined, as apparent domestic consumption of certain carbon flat-rolled steel was 14.9 percent lower in interim 2001 than in interim 2000.

Similar, though not identical, increases occurred in the consumption of each type of flat-rolled steel. Apparent domestic consumption of slabs rose from 71.4 million short tons in 1996 to 74.4 million short tons in 2000; apparent domestic consumption of slabs in 2000 was the highest level registered in the POI.[237] Apparent domestic consumption of slabs declined 15.6 percent between interim 2000 and interim 2001.[238] Apparent domestic consumption of hot-rolled steel increased from 68.5 million short tons in 1996 to 75.1 million short tons in 2000; apparent domestic consumption of hot-rolled steel in 2000 was the highest level registered in the POI.[239] Apparent domestic consumption of hot-rolled steel declined 17.1 percent between interim 2000 and interim 2001.[240] Apparent domestic consumption of cold-rolled steel actually peaked in 1999 at 40.6 million short tons. Nonetheless, apparent domestic consumption of cold-rolled steel in 2000, at 40.0 million short tons, was 9.8 percent higher than the 1996 level of 36.4 million short tons.[241] Apparent domestic consumption of cold-rolled steel declined 12.3 percent between interim 2000 and interim 2001.[242] Similarly, apparent domestic consumption of coated steel peaked in 1999 at 22.8 million tons, but apparent domestic consumption in 2000, at 22.3 million short tons, was 16.9 percent higher than the 1996 level of 19.1 million short tons.[243] Apparent domestic consumption of coated steel was 13.0 percent lower in interim 2001 than in interim 2000.[244] Only plate consumption exhibited a significantly different trend, with apparent consumption in 2000, at 7.1 million short tons, below the 1996 level of 7.8 million short tons.[245] Apparent domestic consumption of plate was 3.6 percent lower in interim 2001 than in interim 2000.[246]

With regard to supply of certain carbon flat-rolled steel, as discussed above, domestic capacity increased steadily from 1996 to 2000. Foreign production capacity also increased from 1996 to 2000.[247] As measured by production capacity for plate and hot-rolled steel only, foreign production capacity rose

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[234] INV-Y-209 at Table FLAT-ALT7.

[235] INV-Y-209 at Table FLAT-ALT7.

[236] INV-Y-209 at Table FLAT-ALT7.

[237] CR and PR at Table FLAT-C-2.

[238] CR and PR at Table FLAT-C-2.

[239] CR and PR at Table FLAT-C-4.

[240] CR and PR at Table FLAT-C-4.

[241] CR and PR at Table FLAT-C-5.

[242] CR and PR at Table FLAT-C-5.

[243] CR and PR at Table FLAT-C-7.

[244] CR and PR at Table FLAT-C-7.

[245] CR and PR at Table FLAT-C-3.

[246] CR and PR at Table FLAT-C-3.

[247] We note that domestic producers criticized the quality of data from our questionnaires regarding foreign capacity. Prehearing Brief of Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation and United States Steel LLC at 70 n.217 and Appendix A. We have followed our long-standing practice of relying on questionnaire data in reaching our determination, although we have considered the alternative data provided by domestic producers and other parties.

from 290.9 million short tons in 1996 to 335.2 million short tons in 2000, an increase of 15.2 percent.[248] Foreign production capacity for each of the product categories increased during the POI. Foreign production capacity for slabs rose 8.0 percent between 1996 and 2000, while production capacity for plate rose 9.5 percent.[249] Foreign production capacity for further processed flat-rolled steel rose much more significantly between 1996 and 2000, with production capacity for hot-rolled steel rising by 16.3 percent, for cold-rolled steel by 13.9 percent, and for coated steel by 29.4 percent.[250]

These significant production capacity increases occurred during a period of disruption in world steel markets. The depreciation of several Asian currencies in late 1997 and early 1998 significantly curtailed steel consumption in those countries and created a pool of steel seeking alternative markets.[251] The dissolution of the USSR led to significant increases in steel exports to the United States from former USSR countries.[252]

There is a moderate to high degree of substitutability between domestically-produced and imported certain carbon flat-rolled steel.[253] Purchasers typically ranked "quality" as the most important factor in their purchasing decision.[254] A significant majority of purchasers found domestically-produced and imported certain carbon flat-rolled steel comparable in product quality, product range, and consistency.[255] Only in delivery time did purchasers note a clear difference between domestically-produced and imported certain carbon flat-rolled steel.[256] Furthermore, while more purchasers ranked quality as the most important factor in the purchasing decision, a significant number ranked price first, and most purchasers included price as one of the top three factors.[257] A significant number of purchasers reported they "always" or "usually" purchase the lowest priced flat-rolled steel offered.[258]

Imports of various certain carbon flat-rolled steel products are affected by a number of existing antidumping and countervailing duty orders and suspension and other trade restricting agreements.[259] Some of these measures pre-dated the POI and did not prevent the import surge observed in this investigation. However, other measures were imposed during the POI.

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[248] INV-Y-215 at Table VII-ALT1.

[249] CR and PR at Tables FLAT-30 and FLAT-33.

[250] CR and PR at Tables FLAT-36, FLAT-39, and FLAT-43.

[251] CR and PR at OVERVIEW-17.

[252] CR and PR at OVERVIEW-18.

[253] CR at FLAT-68, PR at FLAT-54.

[254] CR and PR at Table FLAT-64. Purchasers made similar responses for each of the types of certain carbon flat-rolled steel. INV-Y-212 at Flat Products, pp.20-22.

[255] CR at Table FLAT-65, PR at Table FLAT-65. Purchasers made similar responses for each of the types of certain carbon flat-rolled steel. INV-Y-212 at Flat Products, pp.15-19.

[256] CR at Table FLAT-65, PR at Table FLAT-65. Purchasers made similar responses for each of the types of certain carbon flat-rolled steel. INV-Y-212 at Flat Products, pp.15-19.

[257] CR at Table FLAT-64, PR at Table FLAT-64. Purchasers made similar responses for each of the types of certain carbon flat-rolled steel. INV-Y-212 at Flat Products, pp.20-22.

[258] CR at FLAT-71, PR at FLAT-57.

[259] CR and PR at Table OVERVIEW-1; *see also Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand*, Inv. Nos. 701-TA-393 (Final) and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 (March 2000) at 20 (comprehensive agreement with Russia); *Certain Hot-Rolled Steel from Brazil and Japan*, 701-TA-384 (Final) and 731-TA-806 and 808 (Final), USITC Pub. 3223 (Aug. 1999) at 3 n.7 (suspension agreements with Brazil and Russia).

b. Analysis[260]

In determining whether increased imports are a substantial cause of serious injury, we considered the impact of imports as well as the impact of other possible causes. The statute defines "substantial cause" as a cause "which is important and not less than any other cause."[261]

Imports of certain carbon flat-rolled steel increased over the POI both in actual terms and relative to domestic production. Imports of certain carbon flat-rolled steel increased from 18.4 million short tons in 1996 to 20.9 million short tons in 2000, an increase of 13.7 percent.[262] The value of certain carbon flat-rolled steel imports increased by a scant 1.6 percent despite the significant increase in the volume of subject imports.[263]

Imports also increased relative to domestic production. Imports were equivalent to 10.0 percent of domestic production of certain carbon flat-rolled steel, including production for captive consumption, in 1996.[264] Imports were equivalent to 13.2 percent of domestic production in 1998. Imports were equivalent to 10.5 percent in 2000, still above the 1996 figure.[265] Imports accounted for 24.0 percent of commercial shipments of certain carbon flat-rolled steel in 1996; that share peaked in 1998 at 29.7 percent before dropping back to 24.6 percent in 2000.[266] Imports accounted for 9.0 percent of total apparent domestic consumption, including captive consumption, in 1996.[267] That share peaked in 1998 at 11.8 percent but still remained above 1996 levels in 2000 at 9.5 percent.[268]

The dramatic increase in the volume of imports in 1998 – at the midpoint of the period examined – coincided with sharp declines in the domestic industry's performance and condition which occurred despite growing U.S. demand. Total imports were 18.4 million short tons in 1996 and 19.3 million short

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[260] Both domestic producers and respondents produced econometric models purporting to measure the relationship, or lack of relationship, between imports and the condition of the domestic industry. *See, e.g.*, Prehearing Brief on Behalf of Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation and United States Steel LLC, Vol. II at Exh. 4, pp.15-16 (imports responsible for 63-85 percent of the impact on prices of certain domestic producers from 1998-2001 compared to 1996); *e.g.*, Joint Prehearing Brief of Respondents: Product Group 4, Cold-Rolled Steel at Exh. 4, pp. 4-5 (effect of imports insubstantial; other factors are much more significant). We considered these models in making our determinations, but because of the serious limitations in each, we placed little weight on the models. *See* EC-Y-042.

[261] 19 U.S.C. § 2252(b)(1)(B).

[262] INV-Y-209 at Table FLAT-ALT7.

Imports of the various types of certain carbon flat-rolled steel followed a similar trend, with the exception of plate. The volume of slab imports increased by 15.3 percent, from 6.3 million short tons in 1996 to 7.3 million short tons in 2000. CR and PR at Table FLAT-C-2. Imports of hot-rolled steel increased by 41.7 percent, from 5.3 million short tons in 1996 to 7.5 million short tons in 2000. CR and PR at Table FLAT-C-4. Imports of cold-rolled steel increased by 6.7 percent, from 2.6 million short tons in 1996 to 2.8 million short tons in 2000. CR and PR at Table FLAT-C-5. Imports of coated steel increased by 7.9 percent, from 2.3 million short tons in 1996 to 2.5 million short tons in 2000. CR and PR at Table FLAT-C-7. Imports of plate, like imports of other certain carbon flat-rolled steel, increased dramatically in 1998, rising 53.4 percent from 1997 levels. CR and PR at Table FLAT-C-3. The volume of imports slowed after 1998, and imports in 2000 were 50.9 percent below 1996 levels. *Id.*

[263] INV-Y-209 at Table FLAT-ALT7.

[264] INV-Y-209 at Table FLAT-ALT7.

[265] CR and PR at Table FLAT-11.

[266] CR and PR at Tables FLAT-12 to FLAT-15, FLAT-17, FLAT-C-2 to FLAT-C-5 and FLAT-C-7.

[267] INV-Y-209 at Table FLAT-ALT7.

[268] INV-Y-209 at Table FLAT-ALT7.

tons in 1997, an increase that only modestly exceeded the increase in total apparent domestic consumption.[269] Imports in 1998 jumped more than 30 percent over the previous year's level, to a total of 25.3 million short tons.[270] This increase occurred in a year when total apparent domestic consumption, including all captive consumption, increased 3.2 percent and net domestic sales rose a scant 0.5 percent.[271] After this steep increase, import volume lessened in 1999 and 2000 but remained above 1996 and 1997 levels.[272]

This import surge occurred in most types of certain carbon flat-rolled steel. Imports of plate increased by 53.4 percent between 1997 and 1998; imports of hot-rolled steel increased by 76.4 percent; and imports of cold-rolled steel increased 13.0 percent, after already increasing 38.2 percent between 1996 and 1997.[273] For coated steel, the surge came a year later, as imports increased by 15.8 percent between 1998 and 1999.[274] After these primary surges, imports of hot-rolled steel increased by another 14.4 percent between 1999 and 2000, and cold-rolled steel imports by 11.2 percent between interim 2000 and interim 2001, despite a sharp decrease in demand.[275]

The impact of the 1998 surge in imports on the domestic industry is undeniable. In 1996 and 1997, before the rapid escalation in import volume, the domestic industry performed moderately well. In 1997, with net merchant sales of 61.1 million short tons, the domestic industry had an operating income of 6.1 percent of sales and a net income of 4.5 percent.[276] In 1998, despite an increase in net sales to 61.3 million short tons and a modest decrease in unit costs, the industry's operating margin declined to 4.0 percent. In 1999, net sales increased to 63.5 million short tons and cost of goods sold were the lowest during the POI, but the industry experienced operating losses of 0.7 percent of sales. In 2000, net sales again increased to 65.2 million short tons and the total cost of goods sold increased a modest one percent, yet operating losses fell further, to 1.4 percent of sales. The industry experienced net operating losses in both 1999 and 2000.[277] The industry's operating margin continued to slide in the first half of 2001, to a loss of 11.5 percent of sales.

After the initial import surges in 1998, as noted, the volume of imports slackened somewhat but remained above the levels seen in 1996-1997. One way in which the impact of the massive import volume continued to reverberate beyond 1998 was through increased inventories. End-of-period inventories held by importers increased substantially in 1998, as did inventories held by service centers.[278]

The imports that entered the U.S. market between 1998 and 2000 were generally significantly lower-priced than in the earlier years of the POI. These price decreases were sharp and generally unrelated to overall demand in the U.S. market, which steadily increased even as prices fell.

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[269] INV-Y-209 at Table FLAT-ALT7.

[270] INV-Y-209 at Table FLAT-ALT7.

[271] INV-Y-209 at Table FLAT-ALT7.

[272] INV-Y-209 at Table FLAT-ALT7.

[273] CR and PR at Tables FLAT-C-3-FLAT-C-5.

[274] CR and PR at Table FLAT-C-7.

[275] CR and PR at Tables FLAT-C-4 and FLAT-C-5.

[276] INV-Y-212 at STL201FT.WK4.

[277] INV-Y-212 at STL201FT.WK4.

[278] CR and PR at Table FLAT-49; Dewey/Skadden Prehearing Brief at Exhs. 55 and 56 (we note that the data in the latter exhibits do not distinguish between domestic and imported product).

Import Average Unit Values[279]

	1996	1997	1998	1999	2000	Interim 2000	Interim 2001
Certain Carbon Flat-Rolled	370	376	344	298	331	323	310
Slabs	253	251	231	177	221	222	180
Plate	400	424	466	400	398	418	409
Hot-Rolled	331	325	288	269	303	299	276
Cold-Rolled	505	485	447	402	466	463	399
Coated	608	609	596	537	558	556	519

The import surge in 1998 altered the competitive strategy of domestic producers. After the initial wave of imports in 1998, which captured substantial market share from domestic producers, domestic producers sought to protect market share against further import penetration by competing aggressively against imports on price.[280] Repeated price cuts by the industry, while stemming somewhat the tide of imports and increasing domestic shipments, did nothing to improve the industry's condition. Moreover, the price declines occurred despite the fact that demand for certain carbon flat-rolled steel increased in both 1999 and 2000.

Average Unit Values of Commercial Shipments for Domestically Produced Steel[281]

	1996	1997	1998	1999	2000	Interim 2000	Interim 2001
Certain Carbon Flat-Rolled	470	474	459	415	418	428	373
Slabs[282]	248	251	250	215	214	224	205
Plate	482	473	470	402	401	400	379
Hot-Rolled	348	356	335	294	312	329	257
Cold-Rolled	492	496	472	440	445	452	409
Coated	616	621	597	557	544	553	508

A review of product specific data supports the claims of the domestic producers that imports were priced below domestically produced steel, and that imports led to the decline in prices. For example, for hot-rolled product 3A, *** led to ***, reductions in shipments of the domestic product, and sharp subsequent reductions in domestic prices.[283] Similar pricing and volume patterns, with significant

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[279] CR and PR at Tables FLAT-C-1-FLAT-C-5 and FLAT-C-7. We are mindful not to place undue weight on average unit values, as these may be affected by issues of product mix.

[280] Dewey/Skadden Posthearing Brief on Flat-Rolled at 27.

[281] CR and PR at Tables FLAT-12 to FLAT-15, and FLAT-17.

[282] Between 1996 and 2000, commercial shipments of slabs accounted for only 0.9 percent of total shipments of domestically produced slab. CR and PR at Table FLAT-12.

[283] INV-Y-212 at Table FLAT-ALT69. *See also* Product 3B (historically high import volume in 1998, and falling domestic prices from second quarter 1998 to second quarter 1999).

dips in import prices garnering historically large sales volumes, followed by sharp cuts in domestic prices, occurred for cold-rolled products 4A and 4B.[284]

As noted above, purchasers generally consider price an important factor in the purchasing decision, and the lowest price frequently wins the sale. In addition, although purchasers rank quality as the most important purchasing factor, purchasers generally consider imported certain carbon flat-rolled steel comparable in quality to domestically produced certain carbon flat-rolled steel. In such a market, the increased volume of imports, at prices that undercut and depressed and suppressed domestic prices, had an injurious impact on the domestic industry, particularly when the domestic industry aggressively cut prices to meet the continued influx of import volumes.

The domestic industry includes a number of producers who rely on imported certain carbon flat-rolled steel–especially slab–for use as raw materials in the production of further processed certain carbon flat-rolled steel. Some of these producers may have benefitted from the decline in import prices during the POI.[285] Despite these possible isolated individual benefits,[286] the record indicates that the domestic industry as a whole suffered serious injury from increased imports.

Respondents have argued that, since imports generally peaked in 1998, any injury resulting from increased imports has long since passed, or been repaired by the imposition of subsequent Title VII duties. Between the surge in 1998 and the last full year of the POI, 2000, domestic producers filed Title VII complaints on carbon steel plate, hot-rolled steel, and cold-rolled steel.[287] Additionally, outstanding orders on coated steel were reviewed and retained during this same time period.[288] Existing orders on cold-rolled steel were revoked only late in 2000.[289] We find it reasonable to conclude that the filing of these Title VII actions to some extent staunched the flow of imports after 1998; indeed, respondents admit that the filing of a Title VII action temporarily repressed cold-rolled imports.[290] We note, however, that import levels remained high through 1999 and 2000, and that the corrosive effects of low-priced imports continued to injure the domestic industry even as the absolute volume of imports slackened somewhat. Although the volume of imports was lower in 1999 and 2000, prices of those imports continued to decline.

In sum, the causal link between increased imports and the injury to the domestic industry is clear. In 1997, at an operating margin of 6.1 percent, the industry was performing modestly well and thus was well poised to increase its profitability in 1998 as demand strengthened. However, the surge in imports in 1998, at prices below domestic prices, led to a decline in the industry's financial and other indicators. The industry then cut prices to hold on to market share but the price cuts prevented the industry from restoring profitability. The industry's operating margins declined steadily from 6.1

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[284] INV-Y-212 at Tables FLAT-ALT70 and FLAT-ALT71.

[285] The *** U.S. firms that rely exclusively on imported slab–***–showed generally more positive financial results than the industry as a whole. However, the unit raw material costs of these *** firms were ***. INV-Y-212 at STL201P2.WK4 (results on plate for ***), STL201H3.WK4 (results on hot-rolled for ***), STL201C4.WK4 (results on cold-rolled for ***), and ST201R6.WK4 (results on coated steel for ***).

[286] For example, slab imports represent approximately ten percent of the slab consumed in the United States. CR and PR at Table FLAT-C-2.

[287] CR and PR at Table OVERVIEW-1.

[288] *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, Inv. Nos. AA1921-197, 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review), USITC Pub. 3364 (November 2000) at 3.

[289] USITC Pub. 3364 at 3.

[290] Joint Respondents' Prehearing Brief on Cold-Rolled Steel at 11-12.

percent in 1997 to 4.0 percent in 1998 to negative 0.7 percent in 1999 and to negative 1.4 percent in 2000. Finally, in interim 2001, although import levels declined somewhat, prices remained low. The domestic industry entered a period of falling demand already in a weakened condition and deteriorated even further to an operating margin of negative 11.5 percent.

Respondents have suggested several alternate sources of injury to the domestic industry, including declining domestic demand, intra-industry competition, domestic capacity increases, buyer consolidation, excess leverage of domestic producers, and legacy costs. We consider each of these in turn.

Respondents argue that the domestic industry has been injured by declining U.S. demand. But all evidence suggests that the decline occurred very late in the POI, as late as the fourth quarter of 2000. Demand for certain carbon flat-rolled steel was lower in the first six months of 2001 than in the first six months of 2000.[291] Apparent domestic demand in 2000 was higher than in 1996 for slabs, hot-rolled, cold-rolled, and coated steel, and apparent domestic demand for all certain carbon flat-rolled steel was higher in 2000 than in 1999.[292] The domestic industry showed the signs of injury described above well before the latter portion of 2000, when demand began to drop off. The domestic industry first saw its operating income decline in 1998, at a time when demand was increasing and would continue to increase for another two years.[293] The period of increasing demand was also when imports surged. We thus find that the domestic industry was already injured by increased imports when demand began to decline, and declining demand, while not the cause of the injury found here, contributed to the industry's continued deterioration at the end of the period. Indeed, the losses experienced by the industry in 1999 and 2000 as a result of imports left the industry in a much weakened position to face the slowdown in demand.

Respondents argue that the domestic industry has been injured by increases in domestic capacity well in excess of the increase in domestic demand. As noted above, domestic capacity for certain carbon flat-rolled steel in total and each certain carbon flat-rolled steel category increased between 1996 and 2000. These capacity increases occurred at a time when domestic demand rose consistently. Thus, increases in domestic capacity in general were justified in light of market conditions.

It is true, as alleged by respondents, that capacity increases did exceed the increases in domestic consumption. From 1996 to 2000, apparent consumption of certain carbon flat-rolled steel increased by 7.8 percent for both internal transfers and commercial shipments, and increased by 10.9 percent for commercial shipments alone.[294] By contrast, domestic capacity increased by the following amounts from 1996 to 2000: 15.9 percent, for certain carbon flat-rolled steel; 12.2 percent for initial-stage steel-making capacity (slabs); 16.9 percent for combined hot-rolled steel and plate. Because domestic production did not increase by an amount as great as the increase in capacity but did increase commensurate with increased consumption, the increase in capacity appears to explain, in significant part, the decline in the rate of domestic capacity utilization that occurred over the period examined.

Respondents have argued that the presence of this new capacity, combined with the failure of the industry to retire older, less efficient capacity, put tremendous pressure on the domestic industry to cut costs in order to generate sales to fill the new capacity. It is true that there is a significant incentive to maximize the use of steelmaking assets, which can affect producers' pricing behavior. As we noted above, however, product-specific data, as well as AUV data, indicate that imports, rather than

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[291] INV-Y-209 at Table FLAT-ALT7.

[292] INV-Y-209 at Table FLAT-ALT7 and CR and PR at Tables FLAT-C-2, FLAT-C4-FLAT-C-5, and FLAT-C-7.

[293] INV-Y-209 at Table FLAT-ALT7.

[294] INV-Y-209 at Table FLAT-ALT7, CR and PR at Tables FLAT-12 to FLAT-15, FLAT-17, FLAT-C-2 to FLAT-C-5 and FLAT-C-7.

domestically produced steel, led prices downward during the POI. Indeed, capacity of foreign producers, already substantial exporters, increased steadily over the POI.[295] Additionally, imports supplied a higher share of apparent domestic consumption in 2000 than in 1996. If increased domestic capacity were in fact the source of injury to the domestic industry, we would have expected to see the domestic industry lead prices downward, and wrest market share from imports. Therefore, we find that increased production capacity, while likely playing a role in the price declines that helped cause injury, was not an important cause of serious injury to the domestic industry equal to or greater than the injury caused by increased imports.

Respondents have also claimed that poor management decisions, such as capital investment decisions that increased companies' debt load, are responsible for bankruptcies and poor financial performance by the domestic industry.[296] We do not find these arguments persuasive. We noted above that the financial position of the industry weakened after imports first surged in 1998. The most serious injury to the domestic industry occurred in years of record overall demand. High levels of low-priced imports prevented the domestic industry from achieving profitability despite increased demand and increased shipments by the domestic industry. We find that the poor financial position of the domestic industry, including the high degree of debt leverage, is a result of the injury from increased imports suffered by the domestic industry, including poor equity performance, rather than a cause of that injury.[297] Moreover, increased debt load and other allegedly poor management decisions cannot explain the price declines experienced by this industry.[298]

Respondents argue that legacy costs, in the form of pension and non-pension benefits, have increased costs substantially, and those increased costs are more responsible for the wave of bankruptcy filings than are increased imports.[299] The funding of legacy costs is a vexing problem for the domestic industry, and evidence on the record indicates that legacy costs have prevented needed consolidation within the domestic industry from taking place. However, the burden of legacy costs varies tremendously among domestic producers.[300] The issue of legacy costs is not a new one to this industry. The difficulties in meeting these obligations were recognized before the POI, and the domestic industry was able to earn a reasonable rate of return in 1996 and 1997 despite these costs. Respondents have offered no reason why the industry's longstanding problem would cause no injury in 1996 or 1997 but then begin to depress prices and strangle revenue in 1998-2000. Legacy costs may have left certain members of the domestic industry less able to compete with low-priced imports, but are not responsible for the low prices that have injured the industry. We therefore find that legacy costs are not a source of injury to the domestic industry equal to or greater than increased imports.

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[295] INV-Y-215 at Table VII-ALT1.

[296] Joint Respondents' Prehearing Framework Brief at 63-83.

[297] Injury Tr. at 988-89 (Dr. Kothari).

[298] We have examined respondents' allegations of poor strategies followed by individual domestic companies. In an industry as large and diverse as the industry producing certain carbon flat-rolled steel, it is always possible to question the business strategies of individual firms. However, such examples, even if true, could not explain the substantial decline in the performance of the domestic industry as a whole. We do not find such a pattern of poor decision-making.

[299] Joint Respondents' Posthearing Brief on Flat-Rolled Steel, Vol. 2 at Exh. B, Answers to Vice Chairman Okun's Questions at 17.

[300] CR and PR at OVERVIEW-31-35. Producers Birmingham, CSI, Commercial Metals, Nucor, and SDI have defined contribution plans, while other steel producers provide defined benefit plans. CR and PR at OVERVIEW-32 nn.37 and 38.

Respondents argue that intra-industry competition, spurred by the increased presence of efficient minimills, has caused injury to the domestic industry. Minimills did typically enjoy cost advantages over integrated producers, based in part on differing product mixes and raw material costs. However, these cost advantages existed throughout the POI, and integrated producers as well as minimills enjoyed declining costs throughout the POI.[301] The addition of a greater volume of lower-cost capacity would be expected to have an effect on prices, and we find that it did. However, as noted above, imports, rather than minimills, typically led prices downward. Hot-rolled steel is the primary commercial product for minimills. Prices for hot-rolled steel produced by minimills typically *** prices of hot-rolled steel produced by integrated producers ***.[302] In 1998 and again in 2000, imports *** hot-rolled steel produced by both integrated producers and minimills by ***, resulting in lowered sales for domestically produced hot-rolled steel and subsequent price cuts by both integrated producers and minimills.[303] Thus, while in general, minimills may have been in a somewhat better position to withstand low-priced import competition than other domestic producers, we find that minimills were not primarily responsible for the declines in domestic prices or an important cause of serious injury to the domestic industry, which is equal to or greater than the injury caused by increased imports.

Respondents have also argued that buyer consolidation, especially among automobile manufacturers, reduced the bargaining power and the profit margins of domestic producers. The record does contain evidence that automobile manufacturers in particular have either consolidated or attempted to consolidate their buying operations. Automotive manufacturers are important purchasers of certain carbon flat-rolled steel.[304] There is some consolidation in other steel-purchasing sectors as well.[305] A smaller number of purchasers would tend to give the purchasers greater bargaining power which would be expected to impact price. However, purchaser consolidation has been an ongoing process that did not suddenly occur beginning in 1998. We do not find that purchaser consolidation can explain the substantial decline in domestic prices or that consolidation is an important cause of serious injury to the domestic industry, which is equal to or greater than the injury caused by increased imports.

In view of the above, we find that increased imports are a substantial cause, and a cause no less important than any other cause, of serious injury to the domestic certain carbon flat-rolled steel industry. Our finding is based on the increase in imports and subsequent increase in the share of the domestic market held by imports, the lower prices of the imports, and the corresponding declines in domestic market share, prices, and capacity utilization, negative profitability, evidence of unemployment, and the decline in capital expenditures. Accordingly, we make an affirmative determination.

4. Finding with respect to NAFTA country imports

a. Canada

Finding. We find that imports of certain carbon flat-rolled steel from Canada account for a substantial share of total imports but do not contribute importantly to the serious injury caused by the imports.

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[301] INV-Y-215 at STL20P2I.WK4, STL20P2M.WK4, STL20H3I.WK4, STL20H3M.WK4, STL20C4I.WK4, STL40C4M.WK4, STL20R6I.WK4, and STL20R6M.WK4.

[302] INV-Y-215 at Pricing Tables for products 3A and 3B.

[303] INV-Y-215 at Pricing Tables for products 3A and 3B.

[304] CR and PR at Table OVERVIEW-2.

[305] CR and PR at OVERVIEW-53-54.

Canada was one of the top five suppliers of certain carbon flat-rolled steel imports during the POI.[306] However, imports from Canada declined both absolutely and relatively between 1996 and 2000, with the volume of imports from Canada sliding by 16.1 percent.[307] This decline occurred as total imports increased by 13.7 percent and non-Canada imports increased by 17.3 percent.[308] Imports from Canada were equivalent to 1.1 percent of total domestic production (including production for captive consumption) in 1996 and equivalent to 0.8 percent in 2000.[309] Imports from Canada were equivalent to 2.6 percent of domestic commercial shipments in 2000, down from 3.4 percent in 1996.[310] Domestic producers agree that imports from Canada do not meet the statutory threshold.[311] Based on the evidence, we find that imports from Canada do not contribute importantly to the serious injury suffered by the domestic industry.

b. Mexico

Finding. We find that imports of certain carbon flat-rolled steel account for a substantial share of total imports and contribute importantly to the serious injury caused by the imports.

Mexico was one of the top five sources of imports of certain carbon flat-rolled steel during the POI.[312] Imports of certain carbon flat-rolled steel from Mexico increased absolutely between 1996 and 2000, with import volume increasing by 26.9 percent, from 1.9 million short tons in 1996 to 2.5 million short tons in 2000.[313] The rate of increase in imports from Mexico was higher than the rate of increase in non-Mexico imports (12.2 percent) or total imports (13.7 percent).[314] Imports from Mexico were equivalent to 1.2 percent of domestic production (including production for captive consumption) in 2000, compared to 1.1 percent in 1996.[315] Imports from Mexico were equivalent to 3.8 percent of domestic commercial shipments in 2000, compared to 3.3 percent in 1996.[316] Average unit values for certain carbon flat-rolled steel imports from Mexico were consistently below average unit value for other imports.[317] Product-specific pricing data showed a mixed pattern of underselling and overselling by imports of certain carbon flat-rolled steel from Mexico during the POI.[318] Therefore we find that imports

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[306] INV-Y-215 at 11(g).

[307] INV-Y-209 at Table FLAT-ALT7.

[308] INV-Y-209 at Table FLAT-ALT7.

[309] INV-Y-209 at Table FLAT-ALT7.

[310] INV-Y-209 at Table FLAT-ALT7.

[311] Dewey/Skadden Posthearing Brief on Carbon Flat Products, Answer to Vice Chairman Okun Questions, at 15-16.

[312] INV-Y-215 at 11(g).

[313] INV-Y-209 at Table FLAT-ALT7.

[314] INV-Y-209 at Table FLAT-ALT7.

[315] INV-Y-209 at Table FLAT-ALT7.

[316] INV-Y-209 at Table FLAT-ALT7.

[317] INV-Y-209 at Table FLAT-ALT7.

[318] CR and PR at Tables FLAT-66-71, FLAT-73, and FLAT-74. We note that one reason for lower AUVs for certain carbon flat-rolled steel imports from Mexico is that a substantial portion consists of slabs, which are a relatively low-value product.

of certain carbon flat-rolled steel from Mexico account for a substantial share of total imports and imports from Mexico contribute importantly to the serious injury.[319]

C. Grain-Oriented Electrical Steel (GOES)[320] [321]

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met. We find that total imports[322] of GOES increased in actual terms during the POI. In actual terms, imports increased from 34,946 short tons in 1996 to 36,773 short tons in 2000, an increase of 5.2 percent.[323] The ratio of imports to domestic production declined during the POI, falling from *** percent in 1996 to *** percent in 2000.[324]

2. Serious Injury

Finding. We find that the domestic industry is not seriously injured; that is, we find that there has not been a "significant overall impairment in the position" of the domestic industry. In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, wages and other employment-related data, productivity, capital expenditures, and research and development expenditures.

a. Overview of the GOES Industry

There are *** producers of GOES in the United States.[325] *** produces a variety of other flat steel products, while *** does not produce any other flat steel products. *** is the larger of the ***, accounting for *** of all domestic production of GOES in 1996-2000.[326]

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[319] We note that we would have reached the same result had we excluded imports from Canada from our injury analysis. Imports less those from Canada increased significantly over the period of investigation, in absolute terms and as a percentage of domestic production, and also increased more significantly than did imports including Canada. Non-Canada imports rose from 16.4 million short tons in 1996 to 19.2 million short tons in 2000, an increase of 17.3 percent, while total imports increased 13.7 percent in the same time period. As a share of domestic production, non-Canada imports rose from 8.9 percent in 1996 to 9.6 percent in 2000. As a share of total apparent domestic consumption, non-Canada imports rose from 8.1 percent in 1996 to 8.8 percent in 2000. The average unit value of non-Canada imports fell by 14.2 percent between 1996 and 2000. INV-Y-209 at Table FLAT-ALT7. *See Circular Welded Carbon Quality Line Pipe*, USITC Pub. 3261 at I-26, n.168.

[320] *See* Section IV.A. above for our discussion of the like or directly competitive article factors. We find the domestic industry to include all producers of GOES.

[321] As previously noted, Commissioner Devaney does not join in this portion of the opinion. In his view there is only one like product, which includes GOES, and he has made an affirmative injury finding as to that like product.

[322] Including imports from NAFTA countries.

[323] CR and PR at Table FLAT-C-6.

[324] CR and PR at Table FLAT-C-6.

[325] CR and PR at Table FLAT-1.

[326] INV-Y-212 at STL201G5.WK4.

In February 2001, the Commission determined that revocation of a countervailing duty order on GOES from Italy and revocation of an antidumping duty order on GOES from Japan and Italy would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.[327] In reaching that determination, the Commission found that the domestic industry was not in a vulnerable condition.[328]

b. Analysis

We find that the record does not indicate that there has been a significant idling of productive facilities in the domestic GOES industry. Although domestic production of GOES decreased between 1996 and 1997, domestic production then increased steadily, with production *** short tons, an increase of *** percent between ***.[329] Domestic production was *** percent higher in interim 2001 than in interim 2000.[330] Domestic GOES producers added *** short tons of new productive capacity between 1996 and 2000, an increase of *** percent.[331] Domestic production capacity was *** percent higher in interim 2001 than in interim 2000.[332] In a period of increased demand and production, the additional capacity was utilized, and the capacity utilization rate actually rose during the POI, from *** percent in 1996 to *** percent in 2000.[333] In addition, as apparent domestic consumption rose by *** percent between 1996 and 2000, the industry's share of apparent domestic consumption of GOES also increased slightly between 1996 and 2000, rising from *** percent in 1996 to *** percent in 2000.[334] Both apparent domestic consumption and the domestic industry's share of the market were lower in interim 2001 than in interim 2000.[335]

We also find that the record does not indicate that a significant number of domestic firms have been unable to carry out their production operations at a reasonable level of profit. Domestic GOES producers made significant capital investments during the POI. Capital expenditures were at the highest rate of the POI in 2000.[336] Domestic producers' investments also contributed to a *** percent improvement in productivity.[337]

Domestic producers benefitted from cost declines throughout the POI. Raw material costs fell from $*** per short ton in 1996 to $*** per short ton in 2000.[338] Raw material costs fell from $*** per short ton in interim 2000 to $*** per short ton in interim 2001.[339] Domestic producers' investments also

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[327] *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Inv. Nos. 701-TA-355 (Review) and 731-TA-659-690 (Review), USITC Pub. 3396 (Feb. 2001) at 3.

[328] USITC Pub. 3396 at 20 (majority views) and 27 (Dissenting Views of Vice Chairman Okun and Commissioner Hillman).

[329] CR and PR at Table FLAT-C-6.

[330] CR and PR at Table FLAT-C-6.

[331] CR and PR at Table FLAT-C-6.

[332] CR and PR at Table FLAT-C-6.

[333] CR and PR at Table FLAT-C-6.

[334] CR and PR at Table FLAT-C-6.

[335] CR and PR at Table FLAT-C-6.

[336] CR and PR at Table FLAT-C-6.

[337] CR and PR at Table FLAT-C-6.

[338] CR and PR at Table FLAT-24.

[339] CR and PR at Table FLAT-24.

contributed to reduced factory costs, which fell from $*** per short ton in 1996 to $*** per short ton in 2000.[340] Factory costs rose from $*** per short ton in interim 2000 to $*** per short ton in interim 2001.[341]

The average unit value of sales of domestically produced GOES declined by *** percent between 1996 and 2000. The AUV of sales of domestically produced GOES declined *** percent between interim 2000 and interim 2001.[342] But because of declining costs, the weakening in price had no adverse effects on the domestic industry. Instead, the domestic industry's financial performance improved. Operating income as a percentage of sales was *** percent in 2000, up from *** percent in 1996.[343] As noted above, domestic producers were able to maintain capacity utilization rates while expanding productive capacity.[344]

The record does not indicate significant unemployment or underemployment in the industry during the period examined. Employment was higher in 2000 than in 1996, as was the number of hours worked.[345]

Other indicators of the industry's condition improved as well during the period. Net sales by domestic producers also *** from 1996.[346] Net sales by domestic producers were *** percent lower in interim 2001 than in interim 2000.[347] Growth in sales of domestically produced GOES outpaced growth in the overall market. Thus, we find no indication that the industry suffered serious injury during the POI. Rather, we find that the domestic industry benefitted from rising domestic demand, their own investments, and restraints on imports from two important sources. We are mindful that data for interim 2001 indicate the domestic industry's position was somewhat weaker than in interim 2000. Operating income for interim 2001 was *** percent, compared to *** percent in 2000.[348] Operating income as a percentage of sales was *** percent in interim 2001, compared to *** percent in interim 2000.[349] Import levels, which fluctuated throughout the POI, were *** percent higher in interim 2001 than in interim 2000, while apparent domestic consumption in interim 2001 was *** percent lower than in interim 2000.[350] Employment was lower in interim 2001 than in interim 2000.[351] Both employment levels and hours worked were lower in interim 2001 than in interim 2000.[352]

We do not find that the interim 2001 data alone support a finding of serious injury. The domestic industry enjoyed a five-year period of increased demand, increased profits, increased market share, increased productivity, and lower costs. Despite recent declines in demand, the domestic industry still had positive returns in interim 2001, and, despite an increase in import volume, the domestic

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[340] CR and PR at Table FLAT-24.

[341] CR and PR at Table FLAT-24.

[342] CR and PR at Table FLAT-24.

[343] CR and PR at Table FLAT-24.

[344] CR and PR at Table FLAT-24.

[345] CR and PR at Table FLAT-24.

[346] CR and PR at Table FLAT-C-6.

[347] CR and PR at Table FLAT-C-6.

[348] CR and PR at Table FLAT-24.

[349] CR and PR at Table FLAT-24.

[350] CR and PR at Table FLAT-24.

[351] CR and PR at Table FLAT-24.

[352] CR and PR at Table FLAT-24.

industry's share of apparent domestic consumption in interim 2001 was little different from its share for 2000.[353]

3. Threat

Finding. We find that the increased imports are not a substantial cause of any threat of serious injury to the domestic industry producing GOES. As we noted above, the domestic industry experienced positive results over the period of 1996-2000, but then experienced a downturn in performance as overall demand for GOES weakened in 2001. Although production in interim 2001 was actually *** percent above production in interim 2000, sales were flat, market share declined somewhat, inventories rose, and profits and employment both turned downward.[354] However, we do not find that these recent downturns indicate that serious injury is imminent. Despite downturns in demand and prices, the industry remained profitable.[355] Despite an increase in imports, the domestic industry continued to dominate the U.S. market for GOES, and its share of the market at the end of the POI was higher than its share at the outset.[356] Extensive capital improvements have yielded significant productivity gains.[357] The domestic industry has been able to significantly lower its costs and increase its importance to U.S. purchasers by passing on a portion of these productivity improvements to its customers in the form of lower prices while still boosting its own profitability.[358] We find no evidence to indicate that the recent downturn in demand has seriously impaired the domestic industry's ability to continue to compete successfully in the U.S. market.

We have already noted the significant improvements made by the domestic industry during the POI. Indeed, capital expenditures in 2000, at ***, were at the highest level in the POI.[359] While capital expenditures in interim 2001 were down from interim 2000 levels, research and development expenditures were *** than in interim 2000.[360] Even during the current downturn, therefore, the domestic industry has been able to continue to improve itself.

Imports in interim 2001 were higher than in interim 2000.[361] However, the rate of increase in imports between interim 2000 and interim 2001 is significantly lower than the rate of increase between 1997 and 1998 or 1999 and 2000.[362] Average unit values for imports in interim 2001 were somewhat lower than in interim 2000, but in line with average unit values for imports in 1999 and 2000.[363] In short, we find no evidence that the pattern of imports in the imminent future will be significantly different than in the latter years of the POI, years in which the domestic industry dominated the U.S. market and profited accordingly.

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[353] CR and PR at Table FLAT-24.

[354] CR and PR at Table FLAT-C-6.

[355] CR and PR att Table FLAT-C-6.

[356] CR and PR at Table FLAT-C-6.

[357] CR and PR at Tables FLAT-24.

[358] CR and PR at Table FLAT-C-6.

[359] CR and PR at Table FLAT-24.

[360] CR and PR at Table FLAT-24.

[361] CR and PR at Table FLAT-C-6.

[362] CR and PR at Table FLAT-C-6.

[363] CR and PR at Table FLAT-C-6.

The record indicates that the U.S. market is not a focal point for GOES exports. While foreign capacity for GOES production has increased over the POI, the increase was ***.[364] Throughout the POI foreign producers have operated at capacity utilization levels higher than those of the domestic industry.[365] Exports to the U.S. market accounted for a small share of total non-U.S. production throughout the POI, and that share declined notably in 1999 and 2000.[366]

The likelihood of imports threatening serious injury to the domestic industry is further lessened by the presence of outstanding antidumping duty orders on imports of GOES from Italy and Japan and a countervailing duty order on imports of GOES from Italy. These orders were reviewed in February of 2001 and will remain in place until the next scheduled review in 2005. In light of the foregoing, we find that imports of GOES are not a substantial cause of the threat of serious injury to the domestic industry producing GOES.

D. Tin Mill Products[367] [368]

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met. We find that total imports[369] of tin mill products have increased both in actual terms and relative to domestic production during the POI.[370] In actual terms, imports increased from 444,684 short tons in 1996 to a peak level of 698,543 short tons in 1999, and while they declined to 580,196 short tons in 2000, the overall increase from 1996 to 2000 was 30.5 percent.[371] Imports of tin mill products were 263,091 short tons in interim 2001, 11.1 percent lower than in interim 2000.[372] The ratio of imports to domestic production increased

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[364] CR and PR at Tables FLAT-42 and FLAT-C-6.

[365] CR and PR at Tables FLAT-42 and FLAT-C-6.

[366] CR and PR at Table FLAT-42.

[367] *See* Section IV.A. above for our discussion of the like or directly competitive article factors. We find the domestic industry to include all producers of tin mill products.

[368] As previously noted, Commissioner Devaney does not join in this portion of the opinion. In his view there is only one like product, which includes tin mill products, and he has made an affirmative injury finding as to that like product.

[369] Including imports from NAFTA countries.

[370] We recognize that the official import data for tin mill products, which is used in our discussion, overstate the imports subject to this investigation to some degree because it includes tin mill products specifically excluded from the request. For example, using Joint Respondents' data, imports of tin mill products increased from 414,013 short tons in 1996 to a peak level of 642,353 short tons in 1999, and declined to 491,836 short tons in 2000. The overall increase from 1996 to 2000 was 18.8 percent. *See* Appendix 2 to Request and Joint Respondents' Tin Mill Prehearing Brief at 5-7.

[371] CR and PR at Tables FLAT-10 and FLAT-C-8.

[372] CR and PR at Tables FLAT-10 and FLAT-C-8.

during the POI, from 12.0 percent to 17.4 percent in 2000.[373] The ratio of imports to production was 20.1 percent during the import volume peak in 1999.[374]

2. Serious Injury

Finding. We find that the domestic tin mill products industry is seriously injured; that is, we find that there has been a "significant overall impairment in the position" of the domestic industry.

a. Overview of the Tin Mill Products Industry

There are *** producers of tin mill products in the United States.[375] *** tin mill producers make a variety of other types of certain carbon flat-rolled steel, including slab, while *** other types of certain carbon flat-rolled steel and *** hot-end production (slabs).

In August 2000, the Commission determined that imports of tin- and chromium-coated steel from Japan were materially injuring the domestic tin mill products industry.[376] In reaching that determination, the Commission recognized evidence of continued operating losses and increasing deterioration in the condition of the domestic industry.[377]

b. Analysis

The evidence shows there has been a significant idling of productive facilities in the domestic tin mill industry. Domestic production of tin mill products increased slightly between 1996 and 1997 but then decreased steadily, with production in 2000 at 3.3 million short tons, a decline of 10.3 percent between 1996 and 2000.[378] Likewise, domestic capacity, which increased slightly from 1996 to 1998, declined to 4.6 million short tons in 2000, a decrease of 3.7 percent between 1996 and 2000.[379] Domestic capacity was 9.3 percent lower in interim 2001 compared to interim 2000.[380] Capacity utilization declined from 78.3 percent in 1996 to 72.9 percent in 2000, and declined to 71.7 percent in interim 2001.[381] Thus, domestic producers were unable to maintain capacity utilization rates despite reducing productive capacity.[382]

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[373] CR and PR at Table FLAT-10. Tin mill product imports were 17.7 percent of domestic production in interim 2001, compared to 17.1 percent in interim 2000. *Id.* Joint Respondents alleged that if the tin mill products excluded from the request were subtracted from the official import data, the ratio of subject imports to domestic production would increase from 11.2 percent in 1996 to a peak of 18.5 percent in 1999 and decline to 14.8 percent in 2000. Joint Respondents' Tin Mill Prehearing Brief at 7.

[374] CR and PR at Table FLAT-10.

[375] CR at Table FLAT-1, PR at Table FLAT-1.

[376] *Tin- and Chromium-Coated Steel Sheet from Japan,* Inv. No. 731-TA-860 (Final), USITC Pub. 3337 at 3 (Aug. 2000)(Chairman Koplan dissenting).

[377] USITC Pub. 3337 at 17-19 and 29 (Dissenting Views of Chairman Koplan).

[378] CR and PR at Table FLAT-C-8. Domestic production was 14.1 percent lower in interim period 2001 at 1.5 million short tons compared with interim 2000 at 1.7 million short tons.

[379] CR and PR at Tables FLAT-18 and FLAT-C-8.

[380] CR and PR at Tables FLAT-18 and FLAT-C-8.

[381] CR and PR at Table FLAT-18.

[382] CR and PR at Table FLAT-18.

The quantity and value of U.S. shipments increased slightly between 1996 and 1997, but declined steadily from 1997 to 2000. U.S. shipments by quantity declined from 3.5 million short tons in 1996 to 3.2 million short tons in 2000, a decline of 9.4 percent.[383] Commercial sales by domestic producers declined steadily from 3.7 million short tons in 1996 to 3.4 million short tons in 2000, a decrease of 9.0 percent.[384] Declines in U.S. shipments and sales of domestically produced tin mill products outpaced declines in the overall market.

Apparent domestic consumption fluctuated between years but declined by 4.9 percent from 1996 to 2000.[385] U.S. apparent consumption was 10.2 percent lower in interim 2001 compared with interim 2000.[386] The share of apparent domestic consumption held by domestic tin mill producers declined from 88.7 percent in 1996 to 84.5 percent in 2000.[387]

Domestic producers' inventories as a share of total shipments fluctuated between years, but only increased slightly from 9.7 percent in 1996 to 9.9 percent in 2000.[388] Moreover, U.S. producers' end of period inventory levels declined by 7.2 percent from 1996 to 2000, and declined by 9.1 percent for interim 2001 compared with interim 2000.[389]

In addition to a significant idling of domestic productive facilities, the tin mill industry as a whole has been unable to operate at a reasonable level of profit, with a significant number of firms incurring operating losses throughout the period of investigation.[390] *** firms reported operating losses in 1996, *** in 2000, and *** in interim 2001.[391] Operating losses as a percentage of sales widened from 3.9 percent in 1996 to 6.1 percent in 2000, and declined further to 7.4 percent in interim 2001.[392] The domestic industry's operating losses fluctuated between years but widened from $88.6 million in 1996 to $140.7 million in 1999, and improved somewhat to $119.4 million in 2000.[393] The domestic industry experienced an operating loss of $64.8 million in interim 2001 compared with an operating loss of $25.0 million in interim 2000.[394] Operating losses increased by a rate of 34.8 percent from 1996 to 2000.[395] The average unit value of sales of domestically-produced tin mill declined by 4.5 percent from 1996 to 2000.[396] Moreover, the domestic industry should have benefitted from a decline of 11.7 percent in cost

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[383] CR and PR at Tables FLAT-18 and FLAT-C-8. U.S. shipments by value declined by 13.4 percent between 1996 and 2000. U.S. shipments by quantity and by value were 10.1 percent and 10.0 percent, respectively, lower in interim 2001 compared with interim 2000. *Id.*

[384] CR and PR at Table FLAT-C-8. Commerical sales by value declined by 13.1 percent between 1996 and 2000. Commercial sales by quantity and by value were 12.6 percent and 12.7 percent, respectively, lower in interim 2001 compared with interim 2000. *Id.*

[385] CR and PR at Table FLAT-C-8.

[386] CR and PR at Table FLAT-C-8.

[387] CR and PR at Table FLAT-C-8. Domestic tin mill producers market share remained at 84.5 percent in interim period 2001.

[388] CR and PR at Table FLAT-C-8.

[389] CR and PR at Table FLAT-C-8.

[390] CR and PR at Table FLAT-26.

[391] CR and PR at Table FLAT-26.

[392] CR and PR at Table FLAT-26.

[393] CR and PR at Table FLAT-26.

[394] CR and PR at Table FLAT-26.

[395] CR and PR at Table FLAT-C-8.

[396] CR and PR at Table FLAT-C-8.

of goods sold between 1996 and 2000, and a decline of 8.6 percent for interim 2001 compared with interim 2000.[397]

The industry's capital expenditures fluctuated between years, but declined by 9.4 percent from 1996 to 2000 and were 46.8 percent lower in interim 2001 compared with interim 2000.[398] Moreover, research and development expenditures declined steadily from $5.3 million in 1996 to $3.9 million in 2000, a decline of 35 percent.[399]

In addition, the domestic industry experienced significant unemployment or underemployment during the period of investigation. Employment, hours worked, and total wages paid decreased during the POI. The average number of production and related workers employed to produce tin mill products declined from 7,536 in 1996 to 5,733 in 2000, and declined to 5,584 in interim 2001.[400] Productivity declined at a rate of 5.6 percent from 1996 to 2000, a rate slightly higher than the 5.0 percent decline in hours worked.[401]

In summary, the domestic industry has been in very poor condition during the entire period of investigation. While the condition of the domestic tin mill industry deteriorated further from 1996 to 2000, the evidence demonstrates that the domestic industry already was experiencing "significant overall impairment" at the beginning of the period examined. For example, domestic tin mill producers were experiencing substantial operating losses in 1996 through 1999, and only improved somewhat in 2000. Thus, we find that the domestic tin mill industry has been unable to operate at any, let alone a reasonable, level of profitability throughout the period of investigation.

In view of the significant idling of productive facilities, the seriously impaired financial condition of the domestic industry, and significant unemployment or underemployment within the domestic industry, we find that the domestic industry producing tin mill products is seriously injured.

3. Substantial Cause[402]

Finding. We find that the increased imports of tin mill products are not a substantial cause of serious injury to the domestic tin mill industry. Specifically, we do not find that increased imports are a cause of serious injury that is equal to or greater than any other cause. Our findings with respect to substantial cause of threat of serious injury are provided in Section IV.D.4. below.

a. Conditions of Competition

There are a number of factors that affect the competitiveness of domestic and imported tin mill products in the U.S. market, including the declining trends in demand for tin mill products, in large part because of the increasing use of alternative packaging materials, the consistent low levels of capacity utilization, and the consolidated purchaser base.

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[397] CR and PR at Table FLAT-C-8.

[398] CR and PR at Table FLAT-C-8.

[399] CR and PR at Table FLAT-26.

[400] CR and PR at Table FLAT-18.

[401] CR and PR at Table FLAT-C-8.

[402] Commissioner Miller finds that increased imports of tin mill products are a substantial cause of serious injury to the domestic industry and does not join in the remainder of the discussion on tin mill products. *See Separate and Dissenting Views of Commissioner Marcia E. Miller on Injury with Respect to Tin Mill Products.*

The demand for tin mill products depends on the demand for containers, primarily processed food containers, but also aerosol cans.[403] During the period of investigation, demand for tin mill products declined overall consistent with the long-term trend towards use of alternative forms of packaging and changes in methods of producing downstream products.[404] For example, food and beverage container manufacturers increasingly have switched to use of plastic containers rather than steel cans as well as plastic rather than steel bottle closures.[405] The evidence demonstrates that such switches to alternative forms of packaging typically are permanent.[406] In addition, purchasers of tin mill products have increasingly used lighter gauge tin mill and/or switched from manufacturing three-piece cans to two-piece cans.[407] Both changes in methods of producing downstream products result in use of less tin mill products.[408]

The domestic tin mill products industry operated at low capacity utilization levels during the period of investigation.[409] Domestic capacity utilization was 78.3 percent in 1996, 72.9 percent in 2000, and 71.7 percent in interim 2001.[410] At the end of the period of investigation, the industry commenced rationalization plans which resulted in production capacity declines in 2000 and interim 2001.[411] Specifically, Weirton's CEO testified that "[o]ne million tons or a little more than 20 percent of U.S. capacity of produced tin mill products will have been shut down this year in the past 12 months."[412] The capacity reductions resulted from U.S. Steel's plans, announced in November 2000, to shut down two tin mill products facilities in Aliquippa and Fairless Hills, Pennsylvania that it had acquired from LTV and to consolidate tin mill production at facilities in East Chicago, Indiana, and Gary, Indiana.[413]

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[403] CR at FLAT-67, PR at FLAT-53. Major end-uses of tin-plate are in the manufacture of welded food, beverage, aerosol, and paint cans. Chromium-coated steel sheet is used primarily for beer and soft drink two-piece drawn cans and ends, as well as ends for food cans and caps and crowns for glass containers. Tin-plate is used for the can itself because it imparts a shinier surface than chromium coating while chromium-coated steel sheet, with its duller surface finish, is considered adequate for use in the ends of cans. According to AISI, nearly 90 percent of all U.S. shipments of chromium-coated steel sheet in 1998 were used in container and packing applications, including cans, crown caps, and other closures. USITC Pub. 3337 at I-6; CR and PR at OVERVIEW-Table 2 and at FLAT-4.

[404] CR at FLAT-67, PR at FLAT-53. From 1996 to 2000, demand for tin mill products declined by 4.9 percent, and was 10.2 percent lower in interim 2001 compared with interim 2000. CR and PR at Table FLAT-C-8. The evidence demonstrates that demand for tin mill products originally declined significantly in the late 1970's and early 1980's and has continued overall to decline since as beverage containers were increasingly manufactured from aluminum rather than tin mill products. Joint Respondents' Tin Mill Prehearing Brief at 15-16 and Exh. 1 at 3.

[405] CR at FLAT-67, PR at FLAT-53; CAN's Prehearing Brief at 8-9; Joint Respondents' Tin Mill Prehearing Brief at 15-17. For example, large steel juice cans have increasingly been replaced by plastic bottles and milk carton style containers which have resulted in less demand for tin mill products. Other steel food cans also have been replaced with plastic or food bags. *Id.* and CAN's Prehearing Brief at Exhs. 1 and 3 ***.

[406] Joint Respondents' Tin Mill Prehearing Brief at 17.

[407] Joint Respondents' Tin Mill Prehearing Brief at 17-18; CAN's Prehearing Brief at 10-12 and Exh. 1-3.

[408] CR at FLAT-67, PR at FLAT-53.

[409] CR and PR at Table FLAT-C-8. *See also* Joint Respondents' Tin Mill Prehearing Brief at 22-27.

[410] CR and PR at Table FLAT-18.

[411] CR and PR at Tables FLAT-18 and FLAT-C-8.

[412] Tr. at 689.

[413] These reductions are only partially reflected in the Commission's data since the Aliquippa plant was only closed in March 2001 and the Fairless Works plant was scheduled to close in November 2001. Joint Respondents' Tin Mill Prehearing Brief at 22-27 and Joint Respondents' Tin Mill Posthearing Brief at 19-21.

Another condition of competition for the domestic tin mill products industry is the consolidation of purchasers through acquisitions and formation of buyers' groups. The number of large tin mill purchasers has declined from 49 in 1990 to 26 in 2000, with four to six can manufacturers accounting for 75 to 80 percent of all consumption.[414] In addition to the consolidations, several can manufacturers have formed buying cooperatives to maximize their negotiating power.[415]

b. Analysis

Although we have determined that the evidence demonstrates that the domestic tin mill industry is experiencing serious injury, we find that imports of tin mill products are not a substantial cause of the serious injury.

Imports of tin mill products increased from 444,684 short tons in 1996 to a peak level of 698,543 short tons in 1999, but then declined to 580,196 short tons in 2000.[416] This decline continued in interim 2001, with imports 11.1 percent lower at 263,091 short tons compared to 295,971 short tons in interim 2000.[417]

In concluding that the increased imports are not a substantial cause of serious injury, we found that the domestic industry experienced serious injury prior to the 1999 surge in imports and continues to experience such injury as imports have declined.[418] The tin mill products industry as a whole was unable to operate at a reasonable level of profits throughout the period of investigation, including in 1996, when *** firms reported operating losses on the production of tin mill products.[419]

We find that evidence demonstrates that the decline in the consumption of tin mill products is an important cause of the injury suffered by the industry. There has been a long-term trend of declining demand for tin mill products, which continued during the period examined. U.S. apparent consumption for tin mill products declined by 4.9 percent from 1996 to 2000, and was 10.2 percent lower in interim 2001 compared with interim 2000.[420] Tin mill products demand is derived from the demand for containers as discussed above. As producers of containers have shifted from use of tin mill products to such alternative packaging materials as aluminum and plastic, demand for tin mill products has declined. Changes in the methods of producing containers, such as lightweighting or making two-piece rather than three-piece cans, has resulted in the use of less steel and thus reduces the demand for tin mill products. These reductions in demand for tin mill products generally are permanent.

Nevertheless, the domestic industry has been very slow to rationalize capacity based on the permanent losses in demand. In fact, despite the long-term trends of declines in demand and capacity utilization levels of less than 80 percent, domestic producers of tin mill products actually increased

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[414] CR at FLAT-75, PR at FLAT-61; Joint Respondents' Tin Mill Prehearing Brief at 27-29.

[415] CAN's Prehearing Brief at 12-13 and Exhs. 1 and 4.

[416] CR and PR at Tables FLAT-10 and FLAT-C-8.

[417] CR and PR at Tables FLAT-10 and FLAT-C-8.

[418] We note that the 1999 increase in imports was driven in part by Weirton's decision to shut down a blast furnace and rely on imported slabs. Weirton's on-time performance in 1999 suffered tremendously, and the canning companies were compelled to source product from abroad. With the restart of that furnace, Weirton's on-time performance improved markedly in 2000 and imports declined. Minimill 201 Coalition's Posthearing Brief at Exh. 24.

[419] CR and PR at Table FLAT-26.

[420] CR and PR at Table FLAT-C-8.

capacity from 4.7 million short tons in 1996 to 4.9 million short tons in 1998.[421] As discussed above, domestic producers began to rationalize production with some resultant declines in capacity reported for 2000 and more for interim 2001. However, since the most substantial reductions, reportedly accounting for approximately 20 percent of U.S. capacity to produce tin mill products, only occurred in March 2001 or are scheduled to occur in November 2001, the effects of these rationalization efforts are not reflected in the Commission's data.[422]

Finally, U.S. purchasers of tin mill products accounting for the vast majority of U.S. apparent consumption attested that a substantial portion of their imports consist of tin mill products that are not available from domestic producers.[423] This evidence, which with one exception has not been refuted by domestic producers, indicates that in 2000 approximately *** of imports subject to this investigation reportedly were not available from domestic producers. Moreover, domestic producers provided no evidence to support its opposition regarding domestic availability for those products, except to comment that ***.[424]

In sum, given the serious injury experienced by the domestic industry well before the surge of imports in 1999, as well as the evidence in the record of other factors, particularly the long-term continuing decline in demand for tin mill products, the consolidated market, and the fact that a substantial portion of imports are reportedly not domestically available, we find that increased imports are not a cause that is equal to or greater than any other cause. We therefore conclude that increased imports are not a substantial cause of serious injury to the U.S. tin mill products industry.

4. Threat

Finding. We find that the increased imports of tin mill products are not a substantial cause of the threat of serious injury to the domestic industry. As discussed above, the evidence demonstrates that the domestic industry was seriously injured before and during the period examined. However, our analysis of the following factors leads us to the conclusion that imports do not pose a threat of serious injury to the domestic industry.

First, imports of tin mill products have declined over the last 18 months. Imports declined by 16.9 percent from 698,543 short tons in 1999 to 580,196 short tons in 2000, and were 11.1 percent lower at 263,091 short tons in interim 2001 compared with 295,971 short tons in interim 2000.[425] The ratio of imports to domestic production declined from 20.1 percent in 1999 to 17.4 percent in 2000, and increased slightly to 17.7 percent in interim 2001.[426] The decline in imports in the most recent periods

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[421] CR and PR at Table FLAT-C-8.

[422] *See* note 45 *supra*. Chairman Koplan notes that as demand has declined, tin mill product producers also have been faced with a consolidated purchaser base, involving a small base of large purchasers and buying cooperatives. Four to six firms account for 75 to 80 percent of all consumption. In such a market, purchasers hold significant bargaining power and exert pricing pressures on the domestic industry. Moreover, sales of tin mill products traditionally have been through annual contracts, and increasingly three-year contracts. These large contracts place increased bargaining pressure on tin mill producers not to lose sales in the declining market.

[423] Tr. of 9/20/01 at 1157, 1161-62; CAN's Prehearing Brief at 5-7 and Exhs. 1-4; CAN's Posthearing Brief at 3-5; Joint Respondents' Tin Mill Prehearing Brief at Exh. 5; Jt. Respondents' Tin Mill Posthearing Brief at 33-36 and Exh. 1.

[424] Minimill 201 Coalition's Posthearing Brief at 9.

[425] CR and PR at Table FLAT-C-8.

[426] CR and PR at Table FLAT-10.

strongly suggests that imports do not present a threat of serious injury to the domestic industry that is clearly imminent.

Second, available foreign capacity does not indicate an imminent threat. Foreign capacity to produce tin mill products has fluctuated slightly between years and increased by 5.8 percent from 1996 to 2000.[427] Foreign capacity was only 1.4 percent higher in interim 2001 compared with interim 2000, and is expected to remain in 2001 and 2002 at a level similar to that throughout the period examined.[428] While there is some excess foreign capacity, the excess has remained fairly steady over the POI, and foreign capacity utilization increased somewhat between 1996 and 2000 (from 86.0 percent to 87.9 percent) and is projected to remain at a similar level in 2001 and 2002.[429]

Third, the likelihood of imports threatening serious injury to the domestic industry is further lessened by the presence of an outstanding antidumping duty order, which was applied in 2000, on imports of tin mill products from Japan.[430] This order, which has significantly affected the foreign country that has been the largest supplier of tin mill products to the U.S. market, will remain in place at least until the Commission's scheduled review in 2005.

Fourth, inventories of tin mill products have not increased. Inventories of domestic tin mill products as a share of total U.S. shipments, which were 9.9 percent in 2000, have remained at relatively the same level during the period examined.[431] U.S. importers' inventories as a share of U.S. shipments of imported tin mill products have declined from 5.7 percent in 1996 to 2.2 percent in 2000, although they increased from 1.6 percent in interim 2000 to 6.5 percent in interim 2001.[432] Importers' U.S. inventories were fairly constant in absolute terms and were low in comparison to import shipments. Foreign producers' inventories of tin mill products as a share of their total shipments have declined from 8.9 percent in 1996 to 6.9 percent in 2000 and are expected to remain at about 7 percent in 2001 and 2002.[433]

Fifth, the evidence shows that the declines in demand for tin mill products will continue to be a more important cause of any injury. As discussed above, demand for tin mill products is derived from demand for containers, which increasingly are made from alternative materials or are produced with less use of tin mill products.

We therefore conclude that increased imports are not a substantial cause of the threat of serious injury to the domestic tin mill products industry.

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[427] CR and PR at Table FLAT-46.

[428] CR and PR at Table FLAT-46.

[429] CR and PR at Table FLAT-46.

[430] USITC Pub. 3337 (Aug. 2000).

[431] CR and PR at Table FLAT-18.

[432] CR and PR at Table FLAT-49.

[433] CR and PR at Table FLAT-46.

V. CERTAIN CARBON AND ALLOY LONG PRODUCTS[434]

A. Domestic Industry Producing a Like or Directly Competitive Article

Finding. As stated below, we find that there are ten domestic industries producing articles like and corresponding to the similar imported articles subject to investigation within the carbon and alloy long products category. Nine of these industries produce articles corresponding to individual product categories on which the Commission collected data: (1) carbon and alloy billets, ingots, and blooms ("billets"), (2) carbon and alloy hot-rolled bar and light shapes ("hot-rolled bar"); (3) carbon and alloy cold-finished bar ("cold-finished bar"); (4) carbon and alloy rebar ("rebar"); (5) carbon and alloy rails and railway products ("rails"); (6) carbon and alloy heavy structural shapes and sheet piling ("heavy structural shapes"); (7) carbon and alloy fabricated structural units ("fabricated units"); (8) carbon and alloy wire ("wire"); and (9) carbon and alloy nails, staples, and woven cloth. The tenth industry encompasses producers of carbon and alloy and stainless strand, rope, cable, and cordage.[435]

1. "Long Steel Mill Products"

The Minimill 201 Coalition, a group of domestic producers supporting relief, argued that the Commission should define a single like or directly competitive product encompassing five articles: billets, hot-rolled bar, rebar, rails, and heavy structural shapes. It has referred to this proposed product as "long steel mill products." According to the Minimill 201 Coalition, the salient common feature of long steel mill products is that they are all produced directly from billets at minimills. Billets constitute most of the cost of the finished forms of these products. Additionally, according to the Minimill 201 Coalition, most minimills make two or three of the four types of finished products within its proposed category, and can shift production from one type of product to another based on market conditions. Respondent groups generally opposed this proposal, and requested that the Commission treat as a distinct like product each of the five products within the proposed "long steel mill products" category.

In considering whether to evaluate "long steel mill products" separately or as a whole, we use the general framework that we articulated in section II.A. above. As we explained in that section and elaborated further in the discussion of flat products in section IV.A. above, we give particular attention in safeguards investigations to the commonality of productive resources, examining whether and to what extent different products share common production facilities and production processes. We have also examined whether there are overlaps of demand and pricing correlations between the various products.[436]

a. Finished Products

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[434] Unless otherwise stated, this section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, Commissioner Miller, and Commissioner Hillman.

[435] We initially observe that there is no dispute that, within these particular groupings, there are domestically-produced articles "like" the imports subject to investigation. Additionally, since we have found that there are industries producing like articles, we did not need to reach the question of whether there are directly competitive articles.

[436] Additionally, as we stated in the discussion on flat products, when we are considering product groupings that consist of products in several different HTSUS classifications, we give less emphasis to the factor of customs treatment in our like product analysis. Each of the ten long product types on which the Commission collected data encompassed at least two different HTSUS categories, and hot-rolled bar encompassed over 40.

We first consider the four types of finished products within the proposed "long steel mill products" grouping: hot-rolled bar, rebar, heavy structural shapes, and rails. The Minimill 201 Coalition's argument that these products should all be placed within one like product focuses on the purported existence of common production facilities: the coalition asserts that these products are or can be made at the same facilities and that a mill operator can easily shift the product mix it produces.

On a very broad basis, production of hot-rolled bar, rebar, rails, and heavy structural shapes involves similar processes: reheating a semifinished form of steel (generally a billet for hot-rolled bar, rebar, and heavy structural shapes and a bloom for rails) and passing it through a set of grooved rolls to produce the desired shape.[437] Hot-rolled bars are produced in a variety of shapes and have no cross-sectional dimension greater than three inches. Heavy structural shapes, by contrast, have at least one cross-sectional dimension greater than three inches. Rebar is hot-rolled bar on which indentations such as grooves and ribs are rolled onto the surface. Rails are specific shapes that are typically subjected to specialized treatment processes to make them appropriate for railroad use.[438]

In assessing the Minimill 201 Coalition's contention concerning common production facilities, we used questionnaire data to examine what percentage of shipments of each of the four categories is made by producers who make more than one category of products. The data do not necessarily reflect exactly what percentage of production of any particular product is made at mills producing multiple products, because several producers operate multiple mills, not all of which manufacture the same categories of products. Nevertheless, the data provide an upper bound on productive overlap, because producers that do not produce particular combinations of product categories at all cannot be producing these combinations at the same facility.

The data indicate only negligible overlap between producers of rails and producers of the other three products. In 2000, less than *** percent of hot-rolled bar, rebar, or heavy structural shapes shipments were made by U.S. producers that also produce rails.[439] Rail production is undertaken by a small number of producers who tend to specialize in that product. The two largest U.S. rail producers – Bethlehem and Oregon Steel – accounted for *** of U.S. rail production in 2000.[440] Capital expenses involved in initiating rail production are quite high. The equipment required to produce rails costs well over $100 million.[441]

Rails are also distinguished from other types of long products by their uses, characteristics, and channels of distribution. Rails are used for rail transportation, while other long steel mill products are used at least partially for construction applications.[442] Rails have much more restrictive quality tolerances than the other products.[443] Both industry and railroad witnesses testified that U.S. railroads negotiate directly with the two principal domestic rail producers for their rail purchases.[444] There is little overlap between purchasers of rails and purchasers of the other long steel mill products; only 5 percent of

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[437] CR and PR at OVERVIEW-11, Figure OVERVIEW-2.

[438] CR and PR at OVERVIEW-11.

[439] INV-Y-207, Table X-3A.

[440] CR and PR, Tables LONG-1, LONG-19.

[441] *See* Memorandum from Harry Lenchitz to Investigative Team (Oct. 2, 2001) ("Lenchitz Memorandum") (replacement cost for 1981 rail mill estimated to be $195 million); Domestic Rail Producers Prehearing Brief, ex. 1 (new SDI rail/structural mill estimated to cost approximately $300 million).

[442] *See, e.g.*, CR and PR, Table OVERVIEW-2; Minimill 201 Coalition Posthearing Brief, vol. 2, ex. 2.

[443] CR and PR at OVERVIEW-11.

[444] Tr. at 1327 (Gibson), 1500 (Gilette), 1501 (Zaversnik).

hot-rolled bar purchasers, 12 percent of rebar purchasers, and 9 percent of heavy structural purchasers also purchase rails.[445]

There is consequently a clear dividing line between rails and the other types of long steel mill products in terms of production facilities and processes, uses, physical characteristics, and channels of distribution. Accordingly, we determine that there is a distinct domestic industry producing rails.

By contrast, there is some degree of overlap of production facilities with respect to hot-rolled bar, rebar, and heavy structural shapes; this overlap is most notable with respect to hot-rolled bar and rebar. In 2000, 86.2 percent of rebar U.S. commercial shipments, 56.6 percent of heavy structural shapes U.S. commercial shipments, and 47.9 percent of hot-rolled U.S. commercial shipments were attributable to producers that made one or both of the other two products.[446] Additionally, the Minimill 201 Coalition submitted information for the record indicating that certain mills produce many sizes of product on the same rolling equipment, and use the same equipment to produce both hot-rolled bar and rebar, or hot-rolled bar and heavy structural shapes.[447] Nevertheless, over half of hot-rolled bar shipments were attributable to producers that made neither of the other products.[448]

We also examined the degree to which there were similarities in demand among the "long steel mill products." The parties do not dispute that one type of finished product from the "long steel mill products" group cannot be substituted for another in a particular use.[449] Hot-rolled bar is used in a variety of applications, including in the production of parts of buildings, bridges, motor vehicles, machinery, and transportation equipment.[450] Rebar is used almost exclusively in the construction industry to provide structural reinforcement for concrete structures.[451] Heavy structural shapes tend to be load-bearing support members in such applications as buildings, bridges, and original equipment manufacturing.[452]

Consequently, rebar and heavy structural shapes are used predominantly in construction applications, and a substantial proportion of hot-rolled bar is also used in such applications. Significant quantities of hot-rolled bar are also used in automotive and industrial equipment applications, however, where use of heavy structural shapes is minor and use of rebar is non-existent.[453] The record contains testimony and statements by purchasers, which include steel service centers, fabricators, and distributors, that purchase two or all three products.[454] Nevertheless, no purchaser indicated that demand or prices for the products are interrelated. Indeed, the Minimill 201 Coalition's economic expert did not assert that

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[445] CR and PR, Table LONG-85.

[446] INV-Y-207, Table X-3A.

[447] Minimill 201 Coalition Posthearing Brief, vol. 5, ex. 8. The materials in this exhibit do not indicate the extent to which mills have shifted their product mix over time.

[448] INV-Y-207, Table X-3A. By contrast, as discussed above, flat products producers have a greater degree of overlap in production among several types of products.

[449] *See, e.g.*, Minimill 201 Coalition Posthearing Brief, vol. 1 at 12-13.

[450] CR and PR at LONG-1.

[451] CR and PR at LONG-2; *see generally Certain Steel Concrete Reinforcing Bars from Indonesia, Poland, and Ukraine*, Invs. Nos. 731-TA-875, 880, 882 (Final), USITC Pub. 3245 at I-7 (May 2001).

[452] CR and PR at LONG-3; *see generally Certain Structural Steel Beams from China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan*, Invs. Nos. 731-TA-935-942 (Preliminary), USITC Pub. 3438 at I-3 (July 2001).

[453] Minimill 201 Coalition Posthearing Brief, vol. 2, ex. 2.

[454] Tr. at 1312-13 (Cooper), 1316 (Singer); Minimill 201 Coalition Prehearing Brief, exs. 8, 11.

there were cross-product price effects which would warrant treating producers of "long steel mill products" as an integrated industry for purposes of analyzing the effect of imports.[455]

Because of their distinct uses and the lack of any cross-product price effects, we find that hot-rolled bar, rebar, and heavy structural shapes do not have sufficiently common characteristics to warrant grouping them for purposes of our injury analysis, notwithstanding the overlap in facilities producing these products.[456] We consequently treat hot-rolled bar, rebar, and heavy structural shapes as articles produced by distinct domestic industries.

Ovako Ajax, Inc. and Ovako Steel, AB (collectively "Ovako") request that we establish a like product category consisting of "ball bearing steel" which would incorporate products variously categorized as hot-rolled bar, cold-finished bar, and seamless tubular products. The Ad Hoc Committee for Fair International Steel Trade (FIST) contends that the Commission should treat "large" hot-rolled bar (which it defines as bar over 6.5 inches in diameter) as a distinct like product from other hot-rolled bar. As explained below, we do not believe that these proposed like products have sufficiently different characteristics from other types of hot-rolled bar to warrant treating them distinctly. Accordingly, we find hot-rolled bar to be an article produced by a single domestic industry.

The "ball bearing steel" product on which Ovako focuses encompasses a variety of products with obvious physical differences, including both long products such as hot-rolled bar and tubular products such as seamless pipe. Ball bearing steel is not distinguished from other steel products by considerations of either productive facilities or uses. The Timken Co., a principal U.S. producer of "ball bearing steel," indicates that it makes other alloy steel products on the same equipment it uses to produce "ball bearing steel."[457] Not all ball bearings are produced with "ball bearing steel" and not all "ball bearing steel" is used to produce ball bearings.[458] The information in the record indicates that ball bearing steel is neither sufficiently homogenous in terms of physical characteristics or end uses, nor sufficiently distinguished from other types of steel subject to these investigations in terms of physical characteristics, uses, or production processes to warrant treating it as a separate article.

The very limited information in the record about large hot-rolled bar indicates that there is not a clear dividing line between large hot-rolled bar and other hot-rolled bar products. Generally speaking, hot-rolled bar producers offer their products in a wide variety of sizes and shapes.[459] Channels of distribution for larger and smaller diameter bar tend to be the same.[460] Moreover, the Commission has traditionally been reluctant to divide a product continuum in a safeguards investigation to find specialty products to be distinct like products.[461] Accordingly, we find that the pertinent domestic industry encompasses producers of all hot-rolled bar.

b. Semifinished Products

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[455] *See* Minimill 201 Coalition Posthearing Brief, vol. 1 at 39-40.

[456] The same considerations that preclude grouping more than one of the "long steel mill products" into a single like product also preclude grouping *all* long products subject to investigation as a single like product. Consequently, we reject the argument of USWA that all long products should be treated as a single like product.

[457] Timken Posthearing Brief, ex. 1, ¶ 7.

[458] Timken Posthearing Brief, ex. 1, ¶¶ 5-6.

[459] *See generally* Minimill 201 Coalition Posthearing Brief, vol. 5, ex. 8. Although the HTSUS has different classifications for round bars of different diameters, the classification breakouts occur at diameters below 6.5 inches.

[460] *See* Lenchitz Memorandum.

[461] *Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 at I-10 (July 1999).

We next consider whether billets should be included as the same domestic industry as any of the finished products. The Minimill 201 Coalition, in arguing that they should, emphasizes that billets are generally produced in the same production facilities as hot-rolled bar, rebar, heavy structural shapes, and rails. While it is correct that the majority of billet producers also produce at least one of the finished products,[462] production processes for the semifinished and finished products differ substantially. Hot-rolled bar, rebar, and heavy structural shapes are all produced using rolling processes. By contrast, the semifinished forms of long products are produced by melting scrap or scrap substitutes in an electric arc furnace.[463] Moreover, we have already determined that the overlap of productive facilities among the various types of finished products -- notwithstanding that hot-rolled bar, rebar, and heavy structural shapes can all be made on the same facilities at a single rolling mill -- is insufficient, in and of itself, to justify placing any combination of these products into a single like product. Consequently, the fact that billets are also made at the same mills as particular finished products is not a sufficient basis to justify grouping billets with any of the individual finished products for purposes of our injury analysis.

Further undermining the Minimill 201 Coalition's arguments concerning the interrelationship between billets and finished long products is the fact that billets are not processed merely into the finished long products discussed above. Instead, billets can also be processed into steel wire rod, which is not within the scope of this investigation, and seamless pipe, a tubular product.[464] Consequently, the economic impact of imported billets on domestic production of a particular long mill product can be difficult to ascertain. Indeed, Dr. Hausman, who submitted testimony and economic analysis on behalf of both domestic flat and long mill product producers in this investigation, did not attempt to undertake an economic analysis of the relationship between imports of the semifinished product on domestic production of the further-processed product with respect to long products although he did so with respect to flat products.

Furthermore, there are fundamental distinctions in uses and channels of distribution for billets, on the one hand, and the finished long mill products, on the other. The finished products, as stated above, are sold to steel service centers, fabricators, and distributors, and are used largely as finished products in the construction industry. By contrast, over 92 percent of ingots, billets, and blooms produced in the United States during 2000 were captively consumed, a function of the fact that these products are used as inputs to produce a wide variety of finished products.[465]

Accordingly, there is a clear dividing line between billets, on the one hand, and finished long products, on the other. Consequently, we determine that there is a distinct domestic industry producing billets.

2. Cold-Finished Bar

All parties (excepting the USWA) to have briefed the issue agree that cold-finished bar should not be grouped in the same domestic industry with other long products. We agree.

There is limited overlap between cold-finished bar producers and producers of other types of long products. Of the 17 U.S. producers that reported cold-finished bar production in 2000, five produced hot-rolled bar, one produced rebar, and one produced heavy structural shapes.[466] During the period examined, producers that produced cold-finished bar exclusively made between 44.9 and 49.7

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[462] *See* CR and PR, Table LONG-1.

[463] CR and PR at OVERVIEW-7-8.

[464] CR and PR at OVERVIEW-11.

[465] CR and PR, Table LONG-15.

[466] CR and PR, Table LONG-1.

percent of all U.S. commercial cold-finished bar shipments.[467] Moreover, there are differences in production processes between cold-finished bar and the other products. Cold-finished bar uses hot-rolled bar as an input, and then subjects it to such other processes as cold-rolling, cold-drawing, machining, and grinding.[468] The producers that produce both hot-rolled bar and cold-finished bar perform cold finishing at separate facilities, although the cold-finishing facilities are sometimes adjacent to the rolling mill.[469]

Very little cold-finished bar is used in construction applications, the principal application for hot-rolled bar, heavy structural shapes, and rebar. A principal use of cold-finished bar is in automotive applications. This is also a significant use for hot-rolled bar, but relatively few heavy structural shapes and no rebar or rails are used for such applications.[470] The parties agree that cold-finished bar cannot be substituted for any other product, including hot-rolled bar, in a particular application.[471] There was some testimony that because hot-rolled bar is the principal input into cold-finished bar, hot-rolled bar prices can affect cold-rolled bar prices and sourcing.[472] Nevertheless, these cross-price effects are limited because the bulk of hot-rolled bar production is not cold-finished.[473]

In light of distinctions in productive facilities and uses, there are insufficient common characteristics between cold-finished bar and the other long products to warrant grouping cold-finished bar with any other product. Accordingly, we find that there is a distinct domestic industry producing cold-finished bar.

3. Fabricated Units

We next consider the appropriate treatment of fabricated units, which are used in particular construction projects. These units are produced by a process encompassing steps such as sawing, drilling, attaching, and welding heavy structural units, flat products such as plate, and hot-rolled bar.[474]

There is little overlap in production facilities or processes between fabricated units and other types of long products. Only two of the 34 producers that reported fabricated units production in 2000 also reported production of other types of long products in that year.[475] The various steps involved in fabrication outlined above (*i.e.* sawing, drilling, attaching, and welding) distinguish it from the processes used to produce the other types of bar-type long products, whose production generally involves heating, rolling, or cold-finishing.[476]

Fabricated units are sold in a different manner from other types of long products. Other long products tend to be sold in standard sizes and shapes and are sold on the basis of unit of quantity.[477] By

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[467] INV-Y-207, Table X-3A.

[468] CR and PR at OVERVIEW-11, Minimill 201 Coalition Cold-Finished Prehearing Brief, ex. 3.

[469] Tr. at 1358-59 (DiMicco), 1359 (Thielens); Lenchitz Memorandum.

[470] Minimill 201 Coalition Posthearing Brief, vol. 2, ex. 2.

[471] *See* CFTC Posthearing Brief at 6; Cold-Finished Respondents Posthearing Brief at 7; *see also* Lenchitz Memorandum.

[472] Tr. at 1405-06 (Darling).

[473] *See* Minimill 201 Coalition Posthearing Brief, vol. 2, ex. 2.

[474] CR and PR at LONG-120; AISC Posthearing Brief, Response to Staff Questions.

[475] CR and PR, Table LONG-1.

[476] *Compare* CR and PR at OVERVIEW-11 *with* AISC Posthearing Brief, Response to Staff Questions.

[477] CR and PR at LONG-120; *see, e.g.,* Minimill 201 Coalition Posthearing Brief, vol. 5, ex. 8 (listing standard sizes for which various mills offer hot-rolled bar, heavy structural shapes, and rebar); Domestic Rail Producers Prehearing Brief, ex. 6 (noting that Rocky Mountain offers three different types of rail in lengths up to 80 feet);

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contrast, structural units are fabricated for specific jobs and are priced per job.[478] This reflects the distinctive use of fabricated units. While other types of long products (such as heavy structural shapes and rebar) are used for construction purposes, fabricated units are unique in that they are in a form that can be used to erect a finished structure.[479] Virtually all fabricated units production is sold directly to the end users; this distinguishes fabricated units from every other long product.[480] Fabricated units are also distinguished from the other types of long products because sales are made on the basis of a bidding process.[481]

Consequently, there is no basis for grouping fabricated units with any other type of long product. We next consider whether the category should be subdivided. The American Institute for Steel Construction (AISC), which supports relief, argues that bar joist and steel deck should be excluded from any like product encompassing fabricated units.[482]

The basic use of bar joist and steel deck is the same as other structural units: it is a portion of the structure of an erected building. Joists are used to provide structural support for floors and roofs of buildings.[483] Deck is attached to the building frame to serve as a platform for roof or floor surfaces.[484] Thus, contrary to AISC's assertions, joist and deck are part of a building's support.[485] Contractors who

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[477] (...continued)
Minimill 201 Coalition Cold-Finished Prehearing Brief, ex. 3 (standard lengths in which Nucor offers cold-finished bar).

[478] CR and PR at LONG-120; Ocean Steel Posthearing Brief, ex. 4; AISC Posthearing Brief at 13, Responses to Staff Questions. While fabricated structural steel may be unique to a specific project, it is undisputed that numerous firms can, and do, receive bids from numerous sources for fabricated steel for a particular project. Tr. at 1337-38 (Blackburn), 1510 (Starkey), 1511 (Moore). There is no basis in the record for Ocean Steel's contention that, because the fabricated units it produces in Canada are unique, there is no domestically-produced products "like" them. Ocean Steel does not contend that, as a general matter, it does not face competition from U.S. fabricators on the U.S. projects on which it bids.

[479] Tr. at 1335 (Blackburn); *see generally* AISC Prehearing Brief, ex. 5.

[480] *Compare* CR and PR, Table LONG-24 *with* CR and PR Tables LONG-15-23. While virtually all billet shipments are distributed to end users, the overwhelming share of production of that product is captively consumed.

[481] *See* Tr. at 1337-38 (Blackburn), 1510 (Starkey), 1511 (Moore).

[482] Additionally, Ocean Steel, which opposes relief, argued for the first time in its posthearing brief that fabricated units should be subdivided into four separate categories depending on use: building projects, bridges, towers, and processing equipment. It provided no factual information to show that such a subdivision would be appropriate and acknowledged that the Commission lacks the data to conduct such a disaggregated analysis. Ocean Steel Posthearing Brief at 8-9. The limited information available in this investigation indicates that, although there may be some physical differences between, for example, structural steel for buildings and structural steel for bridges, *see* AISC Prehearing Brief at 54, there are also some similarities in the manner in which such steel is sold. *See id.* at 45 & n.68 (bridge project subject to same type of bidding process as building projects). Moreover, as previously stated, any fabricated unit is unique to the project in which it is used. Finally, fabricated units are a continuum of products, and in our view the record lacks a sufficient basis to divide that continuum. We consequently reject Ocean Steel's argument.

[483] AISC Posthearing Brief, ex. 5 at 3-6, 14.

[484] AISC Posthearing Brief, ex. 4 at 4.

[485] AISC Posthearing Brief, ex. 5 at 14 (joist supports floor and roof decks); ex. 4 at 4 (deck stabilizes frame and reinforces slab to support building's design structure).

appeared at the Commission hearing testified that the fabricated units that they purchase include joist and deck.[486]

The production of joist and deck, like the production of other fabricated structural units, involves processing various flat and long products by such operations as cutting, welding, and forming, although the nature of the processing tends to be less elaborate for joist and deck than for other types of fabricated units.[487] Joist, in particular, is fabricated using a combination of heavy structural shapes, hot-rolled bar, and flat products, just as fabricated units generally are.[488] The record, however, indicates that there appears only to be a small overlap between producers of joist and deck, on the one hand, and producers of other types of fabricated units, on the other.[489]

The record indicates that a "fabricated structural unit" encompasses many different types of structural steel components.[490] We do not perceive a clear dividing line between joist and deck and the other components encompassing fabricated structural units because joist and deck are part of the building structure, are fabricated using analogous material and processes, and are a portion of the fabricated unit that customers purchase.[491] Accordingly, we find that the pertinent domestic industry encompasses producers of all fabricated structural units.

4. Wire

The record of this investigation indicates that products categorized as "wire-type" long products -- including carbon and alloy steel wire, strand, rope, cable, cordage, nails, staples, and woven cloth -- are clearly divided into three domestic industries (*i.e.*, wire, rope and nails) producing articles like and corresponding to the similar imported articles subject to investigation. We find that these "wire-type" long products, in the aggregate, lack sufficient common characteristics to warrant being treated as being produced by a single domestic industry. Indeed, no party has directly advocated that the Commission find one domestic industry producing "all wire products."[492] As explained below, there are insufficient similarities in the physical properties of the articles, the production facilities in which they are made, their production processes, employees, marketing channels, and uses to justify finding that all three categories of wire-type products (wire, rope and nails) are produced by a single domestic industry.[493]

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[486] Tr. at 1567 (Starkey), 1568 (Moore).

[487] AISC Posthearing Brief, ex. 4 at 4, ex. 5 at 14-18; Lenchitz Memorandum.

[488] AISC Posthearing Brief, ex. 5 at 14.

[489] *See* CISC Posthearing Brief at 16; AISC Posthearing Brief at 9 n.18.

[490] *See* AISC Prehearing Brief, ex. 5, an Ironworkers Union manual illustrating 29 different types of structural steel. Joists are expressly listed. Another item appears to refer to steel deck.

[491] We observe that a major focus of AISC's like product argument is that deck and joist producers have separate trade associations from the AISC and have not participated actively in this investigation. *See* AISC Posthearing Brief at 12-13, 16. We believe these considerations are of little probative value in the Commission's like product analysis.

[492] The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers ("Rope Committee") stated it could support such a finding, but did not advocate its adoption. *See* Rope Committee Prehearing Brief at 4.

[493] In a prior Commission investigation of carbon and certain alloy steel products under Section 201 of the Trade Act of 1974, as amended, the Commission grouped wire and wire products in one of nine domestic industries or "classes of products" that was found to be like or directly competitive with the imported carbon wire product. In that case, the Commission found that all of the articles in the class shared common characteristics to the extent that steel was the raw material for further processing of the products. However, the Commission also noted in the determination that, "there are meaningful differences in the productive facilities and processes for many of the

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Instead, we find the following three domestic industries: carbon and alloy wire ("wire"); carbon/alloy and stainless steel wire rope, strand, cable, and cordage ("rope"); and carbon and alloy nails, staples, and woven cloth ("nails").

Wire is formed by cold drawing rods, a long product not within the scope of this investigation. Wire is then sold to redrawers for further processing into different products in the rope/cable/cordage and nails/staples/cloth categories.[494] For example, rope is processed by twisting together several wires encircling a core (which itself may consist of other twisted wires) configured in a constant lay.[495] Nails and staples are downstream products cut from wire.[496] Nevertheless, overlap of production across these categories of products is limited. A majority of both wire and nail producers manufacture only wire and nails, respectively, and only two producers produce wire, rope and nails.[497] This lack of overlap indicates that production of each of the product categories generally takes place at different facilities.

Similarities in end uses are also limited. While wire is frequently used in automotive applications,[498] rope is generally used to lift, support, or secure loads or materials.[499] Nails and industrial staples are primarily sold to the construction industry to join or connect wood or other construction materials, although some staples are sold for office use.[500] Moreover, the three different product categories are sold through different marketing channels, and there is little overlap in purchasers. While wire and rope are primarily shipped to end users,[501] nails are shipped to distributors.[502] Thus, few customers who buy wire or rope also purchase nails.[503] More specifically, less than 20 percent of wire purchasers purchase products in either the rope or nails categories. Fewer than 30 percent of purchasers in the rope category purchase either wire or products in the nails category. Of purchasers in the nails category, 20 percent purchase rope and 37 percent purchase wire.[504]

Therefore, the record indicates significant distinctions between wire and products in the rope/cable/cordage and nail/staples/cloth categories in terms of production processes, production facilities, and end uses. Because there is a clear dividing line between carbon and alloy wire and the other "wire-type" products, we find that there is a distinct domestic industry producing carbon and alloy wire.[505]

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[493] (...continued)
products and wide variance in the U.S. market for each group of products." *Carbon and Certain Alloy Steel Products*, Inv. No. TA-201-51, USITC Pub. 1553 (July 1984) at 18-21.

[494] CR and PR at LONG-3.

[495] CR and PR at LONG-3.

[496] CR and PR at OVERVIEW-11-12.

[497] Of 45 wire producers, only 11 manufacture rope and 6 produce nails. CR and PR at Table D-1. While certain companies manufacture both wire and rope, it is not clear that both articles are produced in the same facilities. CR and PR at Table DC-1.

[498] CR and PR at Table OVERVIEW-2.

[499] CR and PR at LONG-3.

[500] DeAcero, S.A. de C.V. Prehearing Brief at III-C-2.

[501] CR and PR at Tables LONG-20 and 21.

[502] CR and PR at Table LONG-22.

[503] CR and PR at Table LONG-85.

[504] CR and PR at Table LONG-85.

[505] The American Wire Producers Association, the Joint Wire Respondents, and Acero, S.A. de C.V. all argued that carbon and alloy steel wire should be treated as a separate like product.

(continued...)

We next consider the argument of Michelin and the Rubber Manufacturers of America that tire bead wire should be a separate like or directly competitive product from other carbon and alloy wire. Both wire and tire bead wire are drawn from wire rod and therefore share basic physical properties. Tire manufacturers testified during the investigation that bead wire is unique because it is bronze-coated, but other types of wire are also coated.[506] While tire bead wire may be a specialized product, the record indicates it is produced by wire companies that make other types of wire in the same facilities, using the same equipment and employees.[507] Several producers of bead wire also appear to produce other types of wire on the same equipment.[508] Bead wire, like other types of wire, is primarily sold to the automotive industry.[509]

The record therefore indicates that bead wire is part of a continuum of wire products, and we do not find bead wire to be produced by a domestic industry distinct from that producing other types of carbon and alloy wire. Accordingly, we find that the pertinent domestic industry encompasses all producers of carbon and alloy wire.

5. Strand, Rope, Cable and Cordage

As discussed above, articles in the rope category are distinguishable from those in both the wire and the nails categories. There is little commonality in productive facilities. Only two of 17 rope producers also manufacture nails.[510] As stated previously, the production of wire, rope, and nails each requires different production processes and equipment. Furthermore, rope is used in applications different from those of wire or nails. Unlike wire or nails, rope is generally used to transmit force by

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[505] (...continued)

No party argued that stainless steel wire should be included in the same like product or industry as carbon and alloy steel wire. Indeed, domestic stainless steel wire producers argued against such treatment. *See* Tr. at 1681 (McElwee), 1686 (Pendleton). We agree that combining carbon and alloy wire, on the one hand, and stainless wire, on the other, into a single like product is not warranted. Of 45 carbon steel wire producers and 21 stainless steel wire producers, only five produced both products in 2000. CR and PR at Table D-1 and INV-Y-191. Moreover, these five firms produced only 10.5 percent of all U.S. production of carbon steel wire in 2000. *See* INV-Y-191. Although both carbon and stainless steel wire can be produced in the same facilities, they are rarely produced on the same equipment. Tr. at 1660-61 (Coelho). Even then, switching production from one product to the other is not a continuous process. Tr. at 1661 (Coelho). Moreover, carbon and stainless steel wire share different physical properties, uses, and marketing channels. Unlike carbon wire, stainless wire is used in the food processing industries as well as in the production of household appliances. CR and PR at LONG-4-5 and STAINLESS-1-4.

[506] For example, galvanized wire is carbon steel wire that has been coated with zinc.

[507] *See* American Wire Producers Association Posthearing Brief at 31 ("while tire bead wire is a specialized product, so are other types of Wire which are produced to meet specific end-use applications. They are all part of the Wire industry, and they are all made by companies which make other types of Wire in the same facilities, using the same equipment and employees.")

[508] The President and CEO of domestic producer ***, a major producer of both bead wire and other types of carbon steel wire, submitted an affidavit stating that *** produces bead wire on the same equipment and with the same employees used to produce other types of carbon wire, such as spring wire and duct reinforcing wire. American Wire Producers Association Posthearing Brief, ex. 12. The American Wire Producers Association, in its posthearing brief, stated that there are a number of other domestic wire producers that manufacture both bead wire and other wire products at the same facilities, including ***. CR and PR at Table LONG-1. *See also* www.bekaert.colm/steelcord/ S_app2b_main.htm., and American Wire Producers Association Posthearing Brief at 31-32.

[509] Rubber Manufacturers Association Prehearing Brief at 11-12, Posthearing Brief at 23-29, and CR and PR at Table OVERVIEW-2.

[510] CR and PR at Table D-1.

lifting loads and materials.[511] The market for rope includes different end-users, such as the airline industry and commercial fishing vessels.[512]

We considered two issues concerning products in the rope category. The first concerned whether articles in the carbon and alloy rope category and those in the stainless rope category are similar and produced by the same domestic industry. Domestic rope producers supported such treatment, but certain respondents initially opposed it.[513]

Both carbon/alloy and stainless steel wire rope consist of two or more steel wires formed into multiple strands that are laid helically around a central core.[514] In addition, both types of rope are used to transmit force and share similar end uses.[515] For example, both are used in marine applications such as riggings on yachts and on commercial fishing vessels.[516] Both are also used in aircraft applications.[517]

All U.S. producers of stainless steel wire rope that responded to the Commission's questionnaires also produce carbon/alloy steel wire rope.[518] Both carbon/alloy and stainless steel wire rope are produced in the same production facilities, by the same employees, using the same equipment.[519] Two U.S. steel wire rope producers testified that their companies produce both carbon/alloy steel wire rope and stainless steel wire rope in the same facilities, on the same equipment, without a significant "change-over" period between running one product or another."[520]

Carbon/alloy and stainless steel wire rope are both sold to distributors and end-users.[521] Although stainless steel wire rope is sold predominantly through the former channel and carbon/alloy steel wire rope through the latter, the overlap is significant.[522]

Consequently, carbon/alloy and stainless steel wire rope share substantial similarities in physical properties, production facilities, equipment, and employees, marketing channels, and end uses. Accordingly, we find there is one domestic industry producing both carbon/alloy and stainless steel wire rope.

The second issue concerns whether tire cord should not be grouped with other products in the rope category, as requested by several tire manufacturers and the Rubber Manufacturers Association. Tire cord is a specific type of steel wire rope used to reinforce the tread in pneumatic tires.

In basic respects, the physical properties of wire rope and tire cord are similar -- they are made of wire formed into multiple strands laid in various configurations. The extent to which the configuration of tire cord is different from that of any other rope product is reportedly a function of its need to

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[511] CR and PR at LONG-3.

[512] CR and PR at LONG-3.

[513] Joint Rope Respondents Posthearing Brief at 3.

[514] *Compare* CR and PR at LONG-2-3 *with id.* CR and PR at STAINLESS-3-4. *See also Steel Wire Rope from China and India*, Invs. Nos. 731-TA-868-869 (Final), USITC Pub. 3406 (March 2001) at 5.

[515] *Id.* at 5.

[516] CR and PR at LONG-3 and CR and PR at STAINLESS-3-4.

[517] CR and PR at LONG-3 and CR and PR at STAINLESS-3-4.

[518] These companies include ***. CR and PR at Table D-1.

[519] CR and PR at Table D-1. *See also* Steel *Wire Rope from China and India*, Invs. Nos. 731-TA-868-869 (Final), USITC Pub. 3406 (March 2001) at 6.

[520] Tr. at 1659-60 (Wallace, Hughes).

[521] Tables LONG-21 and STAINLESS-23.

[522] Tables LONG-21 and STAINLESS-23.

withstand the stresses and pressures of the road.[523] U.S. tire manufacturers argued that tire cord is unique because its brass coating prolongs its life.[524] However, the Commission recently determined that a zinc or plastic coating can similarly preserve other steel wire rope, thereby providing the product with the same type of longer, useful life that brass plating affords tire cord.[525] The Commission in the past also determined that the use of one type of steel wire rope is not sufficient to differentiate it from other types of steel wire rope products with respect to making a like product determination.[526]

The Commission has previously found that the manufacturing process for steel wire rope consists of three steps: (1) drawing rod into wire; (2) stranding wire; and (3) closing the strands into wire.[527] Tire cord production encompasses these same general processes and *** U.S. producer of steel wire rope, ***,[528] produces both tire cord and other types of rope in the same facilities.[529]

Although three U.S. tire cord producers captively consume their production in the manufacture of tires, there are five other "specialty" producers who also supply tire cord to these tire companies.[530] Consequently, although some tire cord may be captively consumed, other tire cord is sold by producers to unaffiliated end-users, and tire cord thus shares channels of distribution applicable to other types of steel wire rope products.

Thus, we do not find a clear dividing line between tire cord and other types of wire rope products. Accordingly, we find that the pertinent domestic industry encompasses all producers of carbon/alloy and stainless steel wire rope, strand, cable, and cordage.

6. Nails, Staples, and Woven Cloth

Nails, staples, and woven cloth are produced in a similar manner and share certain physical properties and production processes. All three types of products are produced from cold-drawn steel wire.[531] Nails are produced by drawing wire through a nail machine where the head is formed.[532] Staples are also made from wire in a staple-making machine that bends the wires into a U shape and cuts the ends

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[523] Rubber Manufacturers Association Prehearing Brief at 6.

[524] Rubber Manufacturers Association Prehearing Brief at 6.

[525] *Steel Wire Rope From China and India*, Invs. Nos. 731-TA-868-869 (Final), USITC Pub. 3406 (March 2001) at I-9.

[526] *See* CR and PR at LONG-3. *Steel Wire Rope From Japan, Korea, and Mexico*, Invs. Nos. AA1921-124 and 731-TA-546 and 547 (Reviews), USITC Pub. 3259 (December 1999) at 6 and I-15.

[527] *Steel Wire Rope From Japan, Korea, and Mexico*, Invs. Nos. AA1921-124 and 731-TA-546 and 547 (Reviews), USITC Pub. 3259 (December 1999) at I-11. *Steel Wire Rope From China and India*, Invs. Nos. 731-TA-868-869 (Final), USITC Pub. 3406 (March 2001) at 7.

[528] CR and PR at Table D-1.

[529] *See* *** Producer Questionnaire Response and Joint Rope Respondents Posthearing Brief at 15-16 and Exhibit 1. Moreover, the Commission in past investigations has confirmed that different sizes and constructions of steel wire rope may be produced in the same facilities, though not always on the same equipment. *Steel Wire Rope From Japan, Korea, and Mexico*, Invs. Nos. AA1921-124 and 731-TA-546 and 547 (Reviews), USITC Pub. 3259 (December 1999) at I-13-15 and *Steel Wire Rope From China and India*, Invs. Nos. 731-TA-868-869 (Final), USITC Pub. 3406 (March 2001) at 7.

[530] Cooper Tire & Rubber Prehearing Brief at 13.

[531] CR and PR at LONG-3. *See Welded Steel Wire Fabric For Concrete Reinforcement From Italy, Mexico, and Venezuela*, Invs. Nos. 701-TA-261(A), 263(A), and 264(A) (Preliminary), USITC Pub. 1795 (January 1986) at 3-4.

[532] *Carbon and Certain Alloy Steel Products*, TA-201-51, USITC Pub. 1553 (July 1984) at A-17.

into points.[533] Wire cloth is produced from cold-drawn steel wires joined by an electric welding process to form rolls or sheets.[534]

Nails and staples generally are used to join, secure, fasten, attach or reinforce the bond between certain objects or materials.[535] Woven wire is also used to reinforce materials such as concrete.[536] Nails are sold in a variety of heads, shanks, points, sizes and finishes.[537] Staples, too, are sold in a variety of sizes, just as wire cloth is sold in many meshes and wire sizes.[538] All three of the products may be coated with materials such as zinc (for galvanizing), resin, cement or vinyl to prevent rust or corrosion.[539] Moreover, all of the products can be used in a wide variety of applications in the aircraft, chemical, petroleum, and mining industries.

No party provided a factual basis for any alternative definition of the domestic industry with respect to carbon and alloy nails, staples and woven cloth. To the contrary, one respondent, Acco, stated that certain types of staples are indeed used for the same applications as nails.[540] Indeed, in past investigations the Commission has found nails and staples to be part of the same like product.[541] The Commission has similarly found different types of nails to part of the same like product.[542] Based on the foregoing discussion and information in the record, we find carbon and alloy nails, staples and woven cloth to be produced by a single domestic industry.

B. Hot-Rolled Bar

We have found that hot-rolled bar is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic hot-rolled bar industry.

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[533] *Carbon and Certain Alloy Steel Products*, TA-201-51, USITC Pub. 1553 (July 1984) at A-17.

[534] American Wire Producers Association Posthearing Brief at Exhibit 4. *See also, Welded Steel Wire Fabric For Concrete Reinforcement From Italy, Mexico, and Venezuela*, Invs. Nos. 701-TA-261(A), 263(A), and 264(A) (Preliminary), USITC Pub. 1795 (January 1986) at 3-4.

[535] CR and PR at LONG-3. *See also, Certain Steel Wire Nails From The People's Republic of China*, Inv. No. 731-TA-266, USITC Pub. 1842 (May 1986) at 4.

[536] *Welded Steel Wire Fabric For Concrete Reinforcement From Italy, Mexico, and Venezuela*, Invs. Nos. 701-TA-261(A), 263(A), and 264(A) (Preliminary), USITC Pub. 1795 (January 1986) at A-3-4.

[537] *Certain Steel Wire Nails From The People's Republic of China*, Inv. No. 731-TA-266, USITC Pub. 1842 (May 1986) at 3-4.

[538] American Wire Producers Association Exhibit 4.

[539] *Carbon and Certain Alloy Steel Products*, TA-201-51, USITC Pub. 1553 (July 1984) at 16-17 and *Certain Steel Wire Nails From the People's Republic of China*, Inv. No. 731-TA-266, USITC Pub. 1842 (May 1986) at 3. Finishes can also be applied to nails to improve their holding ability or to prevent rust and corrosion. *Id.* at 4.

[540] Acco Prehearing Brief at 2. While Acco contended that office and industrial staples could be considered distinct like products, it did not provide any discussion of the nature of the purported distinctions between these products and in fact argued that industrial staples and nails are directly competitive.

Another respondent, DeAcero, S.A. de C.V., argued that the Commission has found certain nails, staples, and woven cloth to be separate like products in some previous antidumping investigations. *See Carton-Closing Staples and Nonautomatic Carton-Closing Staple Machines From Sweden*, Invs. Nos. 116 and 117 (Final), USITC Pub. 1454 (December 1983) at 4-5 (domestic like product defined as staples in stick form).

[541] *Certain Steel Wire Nails From Canada*, AA1921-189, (Preliminary), USITC Pub. 937 (February 1979) at 3.

[542] *Collated Roofing Nails From China and Taiwan*, Invs. Nos. 731-TA-757 and 759 (Final), USITC Pub. 3070 (November 1997) at 4-9.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Imports of hot-rolled bar increased from 1.66 million tons in 1996 to 1.81 million tons in 1997 and then to 2.34 million tons in 1998. Imports then declined to 2.26 million tons in 1999 but increased in 2000 to 2.53 million tons. Imports were lower in interim (January-June) 2001, at 952,392 tons, than in interim 2000, when they were 1.34 million tons. Imports increased by 52.5 percent from 1996 to 2000 and by 11.9 percent from 1999 to 2000.[543]

As a ratio to U.S. production, imports declined from 19.2 percent in 1996 to 18.4 percent in 1997, but then rose to 23.8 percent in 1998, 24.9 percent in 1999, and 27.5 percent in 2000. The ratio was lower in interim 2001, at 24.6 percent, than in interim 2000, when it was 27.0 percent.[544]

Imports were higher, both in absolute terms and relative to U.S. production, in 2000 than in any prior year of the period examined and showed a rapid and dramatic increase from the previous year. While imports declined in the interim period comparison, the ratio of imports to U.S. production in interim 2001 was higher than that for the first three years of the period examined, and was only three-tenths of a percentage point below the 1999 level.

In view of the above, we find that imports are in increased quantities and that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic hot-rolled bar industry is seriously injured; that is, we find that there has been a "significant overall impairment in the position" of the domestic industry. Factors that support our conclusion include the industry's financial decline, the shuttering and bankruptcy of several producers, and trends in other important indicators of the industry's condition such as capacity, production, shipments, and capital expenditures.

The data below are based on questionnaire responses submitted by 32 domestic hot-rolled bar producers estimated to account for between 70 to 78 percent of U.S. production during the period examined.[545] We observe, however, that three firms that produced hot-rolled bar before declaring bankruptcy and shutting down production in early 2001 did not submit questionnaire responses.[546] Consequently, because these firms are not included, the questionnaire data may not entirely reflect the full extent of declines in industry performance that occurred during the period examined.

There has been significant idling of productive facilities in the domestic industry during the period examined. Domestic production of hot-rolled bar increased for the first three years of the period examined, rising from 8.6 million tons in 1996 to 9.8 million tons in 1997 and then to 9.9 million tons in 1998. Production then declined to 9.1 million tons in 1999 and then rose only slightly to 9.2 million tons in 2000, despite concurrent increases in U.S. apparent consumption. The 3.9 million tons of production in interim 2001 was lower than the 5.0 million tons of production in interim 2000.[547]

According to the questionnaires, capacity increased from 12.8 million tons in 1996 to 13.3 million tons in 1998. It then declined to 12.9 million tons in 1999 and increased to 13.1 million tons in 2000. The 6.4 million tons of capacity in interim 2001 was lower than the 6.6 million tons of capacity in

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[543] CR and PR, Table LONG-5.

[544] CR and PR, Table LONG-5.

[545] CR and PR at LONG-4, Table LONG-2.

[546] These firms are ***. CR and PR, Table OVERVIEW-11.

[547] CR and PR, Table LONG-16.

interim 2000.[548] However, the questionnaires do not account for several domestic producers that shut down their facilities. The three bankrupt firms discussed above that did not submit questionnaire responses accounted for approximately 1.5 million tons of capacity – far more than the putative increase indicated by the questionnaire data.[549] Consequently, capacity actually declined during the period examined. Even if the questionnaire data were complete, however, the 2.2 percent increase in capacity from 1996 to 2000 is far less than the 11.7 percent increase in apparent U.S. consumption during the same period.[550]

Capacity utilization based on questionnaire data fluctuated throughout the period examined. Capacity utilization was at 67.2 percent in 1996, then rose for the next two years until it reached 74.3 percent in 1998, and then declined to 70.1 percent in 1999 and 70.0 percent in 2000. Capacity utilization in interim 2001 (60.3 percent) was lower than in interim 2000 (75.1 percent).[551]

The quantity of U.S. shipments rose from 8.4 million tons in 1996 to 9.5 million tons in 1997, but then declined every year thereafter, falling to 9.3 million tons in 1998, 8.8 million tons in 1999, and 8.7 million tons in 2000. The 3.9 million tons of U.S. shipments in interim 2001 was less than the 4.7 million tons in interim 2000. While the quantity of domestic producers' U.S. shipments was higher in 2000 than in 1996, the value was lower. The value of U.S. shipments, which was at $3.6 billion in 1996, rose to a peak of $4.0 billion in 1997 before declining irregularly to $3.5 billion in 2000. The $1.5 billion in U.S. shipments in interim 2001 was less than the $1.9 billion in interim 2000.[552]

The quantity of net commercial sales increased from 8.0 million tons in 1996 to 9.1 million tons in 1997. It then declined for the next three years, falling to 8.0 million tons in 2000. The 3.7 million tons sold in interim 2001 was less than the 4.5 million tons sold in interim 2000. The value of net commercial sales increased from $3.5 billion in 1996 to $3.9 billion in 1997 and then declined each subsequent year, reaching $3.2 billion in 2000. The $1.4 billion in sales in interim 2001 was less than the $1.8 billion in sales in interim 2000.[553] The fall in sales values was not only due to declines in volume. It also reflects substantial declines in average unit sales values. These declined throughout the period examined, falling from $445 in 1996 to $399 in 1999 and 2000. Average unit sales values were lower in interim 2001, at $381, than in interim 2000, when they were $408.[554]

U.S. producers' inventories increased from 1.19 million tons in 1996 to 1.25 million tons in 1997 and then to 1.48 million tons in 1998. Inventories then declined to 1.37 million tons in 1999 but increased to 1.49 million tons in 2000. The 1.25 million tons of inventories in interim 2001 were lower than the 1.42 million tons in interim 2000.[555]

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[548] CR and PR, Table LONG-16.

[549] *See* Minimill 201 Coalition Prehearing Brief at 36.

[550] CR and PR, Table LONG-C-3.

[551] CR and PR, Table LONG-16.

[552] CR and PR, Table LONG-16.

[553] CR and PR, Table LONG-27.

[554] CR and PR, Table LONG-27. We acknowledge that for a product such as hot-rolled bar which covers a broad range of product types and values, pricing data for a more specific product can provide more probative information than average unit sales values. As discussed in more detail below, for the hot-rolled bar product on which the Commission collected pricing data, prices for the domestically-produced product fluctuated during the earlier portion of the period examined, reaching a peak in the first quarter of 1998. Prices declined thereafter, reaching a low in the second quarter of 2001. CR and PR, Table LONG-90.

[555] CR and PR, Table LONG-16. The ratio of inventories to shipments declined from 13.8 percent in 1996 to 12.8 percent in 1997, increased to 15.5 percent in 1998, declined to 15.0 percent in 1999, and then increased to 16.4 percent in 2000. The ratio was higher in interim 2001, at 15.3 percent, than it was in interim 2000, when it was 14.5

(continued...)

U.S. producers' share of U.S. apparent consumption, measured by quantity, rose from 83.5 percent in 1996 to 84.0 percent in 1997, and then declined every year thereafter, reaching 77.5 percent in 2000. U.S. producers' share of U.S. apparent consumption was higher in interim 2001, at 80.5 percent, than in interim 2000, when it was 77.9 percent.[556]

A significant number of firms have been unable to carry out production operations at a reasonable level of profit during the period examined. Industry financial performance declined sharply during the latter portion of the period. The industry had operating profits of $191.6 million in 1996, which increased to $213.4 million in 1997. Operating income then declined to $193.6 million in 1998 and $124.1 million in 1999. In 2000 the industry sustained a $26.9 million operating loss. The industry had an operating loss of $89.0 million in interim 2001, as opposed to an operating profit of $26.7 million in interim 2000. Operating margins, which were 5.4 percent in 1996 and 1997, then declined to 5.1 percent in 1998, to 3.7 percent in 1999, and to an 0.8 percent loss in 2000. The operating margin was negative 6.4 percent in interim 2001, compared to positive 1.5 percent in interim 2000. The number of firms reporting operating losses, which was no greater than three during the first two years of the period examined, increased to six in 1998 and 1999 and to 10 in 2000. Sixteen firms, a majority of the industry, reported operating losses in interim 2001, compared to seven in interim 2000.[557]

The lack of questionnaire responses from some producers that have shut down facilities means that the questionnaire data do not fully reflect declines in employment that occurred at the conclusion of the period examined. The USWA indicates that, at the three hot-rolled bar production facilities that have shut down operations, over 1000 production employees have lost jobs since January 2000.[558] Questionnaire data also show employment declines during the latter portions of the period examined, albeit of a lesser magnitude. According to the questionnaires, there were 8,718 production and related workers in 1996. The number of workers then peaked in 1997 at 9,023, declined to 8,250 workers in 1999, and rose to 8,965 workers in 2000. Employment was lower in interim 2001 (8,309 workers) than in interim 2000 (9,268 workers).[559] Wages paid rose during the first three years of the period examined, increasing from $417 million in 1996 to $463 million in 1998. They then declined to $429 million in 1999 and increased to $479 million in 2000. Wages paid were lower in interim 2001 than in interim 2000. Hourly wages rose throughout the period examined. Productivity rose from 474.0 tons per thousand hours in 1996 to 521.2 tons per thousand hours in 1999, before declining to 484.9 tons per thousand hours in 2000. Productivity was lower in interim 2001 than in interim 2000.[560]

Other data for the hot-rolled bar industry also indicate serious injury. Industry capital expenditures were at their peak in 1996 at $206.0 million. Capital expenditures declined to $183.5 million in 1998, $135.4 million in 1999, and $122.1 million in 2000. The $57.5 million of capital expenditures in interim 2001 was lower than the $60.0 million in interim 2000. Research and development expenditures also declined over the period examined, never exceeding the levels reached in 1996.[561]

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[555] (...continued)
percent. *Id.*

[556] CR and PR, Table LONG-70.

[557] CR and PR, Table LONG-27. We observe that these figures do not include data from the three bankrupt producers that shut down operations in interim 2001.

[558] USWA Prehearing Brief, section III at 12, 18.

[559] CR and PR, Table LONG-16.

[560] CR and PR, Table LONG-16.

[561] CR and PR, Table LONG-27.

In light of the poor financial performance of the hot-rolled bar industry, the declines in output and shipments, and the numerous bankruptcies and plant closures that occurred during the latter portion of the period examined, with the consequent unemployment due to these closures, we conclude that the industry is seriously injured. The industry's financial condition, which showed little fluctuation during the first three years of the period examined, deteriorated rapidly after 1998. By 2000, 40 percent of producers had unprofitable operations and the industry as a whole experienced an operating loss. Industry financial performance continued to deteriorate in interim 2001.

3. Substantial Cause

Finding. We find that the increased imports of hot-rolled bar are an important cause, and a cause not less than any other cause, of serious injury to the domestic industry. Accordingly, we find that increased imports of hot-rolled bar are a substantial cause of serious injury to the domestic hot-rolled bar industry.

a. Conditions of Competition

We have taken into account a number of factors that affect the competitiveness of domestic and imported hot-rolled bar in the U.S. market, including factors related to the product itself, the degree of substitutability between the domestic and imported articles, changes in world capacity and production, and market conditions. These factors affect prices and other considerations taken into account by purchasers in determining whether to purchase domestically-produced or imported articles.

Market participants generally agree that there are few or no substitutes for long products such as hot-rolled bar.[562] As discussed in section V.A.1. above, hot-rolled bar is used in construction, automotive equipment, and industrial applications. Hot-rolled bar encompasses a wide range of products including merchant bar, special bar quality steel bars, and light shapes.[563]

The record indicates strong demand during the period examined, with apparent U.S. consumption of hot-rolled bar increasing during every full year but one of the period. Apparent consumption rose during the first three years of the period, increasing from 10.0 million tons in 1996 to 11.7 million tons in 1998. It then declined to 11.0 million tons in 1999 but increased to 11.2 million tons in 2000. Apparent consumption was lower in interim 2001, at 4.9 million tons, than in interim 2000, when it was 6.0 million tons.[564]

With regard to supply of hot-rolled bar, U.S. capacity reported in questionnaires increased slightly from 1996 to 2000, but overall industry capacity declined during the period examined. The domestic industry's capacity utilization fluctuated over the period examined. Capacity utilization for full-year periods ranged between 67.2 percent in 1996 to 74.3 percent in 1998. Foreign capacity reported in questionnaires increased from 26.7 million tons in 1996 to 29.8 million tons in 2000, and was higher in interim 2001 than in interim 2000. Foreign capacity utilization for full-year periods ranged from 74.3 percent in 1999 to 79.4 percent in 2000.[565]

Price is a moderately important factor in purchasing decisions for hot-rolled bar. Price was listed as the top factor in purchasing decisions by 27.8 percent of hot-rolled purchasers in their questionnaire

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[562] CR and PR at LONG- 78.

[563] *See* CR and PR at LONG-1.

[564] CR and PR, Table LONG-70.

[565] CR and PR, Table LONG-42. We have relied upon the questionnaires for foreign capacity and capacity utilization data, although such data are not complete. We acknowledge that the domestic producers contended that the questionnaire data understated foreign capacity and overstated foreign capacity utilization.

responses. While more purchasers listed quality than price as their top factor in purchasing decisions, they generally deemed domestically-produced hot bar and imports to be comparable with respect to the particular quality considerations most important in their purchasing decisions.[566]

b. Analysis[567]

Through price-based competition, the increased imports caused domestic hot-rolled bar producers to lose market share at the same time prices were falling. The resulting loss in revenues led to the poor operating results and plant closures discussed above.

The timing of domestic producers' price declines do not correspond precisely to the timing of the import surges. The record, however, indicates that imports had a negative effect on prices and that the domestic industry used different strategies over the course of the period examined to compete with the imports. The largest increase in hot-rolled bar imports occurred in 1998, shortly following the financial crisis that led to sharply decreased steel consumption in several Asian countries. Import volumes increased by 29.5 percent from 1997 to 1998.[568] During 1998, the imports consistently undersold the domestically-produced product. Underselling margins for the hot-rolled bar product on which the Commission collected pricing data, which hovered around 5.0 percent during the first three quarters of 1998, increased to 7.0 percent in the fourth quarter.[569]

Domestic producers generally maintained their prices in 1998, but at the cost of market share. The average unit values of U.S. shipments increased by a very slight 0.3 percent from 1997 to 1998.[570] Prices for the domestically-produced hot-rolled bar product on which the Commission collected data remained generally stable during the first three quarters of 1998. Indeed, prices for the domestically-produced product during these three quarters exceeded prices during any other portion of the period examined. Prices for the domestically-produced product did fall slightly – by 3 percent – between the third and fourth quarters of 1998.[571]

As a result of maintaining prices, the domestic industry maintained its operating margins, which declined by only three-tenths of a percentage point from 1997 to 1998. However, total operating income declined by 9.3 percent during this period.[572] The industry also lost 4.1 percentage points of market share to the imports. This was the largest drop in domestic producers' market share over the period examined.[573]

In 1999 the domestic industry responded to the import competition by reducing prices in an attempt to maintain market share. Import volumes remained high, with import market share rising slightly from 20.1 percent in 1998 to 20.4 percent in 1999.[574] Moreover, inventories held by U.S.

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[566] INV-Y-212 at 45.

[567] The Minimill 201 Coalition produced an economic model that attempted to measure the relationship between imports and the domestic industry's prices and profits. We considered this model in making our determination but note its limitations. In particular, there were defects in the manner the model measured import competition, and the model did not adequately address changes in domestic competition.

[568] CR and PR, Table LONG-5.

[569] INV-Y-212, Table LONG-ALT-90.

[570] CR and PR, Table LONG-16.

[571] INV-Y-212, Table LONG-ALT-90.

[572] CR and PR, Table LONG-27.

[573] CR and PR, Table LONG-70.

[574] CR and PR, Table LONG-70.

importers had increased sharply in 1998.[575] Thus, imports continued to be a significant competitive factor in 1999 although the quantity of imports that year was below the level of 1998. Prices for the domestically-produced hot-rolled bar product on which the Commission collected data declined by 7.8 percent from the fourth quarter of 1998 to the first quarter of 1999, and fluctuated within a narrow range during the remaining three quarters of 1999. During this period, the domestic producers' prices were below those of the imports.[576] Domestic producers' average unit values showed comparable declines.[577] As a result, in 1999 domestic producers held their loss of market share to three-tenths of a percentage point.[578] Nevertheless, because declines in the domestic industry's average unit sales values exceeded declines in the average unit costs of goods sold, its operating margin fell.[579]

In 2000, the domestic industry initially increased prices. Prices for the domestically-produced hot-rolled bar product for which the Commission collected data rose during the first quarter of 2000, although pricing levels remained below those of 1998. In the first half of the year, however, underselling by the imports resumed.[580] The imports consequently gained 1.7 percentage points of market share from the conclusion of 1999 to June 2000. In response, the domestic producers again cut prices during the second half of 2000. Prices declined by 6.1 percent between the second and third quarters of 2000, and by another 2.3 percent between the third and fourth quarters.[581]

These price declines mitigated, but did not eliminate, further erosion in the domestic industry's market share.[582] Indeed, the domestic industry sold less tonnage in 2000 than in 1999, although total U.S. consumption was greater in 2000.[583] Also, price declines during the second half of the year negated the price increases during the first half of the year – average unit sales values were unchanged in 2000 from 1999.[584] The combination of lost market share, lower sales volumes, and lower prices during 2000 -- all of which were linked to the increased imports -- led to the industry's poor operating performance and closure of productive facilities. We consequently conclude that the increased imports were an important cause of the serious injury sustained by the domestic hot-rolled bar industry.

We next consider whether there is any other cause of injury to the domestic hot-rolled bar industry as substantial as the increased imports. Respondents initially contend that competition among domestic producers is at least as great a cause of injury to the domestic industry as increased imports. In particular, they assert that domestic producer Nucor is a market leader that drives down prices. They contend that, through its price leadership, Nucor has increased its market share and made its domestic competitors less profitable.[585]

We observe initially that competition among domestic producers cannot provide any explanation for certain indicia of serious injury. While competition among domestic producers might explain why some individual producers gained market share during the period examined while others lost market

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[575] CR and PR, Table LONG-C-3.

[576] INV-Y-212, Table LONG-ALT-90.

[577] CR and PR, Table LONG-27.

[578] CR and PR, Table LONG-70.

[579] CR and PR, Table LONG-27.

[580] INV-Y-212, Table LONG-ALT-90.

[581] INV-Y-212, Table LONG-ALT-90. Price declines continued through the first two quarters of 2001. *Id.*

[582] The domestic industry's market share was 77.0 percent in the second half of 2000, as opposed to 77.9 in the first half of the year. CR and PR, Table LONG-70.

[583] CR and PR, Table LONG-C-3.

[584] CR and PR, Table LONG-27.

[585] *See* Hot-Rolled Bar Respondents Prehearing Brief at 58-60.

share, it cannot explain why the domestic industry as a whole lost market share over the period examined to the imports. The imports' share of the quantity of U.S. apparent consumption rose from 16.5 percent in 1996 to 22.5 percent in 2000, and was higher in 2000 than at any other point during the period examined.[586] As previously discussed, this loss in market share is a critical component in our causation analysis; the price declines that occurred during the period examined were a function of the industry's efforts to preclude or mitigate losses in market share in the face of increased import volumes.

We additionally examined data concerning Nucor to ascertain the extent to which it was a "price leader" and whether its pricing policies served to increase its market share vis a vis other domestic producers, as respondents contend. The data do not support the notion that Nucor was a primary source of pricing declines. While Nucor's average unit values were ***.[587] ***.[588]

The data additionally do not establish that Nucor ***.[589] We consequently conclude that Nucor's pricing practices cannot provide any explanation for the serious injury experienced by the domestic industry. Moreover, neither Nucor's practices nor internal industry competition in general can explain why the domestic industry as a whole lost market share to the imports.

Respondents next contend that inefficient producers are a larger cause of any serious injury to the domestic industry than increased imports. They contend that domestic producers *** have much higher costs than industry averages and lost money throughout the period examined regardless of market conditions.[590]

Respondents' theory fails on two accounts. First, if the difficulties of *** were due to their inefficiency relative to other domestic producers, one might expect that they would lose market share to other domestic producers that are more efficient and could therefore offer lower prices for their products. This, however, was not the case. Jointly, *** accounted for a higher proportion of the quantity of U.S. producers' commercial sales in 2000 – at *** percent -- than they did in 1996, when they jointly accounted for *** percent of such sales.[591] Consequently, the so-called "inefficiency" of *** was not causing them to lose market to their domestic competitors.

Second, if *** were aberrational performers, as respondents contend, one would expect their performance trends to differ from the other domestic producers. This was also not the case. Declines in operating performance were pervasive among hot-rolled bar producers. While *** were the only domestic producers to experience operating losses in 1997, four additional firms experienced operating losses in 1998, and four more producers beyond that experienced operating losses in 2000.[592] Thus, at most *** consistent operating losses served to make overall domestic industry operating performance consistently worse than it would have been had these two firms not been in the domestic industry. These firms' performance, however, cannot explain the overall declines in operating performance among domestic hot-rolled bar producers, the increasing incidence of operating losses, or the industry's overall loss of market share to the imports. Because neither structural problems nor the poor performance of *** can explain the domestic industry's serious injury, we conclude that the alleged inefficiency of these two firms cannot be a more important cause of injury than increased imports.

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[586] CR and PR, Table LONG-70.

[587] Nucor's average unit values were ***. Questionnaire Data, INV-Y-212.

[588] *See* Producer's Questionnaires.

[589] Nucor's share of the quantity of domestic hot-rolled bar producers' commercial sales was *** in 1996, *** in 1997, *** in 1998, *** in 1999, and *** in 2000. Questionnaire Data, INV-Y-212.

[590] *See* Hot-Rolled Bar Respondents Prehearing Brief at 80-81.

[591] Questionnaire Data, INV-Y-212.

[592] Questionnaire Data, INV-Y-212. Moreover, as previously stated, three producers that did not respond to the questionnaires declared bankruptcy and shut down production operations altogether in interim 2001.

We have also examined the role of changes in demand in explaining the serious injury of the domestic industry. We observe that U.S. apparent consumption, measured by quantity, increased by 11.7 percent from 1996 to 2000. The increase was not evenly distributed throughout the period examined, and apparent consumption peaked in 1998. We observe, however, that during this period apparent consumption declined only from 1998 to 1999, when the domestic industry maintained profitable operating performance. From 1999 to 2000, however, apparent consumption rose – yet the domestic industry became unprofitable. That domestic performance reached injurious levels in 2000, a time of rising apparent consumption, indicates to us that changes in demand cannot be a cause of the serious injury evident at that time.[593]

Finally, we have examined changes in input costs as a possible source of serious injury to the domestic industry. We note that costs declined during the period and observe that declines in input costs, in and of themselves, cannot be an alternative "cause" of injury. At most, a decline in input costs may indicate that a factor other than imports may be responsible for price declines.

For hot-rolled bar, unit cost of goods sold (COGS) declined from $399 in 1996 to $362 in 1999, and then increased to $380 in 2000; unit raw material costs declined throughout the period examined.[594] As previously stated, demand for hot-rolled bar was higher in 1999 than in 1996 and was higher in 2000 than in 1999. In times of increasing demand, producers normally need not cut their prices to reflect fully declines in cost of goods sold. Yet from 1996 to 1999, the domestic industry's declines in average unit sales values outpaced the decline in unit COGS. From 1999 to 2000, when unit COGS increased, unit average sales values remained the same. If the domestic industry could have increased its average unit sales values in 2000 to reflect increasing COGS – a reasonable expectation during a year of increasing demand – the industry could have maintained positive operating margins of at least the levels of 1999. As explained above, however, the industry could not sustain whatever price increases it initiated in 2000 because of that year's import surge. Because we cannot attribute the domestic industry's declines in operating performance in 2000 to increases in COGS, we conclude that changes in input costs cannot be as important a cause of serious injury as increased imports.

We consequently conclude that alternative causes cannot individually or collectively explain the serious injury to the domestic industry, particularly the declining market share over the course of the period examined, and the deteriorating operating performance leading to negative operating margins for the domestic industry in 2000. Accordingly, we find that increased imports are a substantial cause of serious injury to the domestic hot-rolled bar industry that is not less than any other cause.

4. Findings with Respect to NAFTA Imports[595]

a. Canada

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[593] CR and PR, Table LONG-C-3. We observe that, during interim 2001, when apparent consumption fell significantly, the domestic industry experienced further declines in operating performance. The interim 2001 data merely indicate that declines in apparent consumption can lead to further deterioration to an industry that was already seriously injured.

[594] CR and PR, Table LONG-27.

[595] We are unaware of any "exceptional circumstances" that would lead us to combine imports from Canada and Mexico in our analysis.

Finding. We find that imports of hot-rolled bar from Canada account for a substantial share of total imports and contribute importantly to the serious injury caused by the imports.[596]

Canada was the top supplier of hot-rolled bar to the United States for each of the most recent three years in the period examined. Canada supplied 46.0 percent of the quantity of all imports in 1998, 50.6 percent in 1999, and 45.6 percent in 2000.[597] Consequently, we find that imports from Canada constitute a substantial share of total imports.

We also find that Canadian hot-rolled bar has contributed importantly to the serious injury caused by imports. It is true that the percentage increase in imports from Canada was lower than that for imports from all sources. From 1996 to 2000, imports from Canada increased by 22.7 percent, while imports from all sources increased by 52.5 percent. Because imports from Canada began from a much higher base than imports from any other country, we do not believe that the Canadian increase is appreciably lower than the increase in imports from all sources. Canada's share of U.S. apparent consumption increased over the period examined, from 9.4 percent in 1996 to 10.3 percent -- its highest full-year level -- in 2000.[598] Moreover, the increase in import quantities from Canada from 1996 to 2000 was 213,890 tons and imports from Canada contributed to the import surges of 1998 and 2000.[599] The sheer volume of the Canadian increase supports our finding that imports from Canada contributed importantly to the serious injury caused by imports. Consequently, our affirmative determination for hot-rolled bar encompasses imports from Canada.

b. Mexico[600]

Finding. We find that imports of hot-rolled bar from Mexico account for a substantial share of total imports, but do not contribute importantly to the serious injury caused by the imports.

Mexico was among the top five import suppliers of hot-rolled bar during the three most recent years. It was the fourth-largest supplier in 1998 and the third-largest supplier in 1999 and 2000.[601] Consequently, we find that imports from Mexico constitute a substantial share of total imports.

Imports from Mexico increased by 20.2 percent from 1996 to 2000, as compared to a 52.5 percent increase from imports for all sources. There was fairly little fluctuation in the market penetration of the Mexican product during the period examined, which was 1.4 percent in 1996, 1997, and 1998, 1.7 percent in 1999, and 1.5 percent in 2000.[602] During the 2000 import surge, which we found to be a critical element in our analysis of causation, the quantity of imports from Mexico actually fell by 15.1

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[596] The Minimill 201 Coalition, Ispat Inland and the USWA each argued that the Commission should make a negative injury finding with respect to hot-rolled bar imports from Canada.

[597] CR and PR, Table LONG-5. The figures for interim 2000 and interim 2001 are 45.6 percent and 50.2 percent respectively. *Id.*

[598] CR, Table LONG-70.

[599] CR, Table LONG-5.

[600] Chairman Koplan and Commissioner Miller do not join this section of the opinion. Chairman Koplan and Commissioner Miller concur that imports of hot-rolled bar from Mexico account for a substantial share of total imports, and also find that they contribute importantly to the serious injury caused by the imports. Imports of hot-rolled bar from Mexico grew by 20.2 percent over the period. This is similar to the rate of growth for imports from Canada (22.7 percent) and while less than that for total imports, it is still a substantial rate. Further, Mexico has shown the ability to sharply increase its shipments to the U.S. market even when total imports are falling, as in 1999, when total imports fell by 3.5 percent, and imports from Mexico grew by 15.1 percent.

[601] INV-Y-180, Hot-Rolled Bar data. Mexico was also the third-largest supplier in interim 2000 and interim 2001.

[602] CR, Table LONG-70.

percent. Indeed, Mexico's share of total imports in 2000, which was 6.4 percent, was the lowest full-year figure during the period examined.[603] In light of these factors, we conclude that imports from Mexico did not contribute importantly to the serious injury experienced by the domestic hot-rolled bar industry. Consequently, our affirmative determination concerning hot-rolled bar does not encompass imports from Mexico.[604]

C. Cold-Finished Bar

We have found that cold-finished bar is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic cold-finished bar industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Imports of cold-finished bar increased from 206,272 tons in 1996 to 238,221 tons in 1997 and then to 272,972 tons in 1998. Imports then declined to 235,693 tons in 1999 but increased in 2000 to 314,958 tons. Imports were lower in interim 2001, at 134,971 tons, than in interim 2000, when they were 169,889 tons. Imports increased by 52.7 percent from 1996 to 2000 and by 33.6 percent from 1999 to 2000.[605]

As a ratio to U.S. production, imports declined from 17.6 percent in 1996 to 17.3 percent in 1997, rose to 19.5 percent in 1998, declined to 17.0 percent in 1999, and then rose to 23.7 percent in

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[603] CR, Table LONG-5.

[604] We find that our injury analysis would not be affected in any way by the exclusion of hot-rolled bar imports from Mexico.

Exclusion of imports from Mexico does not materially affect import levels or trends. The proportion of total imports supplied by Mexico was low, ranging from 6.4 percent in 2000 to 8.6 percent in 1997. Imports from all sources other than Mexico increased from 1.5 million tons in 1996 to 1.7 million tons in 1997 and then to 2.2 million tons in 1998. Imports then decreased to 2.1 million tons in 1999 and increased to 2.4 million tons in 2000. Imports from sources other than Mexico were lower in interim 2001, at 881,525 tons, than in interim 2000, when they were 1.2 million tons. Imports from sources other than Mexico increased by 55.4 percent from 1996 to 2000, and had major increases both from 1997 to 1998 (31.5 percent) and from 1999 to 2000 (14.4 percent). *See* CR and PR, Table LONG-5.

Additionally, excluding Mexico does not appreciably change either the market share of the change in market share of the remaining imports. Market share of imports from sources other than Mexico increased from 15.1 percent in 1996 to 21.0 percent in 2000, its peak level of the period examined. *See* CR and PR, Table LONG-70.

Average unit values of imports excluding Mexico, like the average unit value of all imports, declined during each year of the period examined. If Mexico is excluded, the rate of decline in average unit values from 1996 to 2000, 14.8 percent, is even greater than the 13.5 percent decline in average unit value from imports from all sources. *See* CR and PR, Table LONG-C-3.

Finally, excluding Mexico from the database does not appreciably change import pricing trends or underselling patterns during 1998 or 2000, although it does reduce the magnitude of underselling margins somewhat. *See* CR and PR, Table LONG-90.

Consequently, the conclusions we have made concerning increased imports are equally applicable whether or not Mexico is included among the imports evaluated.

[605] CR and PR, Table LONG-6.

2000. The ratio was higher in interim 2001, at 23.9 percent, than in interim 2000, when it was 23.6 percent.[606]

Imports were higher, both in absolute terms and relative to U.S. production, in 2000 than in any prior year of the period examined and showed a rapid and dramatic increase. Although import volumes declined in the interim period comparison, the ratio of imports to U.S. production in interim 2001 was higher than in any full year during the period examined.

In view of the above, we find that imports are in increased quantities and that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic cold-finished bar industry is seriously injured; that is, we find that there has been a "significant overall impairment in the position" of the domestic industry. Factors that support our conclusion include the industry's financial decline and trends in other important indicators of the industry's condition such as capacity, production, and shipments.

The data below are based on questionnaire responses submitted by 18 domestic cold-finished bar producers estimated to account for between 60 to 85 percent of U.S. production during the period examined.[607]

Production and capacity declined over the latter portion of the period examined. While domestic production of cold-finished bar increased for the first three years of the period examined, rising from 1.17 million tons in 1996 to 1.40 million tons in 1998, it subsequently fell. Production declined to 1.39 million tons in 1999 and declined further to 1.33 million tons in 2000. The 565,900 tons of production in interim 2001 was lower than the 719,693 tons of production in interim 2000.[608]

Reported capacity increased from 2.8 million tons in 1996 to 3.0 million tons in 1997 and then to 3.2 million tons in 1998. It then declined to 2.9 million tons in 1999 and increased to 3.0 million tons in 2000. The 1.4 million tons of reported capacity in interim 2001 was lower than the 1.5 million tons of reported capacity in interim 2000.[609] One domestic producer, RTI, has closed several cold-finishing facilities since 1999.[610]

Reported capacity utilization fluctuated throughout the period examined. Reported capacity utilization was at 41.9 percent in 1996, rose to 45.8 percent in 1997, declined to 43.7 percent in 1998, rose to 48.6 percent in 1999, and declined to 45.0 percent in 2000. Reported capacity utilization in interim 2001 (40.2 percent) was lower than in interim 2000 (48.0 percent).[611]

The quantity of U.S. shipments rose from 1.20 million tons in 1996 to 1.40 million tons in 1998, but then declined thereafter, falling to 1.37 million tons in 1999 and then to 1.33 million tons in 2000. The 565,231 tons of U.S. shipments in interim 2001 was less than the 735,295 tons in interim 2000. While the quantity of domestic producers' U.S. shipments was higher in 2000 than in 1996, the value was lower. The value of U.S. shipments, which was at $913 million in 1996, rose to the peak of $1.0 billion

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[606] CR and PR, Table LONG-6.

[607] CR and PR at LONG-4, Table LONG-2.

[608] CR and PR, Table LONG-17.

[609] CR and PR, Table LONG-17.

[610] *See* Cold-Finished Bar Respondents Posthearing Brief, ex. 1 (discussion of plant rationalization).

[611] CR and PR, Table LONG-17. The capacity data reported in the questionnaires appears to be overstated, and hence capacity utilization would be understated, because domestic producer ***. Even if the questionnaire data are adjusted to account for the anomalous reporting of ***, as suggested by respondents, industry capacity utilization for 2000 was still under *** percent. *See* Cold-Finished Bar Respondents Prehearing Brief, ex. 4.

in 1998 and then declined each year thereafter until reaching $889 million in 2000. The $382 million in U.S. shipments in interim 2001 was less than the $495 million in interim 2000.[612]

The quantity of net commercial sales increased during the first three years of the period examined, rising from 1.15 million tons in 1996 to 1.31 million tons in 1998. Sales quantity then declined to 1.30 million tons in 1999 and 1.26 million tons in 2000. The 550,691 tons sold in interim 2001 was less than the 696,448 tons sold in interim 2000. The value of net commercial sales followed similar trends, rising from $851 million in 1996 to $933 million in 1998. Sales values then declined to $868 million in 1999 and declined further to $845 million in 2000. The $370 million in sales in interim 2001 was less than the $469 million in sales in interim 2000.[613] Average unit sales values declined the first four years of the period examined, falling from $743 in 1996 to $667 in 1999. They then increased incrementally to $668 in 2000, but were lower in interim 2001 than in interim 2000.[614]

U.S. producers' inventories rose from 193,694 tons in 1996 to 219,434 tons in 1997, and then declined to 216,765 tons in 1998. Inventories then rose to 247,281 tons in 1999 and declined to 231,258 tons in 2000. Inventories were lower in interim 2001, at 211,325 tons, than in interim 2000, when they were 216,926 tons.[615]

U.S. producers' share of U.S. apparent consumption, measured by quantity, was at 85.3 percent in 1996, declined the next two years, and then returned to 85.3 percent in 1999 before declining in 2000 to 80.8 percent, its lowest level for any full year. U.S. producers' share of U.S. apparent consumption was lower in interim 2001, at 80.7 percent, than in interim 2000, when it was 81.2 percent.[616]

A significant number of firms in the domestic industry are unable to carry out production operations at a reasonable level of profit. The cold-finished bar industry had operating profits of $33.3 million in 1996, which increased to $60.2 million in 1997. Operating income then declined to $57.6 million in 1998 and to $10.2 million in 1999 before increasing to $23.9 million in 2000. In interim 2001, the industry sustained a $551,000 operating loss, as compared to a $19.0 million operating profit in interim 2000. The operating margin increased from 3.9 percent in 1996 to 6.5 percent in 1997, declined to 6.2 percent in 1998, declined sharply to 1.2 percent in 1999, and then increased to 2.8 percent in 2000. The operating margin was negative 0.1 percent in interim 2001, as compared to positive 4.1 percent in interim 2000. While no firms reported operating losses in 1996, 1997, or 1998, three reported such losses in 1999, four in 2000, three in interim 2000, and nine in interim 2001.[617] The four firms that reported operating losses in 2000 accounted for 40 percent of the quantity of U.S. producers' net commercial sales that year.

Employment rose in the first portion of the period examined and subsequently declined. The number of production and related workers was 1,693 in 1996 and rose every year until reaching a peak of 1,966 in 1999. Employment then declined in 2000 to 1,915 workers, and was lower in interim 2001, at

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[612] CR and PR, Table LONG-17.

[613] CR and PR, Table LONG-28.

[614] CR and PR, Table LONG-28. We acknowledge that for a product such as cold-finished bar which covers a broad range of product types and values, pricing data for a more specific product can provide more probative information than average unit sales values. As discussed in more detail below, for the principal cold-finished bar product on which the Commission collected pricing data, prices for the domestically-produced product generally declined throughout the period examined. CR and PR, Table LONG-91.

[615] CR and PR, Table LONG-17. The ratio of inventories to shipments was 16.0 percent in 1996 and 1997, declined to 15.3 percent in 1998, increased to 17.8 percent in 1999, and then declined to 17.2 percent in 2000. The ratio was higher in interim 2001, at 18.4 percent, than it was in interim 2000, when it was 14.6 percent. *Id.*

[616] CR and PR, Table LONG-71.

[617] CR and PR, Table LONG-28.

1,793 workers, than it was in interim 2000, when it was 1,992 workers.[618] Wages paid rose during the first four years of the period examined, increasing from $57.6 million in 1996 to $69.6 million in 1999, but declined to $69.2 million in 2000. Wages were lower in interim 2001 than in interim 2000. Hourly wages increased from $15.47 in 1996 to their full-year peak of $15.98 in 1997, and then fluctuated within a narrow range the next three years; the 2000 figure was $15.95. Productivity rose from 291.6 tons per thousand hours in 1996 to 340.7 tons per thousand hours in 1997, and then declined every year until it reached 285.3 tons per thousand hours in 2000. Productivity was lower in interim 2001 than in interim 2000.[619]

Industry capital expenditures generally rose over the period examined, although the pattern of increases was irregular. Research and development expenses were higher in 2000 than in 1996, but lower than in 1998 or 1999.[620]

The most pertinent indicator of the industry's condition is its poor financial performance. The industry's financial condition improved in 1997 and 1998 from its level in 1996, but its operating performance declined sharply in 1999 and continued to be poor in 2000. During both 1999 and 2000, the industry was only marginally profitable, with an increasing number of firms posting operating losses. Industry financial performance continued to deteriorate in interim 2001, when the industry sustained an operating loss. Although the cold-finished bar industry's shipments and production were higher in 2000 than in 1996, these indicators declined during the last three years of the period examined. Capacity also declined during the last three years of the period examined and there was significant unused capacity throughout the period. In light of these considerations, we conclude that the cold-finished bar industry is seriously injured.

3. Substantial Cause

Finding. We find that the increased imports of cold-finished bar are an important cause, and a cause not less than any other cause, of serious injury to the domestic industry. Accordingly, we find that increased imports of cold-finished bar are a substantial cause of serious injury to the domestic cold-finished bar industry.

a. Conditions of Competition

We have taken into account a number of factors that affect the competitiveness of domestic and imported cold-finished bar in the U.S. market, including factors related to the product itself, the degree of substitutability between the domestic and imported articles, changes in world capacity and production, and market conditions. These factors affect prices and other considerations taken into account by purchasers in determining whether to purchase domestically-produced or imported articles.

Market participants generally agree that there are few or no substitutes for long products such as cold-finished bar.[621] As discussed in section V.A.2. above, the principal use of cold-finished bar is in automotive applications.

The record indicates strong demand during most of the period examined with U.S. apparent consumption of cold-finished bar increasing during every full year but one. Apparent consumption rose from 1.41 million tons in 1996 to 1.60 million tons in 1997 and then to 1.67 million tons in 1998. Apparent consumption then declined to 1.61 million tons in 1999 but increased to 1.64 million tons in

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[618] CR and PR, Table LONG-17.

[619] CR and PR, Table LONG-17.

[620] CR and PR, Table LONG-28.

[621] CR and PR at LONG-78.

2000. Apparent consumption was lower in interim 2001, at 700,202 tons, than in interim 2000, when it was 905,184 tons.[622]

With regard to supply of cold-finished bar, U.S. capacity increased from 1996 to 2000 despite declines since 1998. Domestic industry capacity utilization fluctuated during the period examined. Notwithstanding that the capacity utilization data reported in the questionnaires appear to be understated, it is clear that there was additional productive capacity available to the domestic industry throughout the period examined. Foreign capacity reported in questionnaires increased from 1.6 million tons in 1996 to 2.0 million tons in 2000, and was higher in interim 2001 than in interim 2000. Foreign capacity utilization for full-year periods ranged from 75.2 percent in 1999 to 84.3 percent in 2000.[623]

The record indicates that price is an important factor in purchasing decisions for cold-finished bar. Purchasers listed price second most-frequently, after quality, as the top factor in purchasing decisions, and listed price most frequently as the number two factor. Most purchasers evaluated the imports and domestically-produced cold-finished bar as comparable with respect to product consistency and product quality.[624]

b. Analysis[625]

Aggressive pricing by the imports during the latter portion of the period examined caused the domestic industry to lose market share and revenues. This resulted in the poor operating performance and serious injury discussed above.

Average unit values of the imports trended downward from 1996 to 1998, and the decline accelerated in 1999. Import average unit values declined by 1.3 percent from 1996 to 1997 and by 0.1 percent from 1997 to 1998. They then fell by 7.7 percent from 1998 to 1999.[626] Additional evidence that import prices declined dramatically in 1999 is provided by data for one-inch round C12L14, the cold-finished bar product for which the Commission obtained significant pricing data concerning imports.[627] Between the fourth quarter of 1998 and the first quarter of 1999, import prices for this product declined by *** percent. They fell an additional *** percent between the first and second quarters of 1999, the

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[622] CR and PR, Table LONG-71.

[623] CR and PR, Table LONG-45. We have relied upon the questionnaires for foreign capacity and capacity utilization data, although such data are not complete. We acknowledge that the domestic producers contended that the questionnaire data understated foreign capacity and overstated foreign capacity utilization.

[624] INV-Y-212 at 46.

[625] The Minimill 201 Coalition produced an economic model that attempted to measure the relationship between imports and the domestic industry's prices and profits. In particular, there were defects in the manner the model measured import competition, and the model did not adequately address changes in domestic competition.

[626] CR and PR, Table LONG-6.

[627] The Commission collected pricing data concerning two cold-finished bar products. For one of the products, however, the reported data covered very small import volumes: less than 500 tons of imports in each quarter, and less than 100 tons of imports for each of the last six quarters for which data were collected. INV-Y-212, Table LONG-91. By contrast, reported import volume for one-inch round CL12L14 was at least 1,166 tons in every quarter during the entire period examined, and at least 2,636 tons for every quarter during 1999 and interim 2000. INV-Y-212, Table LONG-ALT92. Consequently, in our analysis of pricing we have focused on the latter, more complete data set. We also observe that, in an analysis of whether there is overselling or underselling, pricing data for a specific product can provide more probative information than average unit value data, where comparisons between values for imports and domestically-produced products can reflect variations in product mix. This is particularly true for a product such as cold-finished bar which covers a broad range of product types and values.

largest quarterly decline to that point in the period examined. Although prices rose during the next two quarters, the fourth quarter 1999 price remained 8.2 percent below the fourth quarter 1998 price.[628]

Prices for domestically-produced C12L14 declined by 3.9 percent between the fourth quarter of 1998 and the first quarter of 1999 but fluctuated in a narrow range during the remainder of 1999. As a result, underselling margins were higher in the last three quarters of 1999 than in earlier periods. Between the first quarter of 1996 and the first quarter of 1999, the margin of underselling or overselling by the imports was no greater than 1.8 percent in any quarter. The underselling margin increased to 8.1 percent in the second quarter of 1999, however, and remained above 5.8 percent for the remaining quarters of that year.[629]

The market did not react immediately to the price reductions by the imports. Indeed, neither the absolute volume of the imports nor their market share increased in 1999.[630] The lack of immediate reaction by the market may reflect extensive contract sales: over 40 percent of cold-finished bar purchasers made over 90 percent of their purchases on a contract basis, with contracts commonly six months to over one year in length.[631] However, the aggressive pricing by the imports continued in 2000. Compared to 1999, average unit values for all imports declined by 5.1 percent.[632] Prices for imported C12L14 declined during all but one quarter in 2000, and the price for the fourth quarter of 2000 was 14.0 percent below the price for the fourth quarter of 1999.[633]

Domestic prices also declined in 2000. Average unit values for U.S. shipments of all cold-finished bar products were lower in 2000 than in 1999.[634] Prices for domestically-produced C12L14 were 4.2 percent lower in the fourth quarter of 2000 than in the fourth quarter of 1999. Nevertheless, underselling by the imports persisted, with quarterly underselling margins in 2000 ranging from 3.9 percent to 15.5 percent.[635]

In 2000, the continued underselling by the imports led to significant increases in both import volume and market share. As previously stated, import quantities were 33.6 percent higher in 2000 than in 1999.[636] The imports' share of U.S. apparent consumption, measured by quantity, increased from 14.7 percent in 1999 to 19.2 percent in 2000.[637]

Because the imports succeeded in increasing their share of the U.S. market in 2000, the domestic industry's production and shipments declined from 1999 levels notwithstanding the increase in U.S. apparent consumption.[638] The decline in output, together with the decline in prices, led to declining revenues and poor operating performance, with an operating margin in 2000 of only 2.8 percent.[639]

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[628] INV-Y-212, Table LONG-ALT92.

[629] INV-Y-212, Table LONG-ALT92.

[630] *See* CR and PR, Tables LONG-6, LONG-71. A substantial increase in cold-finished bar imports occurred in 1998, shortly following the financial crisis that led to sharply decreased steel consumption in several Asian countries.

[631] Purchaser Questionnaire Responses.

[632] CR and PR, Table LONG-6.

[633] INV-Y-212, Table LONG-ALT92.

[634] CR and PR, Table LONG-17.

[635] INV-Y-212, Table LONG-ALT92.

[636] CR and PR, Table LONG-6.

[637] CR and PR, Table LONG-71.

[638] CR and PR, Tables LONG-17, LONG-71.

[639] CR and PR, Table LONG-28.

The domestic industry's experience in 2000 serves to rebut one of the principal arguments of respondents – that declines in demand were a greater cause of the substantial injury to the domestic industry than increased imports. The domestic industry acknowledges that prices for cold-finished bar have historically tracked demand conditions.[640] Indeed, the domestic industry's decline in operating performance in 1999, a year when import volume and market penetration declined, appears to a large extent attributable to the declines in demand during that year.

However, in 2000 demand increased above the level of 1999. Nevertheless, as previously discussed, prices for U.S.-produced product did not recover with demand, but instead declined further in the face of the import surge. The per unit difference between average unit values and COGS, although slightly higher in 2000 than in 1999, was well below the levels of any of the prior years of the period examined. Similarly, the industry's operating margin, while slightly above the level of 1999, was only 2.8 percent, less than half the levels of 1997 and 1998. The number of producers experiencing operating losses increased. When demand again declined in interim 2001, the imports maintained their significant presence in the market, and the domestic industry's performance further deteriorated. The domestic industry's poor performance despite increasing demand in 2000 indicates that it is the imports, not changes in demand, that explain the serious injury the domestic industry is experiencing.

We have also considered respondents' arguments that the domestic industry's poor performance was due more to the presence of a purportedly inefficient producer with structural problems, RTI, than to increased imports.[641] RTI's structural difficulties, however, ***.[642] ***. We consequently reject the proposition that RTI's performance was somehow anomalous or served to skew overall data for the domestic industry.

We consequently conclude that alternative causes proffered by respondents cannot individually or collectively explain the serious injury to the domestic industry, particularly the declining market share over the course of the period examined, and the poor operating performance in 2000. Accordingly, we find that increased imports are a substantial cause of serious injury to the domestic cold-finished bar industry that is not less than any other cause.

4. Findings with Respect to NAFTA Imports

a. Canada

Finding. We find that imports of cold-finished bar from Canada account for a substantial share of total imports and contribute importantly to the serious injury caused by the imports.[643]

Canada was the top supplier of cold-finished bar to the United States for each of the most recent three years in the period examined. The quantity of imports from Canada from 1998 to 2000 was 63.7 percent greater than the quantity of imports from the second-largest source, and Canada accounted for at least 25.5 percent of the quantity of all imports during each year in this period.[644] Consequently, we find that imports from Canada constitute a substantial share of total imports.

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[640] *See* CFTC Prehearing Brief at 7.

[641] *See* Cold-Finished Bar Respondents Prehearing Brief at 18-23.

[642] *** Producer's Questionnaire Response.

[643] The Minimill 201 Coalition and the USWA argued the Commission should make a negative injury finding for cold-finished bar from Canada.

[644] CR and PR, Table LONG-6; INV-Y-180, Cold-Finished Bar data. Canada was also the largest supplier of cold-finished bar in interim 2000, when it supplied 27.9 percent of all imports, and in interim 2001, when it supplied 26.4 percent of all imports. *Id.*

We also find that Canadian cold-finished bar has contributed importantly to the serious injury caused by imports. During the period examined, the percentage increase in imports from Canada was lower than that for imports from all sources. From 1996 to 2000, imports from Canada increased by 19.5 percent, while imports from all sources increased by 52.7 percent. However, because imports from Canada increased during each full year of the period examined, they contributed to the import surges of 1998 and 2000.[645] Moreover, imports from Canada increased their share of the market during the latter portion of the period examined. Canadian market share increased from 4.2 percent in 1998 to 5.0 percent in 1999, its top level for any full year during the period examined, and declined only slightly to 4.9 percent in 2000.[646] Consequently, imports from Canada held their elevated share of the market during 2000, the year of the greatest increase in overall imports as well as a year in which the domestic industry experienced severe operating difficulties. In light of this and the fact that Canada accounted for such a large percentage of total cold-finished bar imports, we find that imports from Canada contributed importantly to the serious injury caused by imports. Consequently, our affirmative determination for cold-finished bar encompasses imports from Canada.

b. Mexico

Finding. We find that imports of cold-finished bar from Mexico do not account for a substantial share of total imports and do not contribute importantly to the serious injury caused by imports.

Mexico was not among the top five import suppliers of cold-finished bar during the three most recent years of the period examined. It was the 18th-largest supplier in 1998, the 16th-largest supplier in 1999, and the 20th-largest supplier in 2000.[647] We therefore find that imports from Mexico do not account for a substantial share of total imports. Moreover, Mexico's share of total imports during the period examined was very small and declining.[648] In light of this, imports from Mexico did not contribute importantly to serious injury. Consequently, our affirmative determination concerning cold-finished bar does not encompass imports from Mexico.[649]

D. Rebar

We have found that rebar is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic rebar industry.

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[645] CR and PR, Table LONG-6.

[646] CR and PR, Table LONG-71. Canada's market share was 5.2 percent in interim 2000 and 5.1 percent in interim 2001. *Id.*

[647] INV-Y-180, Cold-Finished Bar data. Mexico was also not among the top 15 suppliers in either in interim 2000 or interim 2001.

[648] CR and PR, Table LONG-6.

[649] We find that our injury analysis would not be affected in any way by the exclusion of cold-finished imports from Mexico.

Imports from Mexico accounted for less than 0.6 percent of total imports during each portion of the period examined. CR and PR, Table LONG-6. Consequently, exclusion of imports from Mexico has only a *de minimis* effect on the import levels and trends discussed above. The pricing data cited above do not include any data concerning imports from Mexico. CR and PR, Table LONG-92. Consequently, the conclusions we have made concerning increased imports are equally applicable whether or not imports from Mexico are included among the imports evaluated.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Imports of rebar increased from 581,731 tons in 1996 to 701,303 tons in 1997 and then to 1.2 million tons in 1998. Imports further increased to 1.8 million tons in 1999 and then declined to 1.7 million tons in 2000. Imports were lower in interim 2001, at 852,488 tons, than in interim 2000, when they were 985,991 tons.[650]

As a ratio to U.S. production, imports rose from 11.7 percent in 1996 to 12.8 percent in 1997, 19.9 percent in 1998, and 29.1 percent in 1999. This ratio then declined to 25.2 percent in 2000. The ratio was lower in interim 2001, at 24.3 percent, than in interim 2000, when it was 30.9 percent.[651]

Notwithstanding the decline from 1999 levels, imports in 2000 were substantially higher than they were during earlier portions of the period examined, reflecting the rapid and dramatic increase in the prior two years. The quantity of imports in 2000 was 187.0 percent above the 1996 quantity and 35.8 percent over the 1998 quantity, and the ratio of imports to U.S. production in 2000 was more than double the ratio in 1996. By the same token, import quantities for the first six months of 2001 were higher than the quantities for the full years of either 1996 or 1997, and the ratio of imports to U.S. production in interim 2001 was higher than that for any year from 1996 to 1998.

In view of the above, we find that imports are in increased quantities and that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic rebar industry is seriously injured; that is, we find that there has been a "significant overall impairment in the position" of the domestic industry. Factors that support our conclusion include the industry's substantial financial decline, its decline in market share, and the shuttering of some production facilities.

The data below are based on questionnaire responses submitted by 17 domestic rebar producers estimated to account for between 72 to 88 percent of U.S. production during the period examined.[652]

Domestic production of rebar increased during each year of the period examined, rising from 5.0 million tons in 1996 to 6.6 million tons in 2000. The 3.5 million tons of production in interim 2001 was greater than the 3.2 million tons of production in interim 2000.[653]

Reported capacity also increased during each year of the period examined, rising from 7.6 million tons in 1996 to 9.7 million tons in 2000. Capacity was higher in interim 2001, when it was 4.8 million tons, than in interim 2000, when it was 4.7 million tons in 2000.[654] The increases in capacity, however, must be viewed in the context of the increases in demand for rebar during the period examined. The 26.6 percent increase in productive capacity between 1996 and 2000 was far smaller than the 48.1 percent increase in U.S. apparent consumption over that period. Moreover, notwithstanding the overall increases in capacity, several firms that produce rebar have shuttered production facilities during the period examined.[655]

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[650] CR and PR, Table LONG-7.

[651] CR and PR, Table LONG-7.

[652] CR and PR at LONG-4, Table LONG-2.

[653] CR and PR, Table LONG-18.

[654] CR and PR, Table LONG-18.

[655] *See* Minimill 201 Coalition Posthearing Brief, vol. 3 at 5-6.

Capacity utilization fluctuated throughout the period examined. Capacity utilization was at 64.9 percent in 1996, rose the next two years, reaching 67.3 percent in 1998, declined to 66.1 percent in 1999, and rose to 68.5 percent in 2000. Capacity utilization in interim 2001 (73.2 percent) was higher than in interim 2000 (68.1 percent).[656]

The quantity of U.S. shipments increased during every full year of period examined, rising from 4.9 million tons in 1996 to 6.4 million tons in 2000. The 3.3 million tons of U.S. shipments in interim 2001 was greater than the 3.1 million tons of shipments in interim 2000. By contrast, the value of U.S. shipments fluctuated. The value rose from $1.45 billion in 1996 to the peak annual level of $1.75 billion tons in 1998. The value of U.S. shipments then declined to $1.71 billion in 1999 and rose to $1.74 billion in 2000. The $883 million of U.S. shipments in interim 2001 was greater than the $849 million in interim 2000.[657]

The quantity of net commercial sales increased during each full year of the period examined, rising from 4.6 million tons in 1996 to 5.7 million tons in 2000. The 3.0 million tons sold in interim 2001 was greater than the 2.8 million tons sold in interim 2000. The value of net commercial sales increased during the first three years of the period examined, rising from $1.39 billion in 1996 to $1.51 billion in 1998. Sales values remained relatively steady at $1.50 billion in 1999 and $1.51 billion in 2000. The $791 million in sales in interim 2001 was greater than the $765 million in sales in interim 2000.[658] Average unit sales values rose from $297 in 1996 to $304 in 1997 but fell every year thereafter, declining to $266 in 2000. Average unit sales values were lower in interim 2001, at $266, than in interim 2000, when they were $273.[659]

U.S. producers' inventories increased from 494,221 tons in 1996 to 461,681 tons in 1997, and then increased to 687,769 tons in 1998. Inventories then declined to 629,283 tons in 1999 and increased to 645,885 tons in 2000. The 708,308 tons of inventories in interim 2001 was higher than the 599,627 tons of inventories in interim 2000.[660]

U.S. producers' share of U.S. apparent consumption, measured by quantity, generally declined during the period examined. The market share was at 89.4 percent in 1996, and then declined each year until reaching 77.2 percent in 1999. Market share rose in 2000 to 79.4 percent, and was higher in interim 2001 (79.6 percent) than in interim 2000 (76.0 percent).[661]

A significant number of firms in the domestic rebar industry are unable to carry out production operations at a reasonable level of profit. The rebar industry had an operating loss of $72,000 in 1996. Operating performance improved during the next two years: the industry had operating income of $52.6 million in 1997 and $88.2 million in 1998. In 1999 operating income declined to $74.4 million and in 2000 the industry incurred a $24.7 million operating loss. Operating income was lower in interim 2001, at $19.9 million, than in interim 2000, when it was $34.6 million. The operating margin increased from a negative 0.02 percent in 1996 to 3.5 percent in 1997 and then to 5.8 percent in 1998. It then declined to 5.0 percent in 1999, and plummeted to a negative 1.6 percent in 2000. The operating margin was 4.5

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[656] CR and PR, Table LONG-18.

[657] CR and PR, Table LONG-18.

[658] CR and PR, Table LONG-29.

[659] CR and PR, Table LONG-29. As discussed in more detail below, for the rebar product on which the Commission collected pricing data, prices for the domestically-produced product generally increased from 1996 to the second quarter of 1998. Prices declined through the remainder of 1998 and 1999 and fluctuated thereafter. CR and PR, Table LONG-92.

[660] CR and PR, Table LONG-18. The ratio of inventories to shipments declined from 9.8 percent in 1996 to 8.4 percent in 1997, rose to 11.5 percent in 1998, and declined the next two years, reaching 9.8 percent in 2000. The ratio was higher in interim 2001, at 10.3 percent, than in interim 2000, when it was 9.3 percent. *Id.*

[661] CR and PR, Table LONG-72.

percent in interim 2000 and 2.5 percent in interim 2001. Five of 14 firms reported operating losses in 1996 and 1997, five of 15 in 1998, six of 15 in 1999 and 2000, five of 15 in interim 2000, and four of 15 in interim 2000.[662] One additional rebar producer that *** a response to the Commission questionnaire declared bankruptcy in August 2001, although it is still operating.[663]

The number of production and related workers rose every year during the period examined, increasing from 2,968 in 1996 to 3,169 in 2000. Employment was higher in interim 2001, at 3,304 workers, than it was in interim 2000, when it was 2,970 workers. Notwithstanding the increase in employment, hours worked were lower in 2000 than in any year since 1996.[664] The reduction of hours occurred while several producers reduced shifts and cut back operations.[665] Wages paid and hourly wages increased every year, and were higher in interim 2001 than in interim 2000. Productivity also rose every year, increasing from 850.0 tons per thousand hours in 1996 to 1062.4 tons per thousand hours in 2000. Productivity was lower in interim 2001 than in interim 2000.[666]

Industry capital expenditures were at their peak in 1996 at $108.7 million. Capital expenditures declined during every succeeding year of the period examined; in 2000 they were $49.4 million, less than half the 1996 level. The $29.8 million in capital expenditures in interim 2001 was greater than the $22.1 million in interim 2000. Research and development expenditures, which were considerably lower than capital expenditures, fluctuated within a fairly narrow range during the period examined.[667]

Although several indicators pertaining to the rebar industry, such as capacity, production, and employment, increased during the period examined, these increases reflect strong increases in U.S. apparent consumption. Notwithstanding these increases, however, the rebar industry showed poor financial performance during the latter portion of the period examined. The industry's financial condition deteriorated sharply between 1999, when it had a positive operating margin of 5.0 percent, and 2000, when it had a negative operating margin of 1.6 percent. Additionally, the domestic industry's market share declined during the period examined and its capital expenses declined considerably. We consequently conclude that the rebar industry is seriously injured.

3. Substantial Cause

Finding. We find that the increased imports of rebar are an important cause, and a cause not less than any other cause, of serious injury to the domestic industry. Accordingly, we find that increased imports of rebar are a substantial cause of serious injury to the domestic rebar industry.

a. Conditions of Competition

We have taken into account a number of factors that affect the competitiveness of domestic and imported rebar in the U.S. market, including factors related to the product itself, the degree of substitutability between the domestic and imported articles, changes in world capacity and production, and market conditions. These factors affect prices and other considerations taken into account by purchasers in determining whether to purchase domestically-produced or imported articles.

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[662] CR and PR, Table LONG-29.

[663] CR and PR, Table OVERVIEW-11.

[664] CR and PR, Table LONG-18.

[665] Minimill 201 Coalition Posthearing Brief, vol. 3 at 6 (citing producer questionnaire responses).

[666] CR and PR, Table LONG-18.

[667] CR and PR, Table LONG-29.

Market participants generally agree that there are few or no substitutes for long products such as rebar.[668] Rebar is used solely for structural reinforcement within cast concrete structures.[669]

U.S. apparent consumption of rebar increased throughout the period examined. Apparent consumption rose every year from 1996, when it was 5.5 million tons, to 2000, when it was 8.1 million tons, a net increase of 48.1 percent. Apparent consumption was also higher in interim 2001, at 4.2 million tons, than in interim 2000, when it was 4.1 million tons.[670]

With regard to supply of rebar, U.S. capacity increased throughout the period examined. Capacity utilization fluctuated; for full-year periods it ranged between 64.9 percent in 1996 to 68.5 percent in 2000. Foreign capacity reported in questionnaires increased from 24.0 million tons in 1996 to 29.6 million tons in 2000, and was higher in interim 2001 than in interim 2000. Foreign capacity utilization for full-year periods ranged from 81.7 percent in 1996 to 86.5 percent in 2000.[671]

Price is a very important purchasing factor in purchasing decisions for rebar. A majority of all purchasers listed price as the number one factor in purchasing decisions for rebar, and price was named over three times more often than any other individual factor.[672] One purchaser testified at the Commission hearing that rebar was a commodity product sold on the basis of price, a proposition not disputed by any respondent.[673]

Finally, rebar imports from several countries were subject to antidumping duties during portions of the period examined. In particular, Commerce imposed provisional antidumping duties on rebar from Turkey on October 10, 1996 and issued an antidumping order on these imports on April 17, 1997.[674] Commerce imposed provisional antidumping duties on rebar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine on January 30, 2001 and issued an antidumping order on imports from these eight countries on September 7, 2001.[675]

b. Analysis[676]

The increased imports put price pressure on domestic producers. This price pressure prevented domestic producers from fully achieving the benefits of cost reductions during certain portions of the period examined and from fully recovering increasing costs during others. It also prevented domestic producers from fully benefitting from the large increase in domestic consumption over the period examined. As a result, operating margins declined and by 2000 the industry's operating income was negative.

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[668] CR and PR at LONG-78.

[669] CR and PR at LONG- 2.

[670] CR and PR, Table LONG-72.

[671] CR and PR, Table LONG-48. We have relied upon the questionnaires for foreign capacity and capacity utilization data, although such data are not complete. We acknowledge that the domestic producers contended that the questionnaire data understated foreign capacity and overstated foreign capacity utilization.

[672] INV-Y-212 at 47.

[673] Tr. at 1316 (Koch).

[674] *See* 61 Fed. Reg. 53203 (Oct. 10, 1996), 62 Fed. Reg. 18748 (April 17, 1997).

[675] *See* 66 Fed. Reg. 8324, 8329, 8333, 8339, 8343 (Jan. 30, 2001); 66 Fed. Reg. 46777 (Sept. 7, 2001).

[676] The Minimill 201 Coalition produced an economic model that attempted to measure the relationship between imports and the domestic industry's prices and profits.. We considered this model in making our determination but note its limitations. In particular, there were defects in the manner the model measured import competition, and the model did not adequately address changes in domestic competition.

Rebar imports increased significantly in 1998, shortly following the financial crisis that led to sharply decreased steel consumption in several Asian countries. As has been observed with other long products, domestic producers did not immediately change their pricing strategy in response to the initial import surge. The average unit value of the domestic industry's U.S. shipments declined by only one dollar per ton from 1997 to 1998.[677] For the rebar product on which the Commission collected pricing data, prices for the domestically-produced product were higher during the first three quarters of 1998 than they were during the comparable quarter of 1997. Prices did begin to fall for the domestically-produced product during the fourth quarter of 1998. Throughout 1998, however, imports undersold the domestically-produced product by margins exceeding 20 percent.[678] The imports in 1998 took nearly six percentage points of market share away from the domestic industry.[679]

During 1999, imports again increased by substantial margins. The quantity of imports was 49.1 percent higher in 1999 than in 1998.[680] This surge was accompanied by price declines for both the imports and the domestically-produced product. Average unit values of the imports declined by 23.6 percent from 1998 to 1999, and average unit values of U.S. shipments of domestically produced rebar declined by 8.9 percent.[681] For the rebar product on which the Commission collected pricing data, import prices fell by 8.8 percent from the fourth quarter of 1998 to the first quarter of 1999, and the first quarter 1999 price was 11.5 percent below the first quarter 1998 price. Similarly, for the domestically-produced product, prices declined by 5.0 percent from the fourth quarter of 1998 to the first quarter of 1999, and the first quarter 1999 price was 10.6 percent below the first quarter 1998 price. There were further price declines in the second quarter of 1999 before prices stabilized during the final two quarters of the year; the second quarter 1999 price was below the second quarter 1998 price by 12.7 percent for the domestically-produced product and by 15.6 percent for the imports.[682]

We can discern no reason other than the imports for the magnitude of price and average unit value declines during 1999. The decline was not a function of demand changes, because U.S. apparent consumption for rebar increased by 14.1 percent from 1998 to 1999.[683] Indeed, in light of these demand conditions, we would ordinarily expect prices to have stayed stable or risen, and not to have declined by such large amounts. Changes in input costs also cannot explain the magnitude of the price decline. While there was a reduction in per unit COGS from 1998 to 1999, this reduction was less than the per unit decline in average sales values.[684] In any event, in a period of sharply increasing demand, producers normally need not cut their prices to reflect fully declines in costs of goods sold.[685] Thus the price pressure imposed by the surging volume of imports prevented the domestic rebar producers from achieving the full benefits of declining input costs in a growing market.

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[677] CR and PR, Table LONG-18.

[678] INV-Y-212, Table LONG-ALT93.

[679] CR and PR, Table LONG-72.

[680] CR and PR, Table LONG-7.

[681] CR and PR, Tables LONG-7, LONG-18.

[682] INV-Y-212, Table LONG-ALT93.

[683] CR and PR, Table LONG-72.

[684] CR and PR, Table LONG-29.

[685] Additionally, competition between domestic producers cannot be a cause for price declines of the magnitude observed. While cost differentials do exist among domestic producers, even the domestic producer with the lowest cost structure had per-unit COGS that was considerably above the average unit sales values of the imports. *See* Producers' Questionnaires. Given the importance of price in rebar purchasing decisions, the commodity nature of rebar and the magnitude of underselling by the imports, it is clear that price leadership was exerted by the imports, rather than any domestic producer.

The imports undersold domestically-produced rebar by quarterly margins between *** and *** percent during 1999.[686] During that year, the imports gained another five percentage points of market share.[687] Nevertheless, because of the strong growth in demand, the domestic industry continued to perform profitably, although operating margins were below the levels of 1998.[688]

There was not a further import surge in 2000, when import quantity and market share declined somewhat from 1999 levels. Imports did maintain a significant presence in the market in 2000, however. Import quantity and market penetration in 2000 were still both significantly above 1998 levels, not to mention those of earlier years; import quantity in 2000 was considerably more than twice the 1996 level and market penetration was nearly twice the 1996 level.[689]

Imports maintained their pricing pressure as well in 2000. Average unit values of imports in 2000 increased only incrementally from their depressed levels of 1999, while the average unit values for the domestically-produced product declined further from 1999 to 2000.[690] Prices for both the domestically-produced and the imported rebar product on which the Commission collected data fluctuated within a fairly narrow range, with prices for the domestic product generally being slightly below the 1999 levels. Imports continued to undersell the domestically-produced product by margins of over 20 percent.[691]

As was the case in 1999, factors in the market other than imports cannot explain why rebar pricing in 2000 continued to be at depressed levels. Demand for rebar continued to increase in 2000, although this increase was less than that of the preceding years.[692] Additionally, per unit COGS increased in 2000 from 1999 levels.[693] The combination of rising demand and rising costs should have led prices of domestically-produced rebar to increase in 2000. Instead, prices generally declined -- a result we conclude is attributable to the intense price-based competition from imported rebar.[694] This decline in prices led to the poor financial performance, most notably the negative operating margins discussed above.

The data for interim 2001 indicate a continuation of the trends observed during 2000. Imports continued to maintain their presence in the market. Although import average unit values in interim 2001 were above those for interim 2000, they were still far below those from 1996 to 1998. The average unit values for U.S. shipments of domestically-produced rebar also remained depressed, notwithstanding increasing demand. Underselling by the imports persisted. Operating performance was poor and below the level of interim 2000.

In our discussion above, we have already considered and rejected several alternative causes advanced by the respondents to explain the condition of the domestic rebar industry. As discussed in the section on serious injury, the domestic industry's capacity increases cannot be deemed to be an alternative cause of injury because capacity increased far less than did U.S. apparent consumption of rebar during the period examined; indeed, capacity utilization generally increased during the period

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[686] INV-Y-212, Table LONG-ALT93.

[687] CR and PR, Table LONG-72.

[688] CR and PR, Table LONG-29.

[689] CR and PR, Tables LONG-7, LONG-72.

[690] CR and PR, Tables LONG-7, LONG-18.

[691] INV-Y-212, Table LONG-ALT93.

[692] CR and PR, Table LONG-72.

[693] CR and PR, Table LONG-29.

[694] Moreover, although the largest individual component of COGS – raw materials costs – declined from 1999 to 2000 on a per unit basis, this decline was still not as great as the per unit decline in average commercial sales values. CR and PR, Table LONG-29.

examined. We have also discussed changes in input costs and demand and found that they cannot explain the changes in pricing that occurred during the period examined; if anything, these factors indicate that prices should have been stable to increasing during the latter portion of the period examined. Instead, because of competition from the increased imports, prices declined.

We have also considered that rebar imports from several countries were subject to antidumping duties during portions of the period examined. As previously stated, rebar imports from Turkey became subject to provisional antidumping duties in October 1996 and have been the subject of an antidumping order since April 1997. Rebar imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine became subject to provisional antidumping duties in January 2001 and have been the subject of antidumping orders since September 2001.

We observe that the order from Turkey did not prevent overall rebar imports from surging in 1998 and 1999. Even with respect to imports from Turkey alone, while import quantities fell sharply in 1998, presumably in response to the order, they rose thereafter. Notwithstanding the order, imports from Turkey were greater in 2000 than any other year of the period examined.[695]

We observe that the provisional antidumping duties imposed in early 2001 had the effect of substantially reducing rebar imports from Korea, and effectively eliminating such imports from the seven other countries then subject to investigation.[696] Nevertheless, these duties had only a limited effect on overall imports. Imports from the countries subject to the antidumping investigation were to a significant extent replaced in the U.S. market by imports from other sources. There were substantial import quantities from Italy, Spain, and the Czech Republic in interim 2001, although none of these countries entered any imports in interim 2000.[697] As previously stated, in interim 2001 imports still had a substantial presence in the market that was far greater than the one at the beginning of the period examined, imports still undersold domestically-produced rebar by substantial margins, and average unit values for imports were still at levels well below those of 1996-98. Indeed, the domestic industry's operating margins were even lower in interim 2001 than they were in interim 2000. Consequently, the antidumping orders do not detract from our conclusions concerning increased imports, serious injury to the domestic industry, or the linkage between that injury and the increased imports. Accordingly, we find that increased imports are a substantial cause of serious injury to the domestic rebar industry that is not less than any other cause.

4. Findings with Respect to NAFTA Imports

a. Canada

Finding. We find that imports of rebar from Canada do not account for a substantial share of total imports and do not contribute importantly to the serious injury caused by the imports..[698]

Canada was not among the top five import suppliers of rebar during the three most recent years of the period examined. In fact, it was not among the top 15 suppliers of rebar for any individual year between 1998 and 2000 or in interim 2001.[699] We therefore find that imports from Canada do not account for a substantial share of total imports. Moreover, Canada's share of total imports throughout

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[695] INV-Y-180, rebar data.

[696] INV-Y-180, rebar data.

[697] INV-Y-180, rebar data. Additionally, imports from Japan during interim 2001 were considerably above interim 2000 levels. *Id.*

[698] All parties to address the issue requested that the Commission make a negative injury finding on rebar imports from Canada.

[699] INV-Y-180, rebar data.

the period examined was consistently very small.[700] In light of this, imports from Canada did not contribute importantly to the serious injury. Consequently, our affirmative determination concerning rebar does not encompass imports from Canada.

b. Mexico

Finding. We find that imports of rebar from Mexico do not account for a substantial share of total imports and do not contribute importantly to the serious injury caused by imports.[701]

Mexico was not among the top five import suppliers of rebar during the most recent period encompassing three full calendar years. It was the sixth-largest import supplier during the period 1998 to 2000, and was also the sixth-largest import supplier in interim 2001.[702] We therefore find that imports from Mexico do not account for a substantial share of total imports.

Additionally, imports from Mexico did not contribute importantly to the serious injury. While rebar imports from all sources increased by 187.0 percent from 1996 to 2000, imports from Mexico declined by 81.4 percent.[703] Consequently, our affirmative determination concerning rebar does not encompass imports from Mexico.[704]

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[700] CR and PR, Table LONG-7.

[701] All parties to address the issue requested that the Commission make a negative injury finding on rebar imports from Mexico.

[702] INV-Y-180, rebar data.

[703] CR and PR, Table LONG-7.

[704] We find that our injury analysis would not be affected in any way by the exclusion of rebar imports from Canada and Mexico.

Exclusion of imports from Canada and Mexico only makes the increase in imports during the period examined more dramatic. Imports of rebar from all sources other than Canada and Mexico increased from 302,217 tons in 1996 to 403,881 tons in 1997, to 1.1 million tons in 1998, and then to 1.7 million tons in 1999. Imports then decreased to 1.6 million tons in 2000. Imports from sources other than Mexico and Canada were lower in interim 2001, at 778,779 tons, than in interim 2000, when they were 960,625 tons. Imports from sources other than Mexico and Canada increased by 434.8 percent from 1996 to 2000, and had major increases both from 1997 to 1998 (183.5 percent) and from 1998 to 1999 (50.2 percent). *See* CR and PR, Table LONG-7.

Excluding Canada and Mexico also serves to accentuate the increase in market share of imports from other sources. The market share of rebar imports from sources other than Canada and Mexico increased from 5.5 percent in 1996 to 21.4 percent in 1999, its peak level of the period examined, and then declined to 19.9 percent in 2000. The market share of imports from sources other than Mexico and Canada was lower in interim 2001 than interim 2000. *See* CR and PR, Table LONG-72.

Average unit values of imports from sources other than Canada and Mexico followed the same pattern as average unit values of imports from all sources. The average unit value of imports from sources other than Canada and Mexico from $300 in 1996 to $275 in 1998, then plummeted to $207 in 1999, and increased slightly to $215 in 2000. These average unit values were $210 in interim 2000 and $224 in interim 2001. *See* CR and PR, Table LONG-7.

Finally, excluding imports from Canada and Mexico from the database does not appreciably change import pricing trends during the period examined. There were no pricing observations for imports from Canada, and imports from Mexico were sold at higher prices than imports from all other sources during every quarter for which pricing data were collected except the fourth quarter of 1996 and the first quarter of 1997. Consequently, for periods after 1998, exclusion of Mexican imports increases the magnitude of underselling margins somewhat. *See* CR and PR, Table LONG-93.

Consequently, the conclusions we have made concerning the effects of increased imports are equally applicable whether or not imports from Canada and Mexico are included among the imports evaluated.

E. **Billets**

We have found that billets are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic billet industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is not met.

Imports of billets declined from 1.1 million tons in 1996 to 858,137 tons in 1997. Imports then increased to 1.2 million in 1998 and declined to 866,430 tons in 1999. Imports increased to 952,156 tons in 2000, but this was still below the 1996 level. Imports were lower in interim 2001, at 215,785 tons, than in interim 2000, when they were 540,959 tons.[705]

As a ratio to U.S. production, imports were at their peak, 5.1 percent, in 1996. This ratio fell to 3.6 percent in 1997, returned to 5.1 percent in 1998, fell to 3.8 percent in 1999, and rose to 3.9 percent in 2000. The ratio was lower in interim 2001, at 2.0 percent, than in interim 2000, when it was 4.2 percent.[706]

Imports were lower in both absolute terms and relative to U.S. production in 2000 than they were in 1996. They were also lower in both absolute terms and relative to U.S. production in interim 2001 than they were in interim 2000. Consequently, the threshold statutory requirement of increased imports has not been satisfied and we need not proceed further with the questions of serious injury, substantial cause, or threat. We consequently have made a negative determination with respect to billets.

F. **Rails**

We have found that rails are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic rail industry.

1. **Increased Imports**

Finding. We find that the statutory criterion of increased imports is met.

Imports of rails increased from 201,711 tons in 1996 to 238,187 tons in 1997 and then to 337,268 tons in 1998. Imports then declined to 284,433 tons in 1999 and declined further to 274,849 tons in 2000. Imports were lower in interim 2001, at 135,799 tons, than in interim 2000, when they were 153,403 tons. Imports increased by 36.3 percent from 1996 to 2000.[707]

As a ratio to U.S. production, imports declined from 28.1 percent in 1996 to 26.6 percent in 1997. This ratio then rose to 35.3 percent in 1998 and increased further to 42.6 percent in 1999 before declining to 32.5 percent in 2000. The ratio was higher in interim 2001, at 40.5 percent, than in interim 2000, when it was 34.3 percent.[708]

Notwithstanding that import quantities declined in 1999 and 2000, following the rapid and dramatic increase of 1998, imports in 2000 were larger in both absolute terms and relative to U.S. production than they were in 1996. Interim 2001 imports, on an annualized basis, also were greater than

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[705] CR and PR, Table LONG-4.

[706] CR and PR, Table LONG-4.

[707] CR and PR, Table LONG-8.

[708] CR and PR, Table LONG-8.

1996 imports both in absolute terms and relative to U.S. production. Accordingly, we find that imports are in increased quantities and that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic rail industry is not seriously injured; that is, we find that there has not been a "significant overall impairment in the position" of the domestic industry. In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures.

The data below are based on questionnaire responses submitted by eight domestic rail producers estimated to account for between 83 and 103 percent of U.S. production during the period examined.[709] As previously stated, the U.S. rail industry is extremely concentrated, with the two largest producers – Bethlehem and Oregon Steel – accounting for *** of U.S. production in 2000.[710]

There has been no significant idling of productive facilities in the domestic rail industry. Production trends tended to track demand throughout the period examined. Domestic production of rails was higher in 2000 than it was in 1996. Production increased from 717,082 tons in 1996 to 895,985 tons in 1997 and then to 955,292 tons in 1998. Production then declined to 667,823 tons in 1999 but increased to 845,350 tons in 2000, a figure 17.9 percent above the 1996 figure. The 334,962 tons of production in interim 2001 were lower than the 446,743 tons of production in interim 2000.[711]

Reported capacity was 1.0 million tons in 1996 and 1997, and then increased to 1.1 million tons in 1998, 1999 and 2000. Capacity was unchanged between the interim periods.[712] The record contains no information that there have been any full or partial closures of production facilities by rail producers.

Reported capacity utilization fluctuated throughout the period examined. Capacity utilization was at 69.0 percent in 1996, rose to 86.2 percent in 1997, declined slightly to 86.0 percent in 1998, declined more sharply to 60.1 percent in 1999, and then rose to 76.1 percent in 2000. Capacity utilization was lower in interim 2001, when it was 60.3 percent, than in interim 2000, when it was 80.4 percent.[713] Capacity utilization in 2000, while not at its peak level, was above the level of 1996.

The quantity of U.S. shipments rose from 658,680 tons in 1996 to 822,853 tons in 1997 and then to 878,947 tons in 1998. U.S. shipments declined in 1999 to 614,688 tons, but rose in 2000 to 775,020 tons, which was 17.7 percent above the 1996 level. The 290,471 tons of U.S. shipments in interim 2001 was less than the 409,885 tons in interim 2000. The value of U.S. shipments showed similar trends, rising from $325 million in 1996 to a peak of $433 million in 1998, declining to $292 million in 1999, and then increasing to $360 million in 2000, which was 10.7 percent above the 1996 level. The $136 million in U.S. shipments in interim 2001 was less than the $195 million in interim 2000.[714]

Commercial sales had trends similar to those for U.S. shipments. The quantity of net commercial sales increased from 740,670 tons in 1996 to 892,109 tons in 1997 and then to 958,578 tons in 1998. Sales quantities then declined to 657,375 tons in 1999 and increased to 840,620 tons in 2000, which was 13.5 percent above the 1996 level. The 347,347 tons sold in interim 2001 was less than the 453,290 tons

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[709] CR and PR at LONG-4, Table LONG-2.

[710] CR and PR, Tables LONG-1, LONG-19.

[711] CR and PR, Table LONG-19.

[712] CR and PR, Table LONG-19.

[713] CR and PR, Table LONG-19.

[714] CR and PR, Table LONG-19.

sold in interim 2000. The value of net commercial sales increased from $362 million in 1996 to $433 million in 1997 and then to $477 million in 1998. Sales value declined to $311 million in 1999 and then increased to $390 million in 2000. The $162 million in sales in interim 2001 was less than the $215 million in sales in interim 2000.[715] Average unit sales values declined from $489 in 1996 to $495 in 1997, rose to $498 in 1998, and declined the next two years, reaching $464 in 2000. Average unit sales values were lower in interim 2001, at $465, then in interim 2000, when they were $475.[716]

U.S. producers' inventories increased from 33,465 tons in 1996 to 38,568 tons in 1997 and then declined to 35,464 tons in 1998. Inventories then rose to 47,441 tons in 1999 and to 52,493 tons in 2000. The 40,655 tons in inventories during interim 2001 was lower than the 40,751 tons in inventories in interim 2000.[717]

U.S. producers' share of U.S. apparent consumption, measured by quantity, was at 76.6 percent in 1996, increased to 77.6 percent in 1997, declined the next two years and reached 68.4 percent in 1999, and then increased to 73.8 percent in 2000. U.S. producers' share of U.S. apparent consumption was lower in interim 2001, at 68.1 percent, than in interim 2000, when it was 72.8 percent.[718]

With the exception of interim 2001, domestic producers' financial performance was generally better in the latter portions of the period examined than in the earlier portions. The industry's operating income improved from $7.5 million in 1996 to $18.8 million in 1997 and then to $42.5 million in 1998. Operating income declined to $31.2 million in 1999 and to $28.0 million in 2000. In interim 2001, the industry experienced an operating loss of $333,000, as compared to an operating profit of $18.5 million in interim 2000. Operating margins increased during the first four years of the period examined, rising from 2.1 percent in 1996 to 10.0 percent in 1999. The margin then declined to 7.2 percent in 2000. It was lower in interim 2001, when it was negative 0.2 percent, than in interim 2000, when it was 8.6 percent. The number of firms reporting operating losses was three in 1996, 1997, and 1998, then declined to two in 1999 and 2000. Two firms reported operating losses in interim 2001, as opposed to one in interim 2000.[719]

The record indicates that a significant number of firms were able to carry out production operations at a reasonable level of profit. While operating margins for the industry as a whole were weak in 1996 and 1997, they improved considerably during the subsequent three years, and the number of firms experiencing operating losses diminished. The industry had strong operating margins in 1998, 1999, and 2000. While the industry was not profitable in interim 2001, we do not find this downturn sufficient to support a conclusion that a significant number of firms in the industry cannot sustain a reasonable level of profit, particularly in light of the performance of the immediately preceding full years.

The number of production and related workers tended to fluctuate in the same manner as production levels. Employment increased from 856 in 1996 to 932 in 1997 and then to 989 in 1998. Employment then fell to 676 in 1999 but rose to 830 in 2000, which was 3.0 percent below the 1996 level. Employment was lower in interim 2001, at 756 workers, than it was in interim 2000, when it was

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[715] CR and PR, Table LONG-30.

[716] CR and PR, Table LONG-30. Prices for the domestically-produced rail product on which the Commission collected data fluctuated downward during the period examined. CR and PR, Table LONG-94.

[717] CR and PR, Table LONG-19. The ratio of inventories to shipments fell during the first three years of the period examined, declining from 4.5 percent in 1996 to 3.7 percent in 1998. The ratio then increased to 7.2 percent in 1999 and fell to 6.2 percent in 2000. It was higher in interim 2001, at 5.9 percent, than in interim 2000, when it was 4.5 percent. *Id.*

[718] CR and PR, Table LONG-73.

[719] CR and PR, Table LONG-30. The two largest performers experienced divergent operating performances. ***. Rail Producers' Questionnaires.

884 workers. Wages paid and hourly wages both fluctuated, but each was higher in 2000 than in either 1996 or 1999. Productivity rose during every year of the period examined, increasing from 407.1 tons per thousand hours in 1996 to 482.3 tons per thousand hours in 2000. Productivity was lower in interim 2001 than in interim 2000.[720]

While employment levels in 2000 were below those of the peak years of the period examined, their decline from the 1996 level was modest; moreover, 2000 employment was significantly above the 1999 level. In light of this, there is not significant unemployment or underemployment in the domestic industry.

Rail industry research and development expenditures were higher in 2000 than in every year of the period examined except 1999, although they were lower in the interim period comparison. Capital expenditures declined from $28.8 million in 1996 to $16.3 million in 1997, increased to $30.3 million in 1998, declined to $17.7 million in 1999, and declined further to $17.0 million in 2000. Capital expenditures were lower in interim 2001, at $3.7 million, than they were in interim 2000, when they were $8.8 million.[721]

Many of the indicators we examined were positive during the period examined. Production, shipments, capacity, and capacity utilization were all higher in 2000 than in 1996, and all these factors either increased in 2000 from 1999 or remained unchanged. The industry also displayed profitable financial performance during each of the years between 1998 and 2000 that was above the level we would consider injurious. While there was some decline in employment during the latter portion of the period examined, employment in 2000 was only slightly below the level of 1996 and productivity increased. We acknowledge that there were declines in some factors such as capital expenditures and market share in the latter years of the period examined, and that most industry indicators fell appreciably in interim 2001. Nevertheless, we do not believe that either declines in isolated factors in 2000, nor the declines that occurred in the limited period of interim 2001, are sufficient to indicate the type of substantial overall impairment of the industry that would constitute serious injury. Accordingly, we conclude that the rail industry is not seriously injured. We therefore do not reach the question of substantial cause.

3. Threat

Finding. We find that the increased imports are not a substantial cause of the threat of serious injury to the domestic rail industry.

In our discussion of serious injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic rail industry. As the data indicate, in 2000 most of the output-related indicators as well as employment-related indicators such as wages and productivity had increased from the beginning of the period examined and had also risen from the levels of the prior year. Additionally, in 2000 the domestic industry was profitable and operating margins were considerably higher than those of 1996 and 1997. Consequently, the full year data over the period examined do not indicate the type of pervasive declining trends that would suggest there is a threat of serious injury.

We acknowledge that nearly all industry performance indicators in interim 2001 were considerably below those of the prior year. Nevertheless, these declines appear primarily to be a function of declining demand. U.S. apparent consumption of rails in interim 2001 was 426,270 tons. This was 24.3 percent below apparent consumption during interim 2000. On an annualized basis, apparent

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[720] CR and PR, Table LONG-19.

[721] CR and PR, Table LONG-30.

consumption during 2001 was lower than any full year during the period examined.[722] The quantity of imports also declined in interim 2001 as compared to interim 2000, although import market penetration was higher in interim 2001 than during interim 2000.

The interim 2001 decline in apparent consumption and increase in import market penetration were due largely to factors unrelated to import competition with domestic rail production. Most importantly, Union Pacific, the largest U.S. railroad,[723] cut its rail purchases significantly, and focused on critical needs for which it required next generation premium rail.[724] ***.[725] ***.[726] As a result, Union Pacific's purchases of domestically-produced rail declined sharply in 2001.[727]

Nevertheless, Union Pacific, Burlington Northern Santa Fe, the second largest railroad in the United States, and the domestic producers themselves all agree that the railroads prefer to make purchases, particularly of standard rail products, from domestic sources for logistical reasons.[728] Additionally, Union Pacific ***.[729] Consequently, the combination of factors that caused domestic industry performance to decline in interim 2001 appear to be to some extent anomalous. Even if interim 2001 could be viewed as a precursor to future trends, however, we would conclude that changes in levels of apparent consumption and the nature of the products offered by the U.S. industry, and not competition with imports, appear to be the principal causes of any future declines in domestic rail industry performance.

Our examination of pricing data provides further support for this conclusion. Although there were price and average unit value declines for rail products during the latter portion of the period examined, these do not appear to be a function of imports. Indeed, for the standard rail product on which the Commission collected pricing data, the imports oversold the domestically-produced product for seven of the last 10 quarters of the period examined.[730] Rather, the pricing trend appears to be a function of the price leadership of domestic producer ***.[731]

The record does not indicate that firms in the domestic industry are unable to generate adequate capital to finance the modernization of domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development, notwithstanding the declines in capital expenditures observed during the period examined. Oregon Steel has been able to develop a next-generation rail product.[732] Steel Dynamics, Inc., is spending $300 million to construct an entirely new mill in Indiana

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[722] CR and PR, Table LONG-73.

[723] Union Pacific individually accounted for *** of U.S. apparent rail consumption in 2000 and interim 2001. *Compare* CR and PR, Table LONG-73 *with* Rail Respondents Posthearing Brief, ex. 6.

[724] Tr. at 1503, 1575-76 (Zaversnik). "Next generation" premium rail has high hardness which offers better wear resistence and durability, making it well-suited to heavily traveled track or difficult track conditions. Tr. at 1504-05 (Atkinson).

[725] Rail Respondents Posthearing Brief, ex. 6 (Union Pacific purchaser questionnaire data).

[726] The material submitted by both domestic producers and respondents supports this finding. *See* Rail Respondents Posthearing Brief at 12-13 (***); Domestic Rail Producers Posthearing Brief, ex. 4 (***).

[727] Tr. at 1503 (Zaversnik); Rail Respondents Posthearing Brief, ex. 6.

[728] Tr. at 1435 (Gibson), 1499 (Gilette), 1501-02 (Zaversnik).

[729] Rail Respondents Posthearing Brief at 13.

[730] INV-Y-212, Table LONG-ALT94.

[731] *See* *** Producer Questionnaire Responses.

[732] Tr. at 1324 (R. Simon).

that will produce rails and heavy structural shapes beginning in 2002.[733] Nucor, another domestic producer, is also actively considering constructing a new steel mill in the United States.[734]

Additionally, there is no material in the record that would indicate that the U.S. market is the focal point for the diversion of rail exports by reason of restraints on export of rails to, or imports of rails from, third country markets. To the contrary, the questionnaire data indicate that rail exports to the United States are far smaller than those to other export markets.[735] Moreover, as previously discussed, the quantity of rail imports into the United States peaked in 1998. Import quantities declined in 1999 and 2000 and were lower in interim 2001 than in interim 2000.

In light of the foregoing, we conclude that increased imports are not a substantial cause of the threat of serious injury to the domestic rail industry.

G. Heavy Structural Shapes

We have found that heavy structural shapes are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic heavy structural shape industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Imports of heavy structural shapes increased from 895,916 tons in 1996 to 930,983 tons in 1997. There was then a rapid and dramatic increase to 2.7 million tons in 1998. Imports then declined to 1.3 million tons in 1999 but then increased to 1.9 million tons in 2000. Imports were lower in interim 2001, at 452,874 tons, than in interim 2000, when they were 892,832 tons. Imports increased by 109.1 percent from 1996 to 2000.[736]

As a ratio to U.S. production, imports declined from 15.6 percent in 1996 to 15.2 percent in 1997. This ratio then rose to 43.7 percent in 1998, declined to 21.5 percent in 1999, and increased to 25.6 percent in 1999. The ratio was lower in interim 2001, at 14.6 percent, than in interim 2000, when it was 23.4 percent.[737]

Imports in 2000, although not at their peak level during the period examined, were more than twice the quantity of imports in 1996 and were also significantly greater relative to U.S. production than they were in 1996. Interim 2001 imports, on an annualized basis, were also greater than 1996 imports in absolute terms. Accordingly, we find that imports are in increased quantities and that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic heavy structural shapes industry is not seriously injured; that is, we find that there has not been a "significant overall impairment in the position" of the domestic industry. In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity

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[733] Domestic Rail Producers Prehearing Brief, exs. 1 and 2.

[734] Domestic Rail Producers Prehearing Brief, ex. 3.

[735] CR and PR, Table LONG-51.

[736] CR and PR, Table LONG-12.

[737] CR and PR, Table LONG-12.

utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures.

The data below are based on questionnaire responses submitted by 13 domestic producers of heavy structural shapes estimated to account for between 90 and 100 percent of U.S. production during the period examined.[738]

Domestic production of heavy structural shapes increased during each full year of the period examined. Production rose from 5.8 million tons in 1996 to 7.3 million tons in 2000, an increase of 27.0 percent. The 3.1 million tons of production in interim 2001 was lower than the 3.8 million tons of production in interim 2000.[739]

Capacity also increased during each full year of the period examined. Capacity rose from 7.1 million tons in 1996 to 9.5 million tons in 2000, an increase of 34.0 percent. Capacity was higher in interim 2001, at 4.751 million tons, than in interim 2000, when it was 4.749 million tons.[740]

Reported capacity utilization fluctuated throughout the period examined. Capacity utilization increased from 81.3 percent in 1996 to 84.6 percent in 1997, then declined to 79.1 percent in 1998 and to 74.8 percent in 1999. In 2000 capacity utilization increased to 77.1 percent. Capacity utilization was lower in interim 2001, when it was 65.5 percent, than in interim 2000, when it was 80.5 percent.[741]

We observe that one domestic heavy structural shapes producer, Northwestern Steel, declared bankruptcy and terminated operations in May 2001.[742] Notwithstanding Northwestern's shutdown, however, productive capacity increased substantially during the period examination -- and did not decline even in the interim period comparison.[743] Moreover, even with the increases in capacity, capacity utilization remained relatively stable over the period examined, with the exception of interim 2001. Consequently, there has been no significant idling of productive facilities in the U.S. heavy structural shapes industry.

The quantity of U.S. shipments rose from 5.5 million tons in 1996 to 6.1 million tons in 1997 and then declined to 5.9 million tons in 1998. U.S. shipment quantity increased the following two years, rising to 6.0 million tons in 1999 and 6.8 million tons in 2000; the 2000 shipment quantity was 24.5 percent above the 1996 quantity. The 3.1 million tons of U.S. shipments in interim 2001 was less than the 3.6 million tons in interim 2000. The value of U.S. shipments increased from $2.2 billion in 1996 to $2.4 billion in 1997, and then fell for the next two years, declining to $2.1 million in 1999. The value of U.S. shipments rose to their peak of $2.6 billion in 2000, which was 19.6 percent above the 1996 level. The $975 million in U.S. shipments in interim 2001 was less than the $1.4 billion in interim 2000.[744]

The quantity of net commercial sales increased from 5.6 million tons in 1996 to 6.1 million tons in 1997 and then declined to 5.7 million in 1998. Sales quantities then increased to 6.3 million tons in 1999 and to 6.7 million tons in 2000, which was 19.9 percent above the 1996 level. The 3.1 million tons sold in interim 2001 was less than the 3.6 million tons sold in interim 2000. The value of net commercial sales increased from $2.24 billion in 1996 to $2.45 billion in 1997 and then declined to $2.23 billion in 1998. Sales value increased to $2.24 billion in 1999 and then to $2.54 billion in 2000. The $1.06 billion

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[738] CR and PR at LONG-4, Table LONG-2.

[739] CR and PR, Table LONG-23.

[740] CR and PR, Table LONG-23.

[741] CR and PR, Table LONG-23.

[742] CR and PR, Table OVERVIEW-11.

[743] Because Northwestern *** to the Commission questionnaire, CR and PR, Table OVERVIEW-11, the aggregate questionnaire data ***.

[744] CR and PR, Table LONG-23.

in sales in interim 2001 was less than the $1.42 billion in sales in interim 2000.[745] Average unit sales values were $400 in 1996 and 1997, declined to $394 in 1998 and to $353 in 1999, and rose to $377 in 2000. The values were lower in interim 2001, at $338, than in interim 2000, when they were $390.[746]

U.S. producers' inventories declined from 634,541 tons in 1996 to 467,397 tons in 1997. Inventories then increased for the next three years, reaching 879,280 tons in 2000, 38.6 percent above the 1996 level. The 780,396 tons in inventories during interim 2001 was higher than the 723,900 tons in inventories in interim 2000.[747]

U.S. producers' share of U.S. apparent consumption, measured by quantity, increased from 86.0 percent in 1996 to 86.7 percent in 1997, and then declined to 68.5 percent in 1998. The share then increased to 81.8 percent in 1999 and declined to 78.5 percent in 2000. U.S. producers' share of U.S. apparent consumption was higher in interim 2001, at 87.2 percent, than in interim 2000, when it was 80.2 percent.[748]

The domestic heavy structural shapes industry has enjoyed profitable performance throughout the period examined. Operating income increased from $332 million in 1996 to $382 million in 1997, and then declined the next two years until reaching $229 million in 1999. In 2000 operating income increased to $324 million. The $51.8 million in interim 2001 operating income was less than the $238 million in interim 2000 operating income. The operating margin increased from 14.8 percent in 1996 to 15.6 percent in 1997, and then fell the next two years, reaching 10.2 percent in 1999. The operating margin then increased to 12.8 percent in 2000. The 4.9 percent operating margin in interim 2001 was less than the 16.7 percent operating margin in interim 2000.[749]

While we acknowledge that a few individual producers within the heavy structural shapes industry -- particularly the now-bankrupt Northwestern -- have not performed well financially, on an aggregate basis the industry showed double-digit operating margins during each full year of the period examined.[750] Even during interim 2001, when sales declined, industry operating margins were positive and more than nominal. In light of this, the record does not indicate that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

The number of production and related workers rose during each full year of the period examined. Employment rose from 3,053 production and related workers in 1996 to 3,860 in 2000, an increase of 26.4 percent. Employment was lower in interim 2001, at 3,494 workers, than it was in interim 2000, when it was 3,878 workers.[751] Wages paid and hourly wages both increased during each full year of the period examined, although wages were lower in interim 2001 than in interim 2000. Productivity fluctuated, increasing from 809.0 tons per thousand hours in 1996 to 851.6 tons per thousand hours in

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[745] CR and PR, Table LONG-34.

[746] CR and PR, Table LONG-34. Prices for the domestically-produced heavy structural shapes product on which the Commission collected data fluctuated before reaching their peak in the second quarter of 1998. Prices then fell sharply, reaching their low point in the second quarter of 1999. Prices then increased through the second quarter of 2000 and fell thereafter. CR and PR, Table LONG-98.

[747] CR and PR, Table LONG-23. The ratio of inventories to shipments declined from 11.3 percent in 1996 to 7.4 percent in 1997, increased to 10.6 percent in 1998, declined to 10.3 percent in 1999, and increased to 12.4 percent in 2000. The ratio was higher in interim 2001, at 12.1 percent, than in interim 2000, when it was 9.7 percent. *Id.*

[748] CR and PR, Table LONG-77.

[749] CR and PR, Table LONG-34. The number of firms reporting operating losses was one in 1996, 1997, and 1998, three in 1999 and interim 2000, and five in 2000 and interim 2001. *Id.*

[750] We also observe that several of the firms operating unprofitably are the smaller ones in the industry. In 2000, the six firms that had operating profits accounted for 69.5 percent of the quantity of industry sales, while the five unprofitable firms accounted for only 30.5 percent. Producers' Questionnaire Responses.

[751] The questionnaire data reflect employment declines of ***. *See* *** Producer's Questionnaire.

1997, and then declining the next two years, reaching 743.9 tons per thousand hours in 1999. Productivity then increased to 821.8 tons per thousand hours in 2000. Productivity was lower in interim 2001 than in interim 2000.[752]

Employment, wages paid, and hourly wages all strongly increased from 1996 to 2000. Although there were employment declines in the interim period comparison, employment in interim 2001 was still above the levels of 1996, 1997, and 1998. In light of these data, there is not significant unemployment or underemployment in the domestic industry.

Heavy structural shapes industry capital expenditures showed very large annual variations, increasing from $91.3 million in 1996 to $207 million in 1997 and then to $672 million in 1998. Capital expenses then declined to $177 million in 1999 and to $76.0 million in 2000. Capital expenditures were higher in interim 2001, at $29.5 million, than they were in interim 2000, when they were $27.3 million. With the exception of 1998, research and development expenditures fluctuated within a fairly narrow range (between $217,000 and $230,000) over the full years examined; these expenses were lower in interim 2001 than in interim 2000.[753]

Almost all of the output and employment-related factors we examined for the heavy structural shapes industry increased consistently and significantly between 1996 and 2000, notwithstanding the losses in market share that occurred between 1996 and 1998. The industry also displayed consistently strong operating margins during the 1996-2000 period. Although most indicators declined during the interim period comparison, including operating performance, the industry still retained a reasonable operating income margin in interim 2001. Consequently, the record does not show the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury. Accordingly, we conclude that the heavy structural shapes industry is not seriously injured. We therefore do not reach the question of substantial cause.

3. Threat

Finding. We find that the increased imports are not a substantial cause of the threat of serious injury to the domestic industry producing heavy structural shapes.

We observe initially that imports declined substantially during the latter portions of the period examined from their peak levels of 1998. The quantity of imports in 2000 was 30.6 percent below the quantity in 1998, and the quantity of imports in interim 2001 was 49.3 percent below the quantity of interim 2000.[754] The imports' share of U.S. apparent consumption in interim 2001 – 12.8 percent – was lower than that of any other period within the period examined, and less than half the market share the imports reached during the peak year of 1998.[755]

The recent reductions are to a large extent a function of antidumping and countervailing duty orders on structural beams, a major product within the heavy structural shapes category. Provisional duties were imposed on imports of structural beams from Japan and Korea in February 2000, and final antidumping duties were imposed on beams from Japan and final antidumping and countervailing duties were imposed on beams from Korea during the summer of 2000.[756] Imports from both of these countries

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[752] CR and PR, Table LONG-23.

[753] CR and PR, Table LONG-34.

[754] CR and PR, Table LONG-12.

[755] CR and PR, Table LONG-77.

[756] *See* 65 Fed. Reg. 6984 (Feb. 11, 2000) (provisional duties on Korea); 65 Fed. Reg. 6992 (Feb. 11, 2000) (provisional duties on Japan); 65 Fed. Reg. 37960 (June 19, 2000) (Japan antidumping order); 65 Fed. Reg. 49542 (Aug. 14, 2000) (Korea countervailing duty order); 65 Fed. Reg. 50503 (Aug. 18, 2000) (Korea antidumping order).

have declined considerably since reaching peaks in 1998 and 1999.[757] The recent import data indicate that these orders, in contrast to those on some other steel products subject to this investigation, have been successful in restraining import volumes overall.

Additionally, antidumping investigations are currently pending against structural beams from eight other countries. At the time the record on injury closed in this investigation, Commerce was due to make preliminary determinations in its antidumping investigations in late November 2001.[758] The pendency of antidumping investigations will reduce the likelihood of increased import volumes from these countries until at least the conclusion of the investigations.

The trend in imports during the latter portion of the period examined, together with the fact that either permanent duties or pending investigations were in effect with respect to imports from 10 of the top 12 suppliers to the United States during interim 2001 at the time the injury record closed, leads us to conclude that there is not likely to be any imminent increase in imports of heavy structural shapes above current levels. Indeed, existing and potential import restraints are likely to inhibit further imports of heavy structural shapes from the subject countries into the United States.

In our discussion of serious injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic industry. As the data indicate, the domestic industry producing heavy structural shapes did not experience serious injury even when import quantities and market penetration were considerably above current levels. In light of our finding that imports levels are not likely to increase, there is no causal connection between the imports and any future difficulties the domestic industry may experience.

In this respect, we acknowledge that the domestic industry's output, shipments, capacity utilization, employment, and profitability were lower and domestic producers' inventories were higher in interim 2001 than interim 2000. Nevertheless, this was not a function of the imports, which were significantly lower both in absolute and relative terms in interim 2001 as compared with interim 2000. Instead, the interim 2001 declines in industry performance appear to be a function of the declines in apparent consumption.

The record does not indicate that firms in the domestic industry are unable to generate adequate capital to finance the modernization of domestic plants and equipment. As previously discussed, the domestic industry has enjoyed consistent operating profits, featuring double digit operating margins over most of the period examined. Its cash flow has been even greater than its operating income.[759] These results indicate that the substantial number of profitable producers should be able to generate funds internally to fund future expansion and gain access to outside capital and credit markets. Additionally, as previously stated, Steel Dynamics, Inc. is spending $300 million to construct an entirely new mill in Indiana that will produce rails and heavy structural shapes beginning in 2002.[760]

In light of the foregoing, we conclude that increased imports are not a substantial cause of the threat of serious injury to the domestic industry producing heavy structural shapes.

H. Fabricated Units

We have found that fabricated units are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic fabricated unit industry.

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[757] INV-Y-180, heavy structural data.

[758] *See* 56 Fed. Reg. 51639 (Oct. 10, 2001).

[759] CR and PR, Table LONG-34.

[760] Domestic Rail Producers Prehearing Brief, exs. 1 and 2.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Imports of fabricated units rose during each year of the period examined, increasing from 217,550 tons in 1996 to 658,950 tons in 2000. Imports were higher in interim 2001, at 370,158 tons, than in interim 2000, when they were 277,135 tons. Imports increased by 202.9 percent from 1996 to 2000.[761]

The ratio of imports to U.S. production reported in questionnaires also rose very year. This ratio increased from 18.1 percent in 1996 to 44.4 percent in 2000. The ratio was higher in interim 2001, at 53.3 percent, than in interim 2000, when it was 37.9 percent.[762] As we explain further in our discussion below of serious injury, a very low proportion of U.S. fabricated unit producers responded to the Commission's questionnaire. As a result, the parties agree that production data reported by questionnaires are understated and hence any ratio of imports to U.S. production based on questionnaire data is substantially overstated. Nevertheless, there is no dispute that the ratio of imports to the reported U.S. production increased over the period examined.

Imports were higher, on both an absolute basis and relative to U.S. production, in 2000 than any prior year of the period examined. Imports were also higher in interim 2001 than interim 2000. In view of the above, we find that imports are in increased quantities and that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic fabricated unit industry is not seriously injured; that is, we find that there has not been a "significant overall impairment in the position" of the domestic industry. In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures.

The Commission received questionnaire responses from 37 domestic producers of fabricated units.[763] The principal parties agree that questionnaire coverage is quite low. Based on questionnaire data, the Commission calculated U.S. shipments by domestic fabricated unit producers in 2000 to be 1,473,852 tons.[764] AISC, the representative of the domestic industry, calculated 2000 U.S. shipments of fabricated units other than joist and deck to be 5,611,000 tons.[765] If joist and deck were included, the quantity of shipments would increase to 8,671,000 tons.[766] Using the latter figure, questionnaire data provide 17.0 percent coverage. The Canadian Institute for Steel Construction (CISC), the principal respondent group, calculated 2000 U.S. shipments of fabricated units to be 11,721,950 tons.[767] If this figure is used, questionnaire data provide 12.6 percent coverage.

For purposes of our analysis, we do not believe it is necessary to resolve the parties' dispute concerning the proper way to calculate U.S. apparent consumption. It is sufficient to observe that, under either party's version, the Commission's questionnaire data cover far less than a majority of the industry

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[761] CR and PR, Table LONG-13.

[762] CR and PR, Table LONG-13.

[763] CR and PR, Table LONG-2.

[764] CR and PR, Table LONG-24.

[765] AISC Prehearing Brief at 39.

[766] *See* AISC Posthearing Brief, Table 9.

[767] CISC Posthearing Brief at B-3.

and that any import penetration ratio based on the questionnaire data will be vastly overstated. Consequently, our discussion of import penetration below will be based on the AISC and CISC calculations of U.S. shipments rather than those found in the Commission questionnaires.

We observe, however, that the parties' alternative calculations do not provide a basis for examination of other statutory factors, such as capacity, production, profitability, and employment. For this we have had to rely on the questionnaire data, notwithstanding the low coverage. As stated below, the questionnaire data clearly establish that the domestic industry is not seriously injured.[768]

Domestic production of fabricated units reported in the questionnaires increased during each full year of the period examined. Production rose from 1.2 million tons in 1996 to 1.5 million tons in 2000, an increase of 23.2 percent. The 694,517 tons of production in interim 2001 was lower than the 730,915 tons of production in interim 2000.[769]

Reported capacity also increased during each full year of the period examined. Capacity rose from 1.3 million tons in 1996 to 1.6 million tons in 2000, an increase of 23.4 percent. Capacity was higher in interim 2001, at 809,201 tons, than in interim 2000, when it was 802,297 tons.[770]

Reported capacity utilization fluctuated throughout the period examined, but was generally at high levels. Capacity utilization increased from 90.1 percent in 1996 to 90.9 percent in 1997, then declined to 89.0 percent in 1998. Capacity utilization then increased at 89.5 percent in 1999 and declined to 89.4 percent in 2000. Capacity utilization was lower in interim 2001, when it was 83.3 percent, than in interim 2000, when it was 88.2 percent.[771]

Although AISC contends that the questionnaire data may tend to understate actual capacity of the producers that responded,[772] it does not assert, nor does the record indicate, that there have been any plant closures or reduction of shifts among U.S. producers of fabricated units. In light of this and the increasing production and capacity and high rates of capacity utilization reported in the questionnaire data, there has been no significant idling of productive facilities in the U.S. fabricated units industry.

The quantity of U.S. shipments reported in the questionnaires rose during each year of the period examined, increasing from 1.2 million tons in 1996 to 1.5 million tons in 2000; the 2000 shipment quantity was 23.7 percent above the 1996 quantity. The 677,803 tons of U.S. shipments in interim 2001 was less than the 699,969 tons in interim 2000. The value of U.S. shipments also increased during each full year, rising from $1.3 billion in 1996 to $1.7 billion in 2000, an increase of 29.5 percent. The $790 million in U.S. shipments in interim 2001 was less than the $822 million in interim 2000.[773]

The quantity and value of net commercial sales also increased during each full year of the period examined. Sales quantities rose from 1.0 million tons in 1996 to 1.3 million tons in 2000, a 24.4 percent

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[768] AISC has invited us to supplement the questionnaire data with results of a survey form it circulated to its members which elicited 193 responses. ASIC Prehearing Brief at 37 n.67, ex. 3. We decline to do so. The survey requested no empirical data from AISC members, so the survey results provide only the yes or no responses to leading questions asked by AISC concerning the effects of imports in the market. Sample questions included "Does the presence of such fabricated steel imports in the U.S. market decrease price levels in the U.S. market?" and "Does the presence of such fabricated steel imports in the U.S. market have an adverse effect on U.S. fabricated steel producers?" AISC Prehearing Brief, ex. 3. We believe that the probative value of such generalized responses, in the absence of supporting data or explanation, is extremely limited. Moreover, AISC has not provided any persuasive reason why the AISC members that responded to its survey could not provide the questionnaire data requested by the Commission.

[769] CR and PR, Table LONG-24.

[770] CR and PR, Table LONG-24.

[771] CR and PR, Table LONG-24.

[772] *See* AISC Prehearing Brief at 47-48.

[773] CR and PR, Table LONG-24.

increase. They were lower in interim 2001, at 575,742 tons, than in interim 2000, when they were 594,132 tons. Sales values rose from $1.1 billion in 1996 to $1.5 billion in 2000, a 34.9 percent increase. The $632 million in sales in interim 2001 was less than the $678 million in sales in interim 2000.[774]

U.S. producers' inventories declined from 63,361 tons in 1996 to 62,236 tons in 1997, then increased to 74,021 tons in 1998. Inventories then declined to 67,065 tons in 1999 and increased to 76,655 tons in 2000, a level 21.0 percent above that of 1996. The 87,140 tons in inventories during interim 2001 was lower than the 95,930 tons in inventories in interim 2000.[775]

As previously stated, because the response rate to the producers' questionnaire was so low, questionnaire data do not provide a reliable measure of import penetration. We have consequently computed import penetration based on the apparent consumption data provided by both AISC (which we have adjusted by adding back data for bar and joist) and CISC. Using either set of data, import penetration increased during each year of the period examined. Using AISC's data, import penetration increased from 2.7 percent in 1996 to 3.0 percent in 1997, 3.7 percent in 1998, 5.2 percent in 1999, and 6.8 percent in 2000, and reached 8.2 percent in interim 2001.[776] Using CISC's data, import penetration increased from 2.3 percent in 1996 to 2.8 percent in 1997, 3.3 percent in 1998, 4.5 percent in 1999, and 6.0 percent in 2000.[777]

The domestic fabricated units industry has enjoyed highly profitable performance throughout the period examined. Operating income rose during the first four years of the period examined, increasing from $161 million in 1996 to $226 million in 1999. Operating income then declined to $209 million in 2000, but this figure was still 29.4 percent above the 1996 level. The $92.7 million in interim 2001 operating income was greater than the $92.4 million in interim 2000 operating income. The operating margin declined from 15.0 percent in 1996 to 13.6 percent in 1997, increased the next two years, reaching 16.2 percent in 1999, and then declined to 14.4 percent in 2000. The 14.7 percent operating margin in interim 2001 was greater than the 13.6 percent operating margin in interim 2000. The number of firms reporting operating losses was four in 1996, declined to three in 1997 and 1998, declined further to two in 1999, and dropped to one in 2000. Four firms reported operating losses in both interim 2000 and interim 2001.[778]

In an effort to show that the industry is not performing well, AISC has suggested the Commission exclude the most profitable industry segments – those producing joist, deck, and bridges – from its analysis. Even if such an analysis were appropriate, it would not support a finding that the remaining segment of the industry is facing serious financial performance problems. Under AISC's own analysis, the operating margins for this segment were never below *** percent for any full year, were higher in 2000, at *** percent, than for any prior year, and reached a peak in interim 2001, at *** percent.[779]

The data, no matter how they are analyzed, indicate that the overwhelming majority of fabricated units producers operate in a consistently profitable manner, and that overall industry operating performance has been extremely strong. We consequently conclude that the record does not indicate that a significant number of firms are unable to carry out production operations at a reasonable level of profit.

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[774] CR and PR, Table LONG-35.

[775] CR and PR, Table LONG-24. The ratio of inventories to shipments declined from 5.3 percent in 1996 to 4.8 percent in 1997, increased to 5.4 percent in 1998, declined to 4.6 percent in 1999, and increased to 5.2 percent in 2000. The ratio was lower in interim 2001, as 6.4 percent, than in interim 2000, when it was 6.8 percent. *Id.*

[776] *See* AISC Prehearing Brief, Table C-2; AISC Posthearing Brief, Table 9.

[777] CISC Prehearing Brief, ex. 16. CISC did not provide data for the interim periods.

[778] CR and PR, Table LONG-35.

[779] AISC Prehearing Brief, Table E-6.

The number of production and related workers declined from 4,572 in 1996 to 4,455 in 1997, and then rose every subsequent year. The peak employment level of 4,952 in 2000 was 8.3 percent above the 1996 level. Employment was virtually unchanged between the interim periods. Wages paid increased during each full year of the period examined and hourly wages increased during each year except 1999. Wages paid and hourly wages were higher in interim 2001 than in interim 2000. Productivity fluctuated, increasing during the first three years of the period examined, rising from 125.6 tons per thousand hours in 1996 to 139.7 tons per thousand hours in 1998. Productivity then fell the next two years, declining to 138.2 tons per thousand hours in 2000. Productivity was lower in interim 2001 than in interim 2000.[780] In light of the consistent increases in employment data, we cannot conclude that there is significant unemployment or underemployment in the domestic industry.

Fabricated unit industry capital expenditures increased from $11.0 million in 1996 to $19.1 million in 1997, declined to $12.2 million in 1998, and increased the next two years, reaching $19.0 million in 2000. Capital expenditures were higher in interim 2001, at $8.5 million, than they were in interim 2000, when they were $8.2 million. Research and development expenditures were higher in 2000 than in any prior year of the period examined, and were higher in interim 2001 than in interim 2000.[781]

Almost all of the output and employment-related factors we examined for the fabricated unit industry increased consistently between 1996 and 2000, notwithstanding that the domestic industry lost market share to the imports over this period. Operating profits also increased and margins were consistently high. Although production, shipments, and market share were lower in interim 2001 than interim 2000, industry financial performance remained strong as operating income and margins both rose in interim 2001 over the level of the prior year. Because the record does not show any overall weakness or impairment in the condition of the fabricated units industry, we conclude that this industry is not seriously injured. We therefore do not reach the question of substantial cause.

3. Threat

Finding. We find that the increased imports are not a substantial cause of the threat of serious injury to the domestic fabricated units industry.

In our discussion of serious injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic fabricated units industry. As that discussion indicated, the domestic industry was able consistently to increase its sales, production, and employment and was able to sustain high operating margins from 1996 to 2000 despite its loss of market share to imports. Additionally, the high operating margins continued in interim 2001 despite some declines in production and shipments and further losses of market share. Consequently, the data over the period examined do not indicate the type of pervasive declining trends that would suggest there is a threat of serious injury. This view appears to be shared by AISC members themselves. An AISC survey of its membership during the first quarter of 2001 indicated that AISC members ***.[782]

The data also do not indicate that firms in the domestic industry are unable to generate sufficient capital to finance the modernization of their domestic plants and equipment. As previously discussed, the questionnaire data indicate that the domestic industry has enjoyed large operating profits and that the overwhelming majority of domestic producers are profitable. The industry's cash flow has been even

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[780] CR and PR, Table LONG-24.

[781] CR and PR, Table LONG-35.

[782] AISC Prehearing Brief, ex. 17.

greater than its operating income.[783] The industry's positive financial performance indicates that it should be able to generate funds internally to fund future expansion and that it should also be able to gain access to outside capital and credit markets. Indeed, the industry's capital expenditures in 2000 were 72.7 percent higher than those in 1996.[784]

We also conclude that, even if import volumes continue to increase, such an increase would not lead to serious injury. AISC contends that the U.S. antidumping orders on beams referenced in the discussion of heavy structural shapes will lead to the diversion of beam exports from these countries to Canada, and that Canadian fabricators will use these low-priced inputs to increase their exports of fabricated units to the U.S. market to the detriment of the domestic industry. As we observed in section V.G.3. above, however, imports of beams from Japan and Korea -- the two countries whose beam imports are currently subject to antidumping orders in the United States -- have declined since 1998. Over the same period, imports of fabricated units both from Canada and from all sources increased. Indeed, total fabricated units imports increased by over 81 percent from 1998 to 2000, and over 40 percent of this increase is attributable to increased imports from Canada, the largest supplier to the U.S. market.[785] Nevertheless, during this same period the domestic industry was able to increase its production and sales, and maintained highly profitable performance.[786] In light of this experience and the domestic industry's current condition and large share of the U.S. market, we do not find that any further increases in imports are likely to impair the domestic industry's performance so seriously as to threaten serious injury.

In light of the foregoing, we conclude that increased imports are not a substantial cause of the threat of serious injury to the domestic industry producing fabricated units.

I. Carbon and Alloy Steel Wire

We have found that carbon and alloy steel wire is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic wire industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Imports of carbon and alloy steel wire were in increased quantities over the period examined. Imports increased from 535,147 short tons in 1996, to 628,279 short tons in 1997, 669,845 short tons in 1998, and peaked at 716,823 short tons in 1999. The imports declined to 710,148 short tons in 2000. The imports in interim 2001 totaled 338,014 short tons, as compared to 370,142 short tons in interim

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[783] CR and PR, Table LONG-35.

[784] CR and PR, Table LONG-35.

[785] CR and PR, Table LONG-13.

[786] Because fabricated units are purchased by a bidding process, the record does not contain meaningful pricing data that would permit a comparison of prices for the domestically-produced and imported product. The available information on average unit values indicates that, notwithstanding import competition, domestic average unit values generally rose over the period examined and were lower than those for either imports overall or imports from Canada. CR and PR, Tables LONG-13, LONG-35. We also observe that non-price considerations appear to play a large consideration in purchasing decisions for fabricated units. INV-Y-212 at 93 (indicating that both quality and availability are more important than price in purchasing decisions), Tr. at 1510 (Starkey), 1511-12 (Moore).

2000. Overall, the imports increased by 32.7 percent between 1996 and 2000.[787] The imports were also 8.7 percent lower in interim 2001 than in interim 2000.[788]

The ratio of imports to domestic production also increased from 1996 to 1999, rising each year between 1995 and 1999, then declining in 2000. The ratio increased from 20.0 percent in 1996 to 21.1 percent in 1997, 21.2 percent in 1998, 22.0 percent in 1999, and was 21.4 percent in 2000.[789] The ratio was 22.7 percent in interim 2001, as compared to 21.5 percent over the same period in 2000.[790]

Based on evidence in the record of this investigation, we determine that, in both absolute terms and relative to U.S. production in 2000, compared to that in 1996, imports of carbon and alloy steel wire were in increased quantities.

2. Serious Injury

Finding. We find that the domestic carbon and alloy steel wire industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry. In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures.

The data below are based on questionnaire responses submitted by 45 domestic producers of carbon and alloy steel wire accounting for an estimated 63 to 76 percent of all U.S. commercial shipments in the United States.[791]

Domestic production of carbon and alloy steel wire increased in each year of the period examined. Specifically, domestic production increased from 2.68 million short tons in 1996, to 2.97 million short tons in 1997, 3.15 million short tons in 1998, 3.25 million short tons in 1999, and 3.31 million short tons in 2000. The sharpest consecutive year increase in U.S. production therefore occurred between 1996 and 1997, when production increased by 11.1 percent.[792] Interim 2001 domestic production of 1.49 million tons was lower than interim 2000 production of 1.72 million tons.[793] In sum, domestic production increased by 23.7 percent between 1996 to 2000, then declined by 13.5 percent in interim 2001, as compared with interim 2000.[794]

Domestic industry capacity was 3.2 million short tons in 1996. As with production, capacity also increased steadily over the period examined, rising from 3.5 million short tons in 1997, to 3.7 million short tons in 1998, 3.8 million short tons in 1999, and 3.9 million short tons in 2000. Capacity was 2.03 million short tons in interim 2001, as compared to 1.96 million short tons over the same period in

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[787] CR and PR at Tables LONG-9 and C-7.

[788] CR and PR at Tables LONG-9 and C-7.

[789] CR and PR at Tables LONG-9 and C-7.

[790] CR and PR at Tables LONG-9 and C-7.

[791] LONG-4, Tables LONG-2 and LONG D-1. Of the 45 responses, 43 contained usable data.

[792] Subsequent increases measured 6.1 percent from 1997 to 1998, 3.1 percent from 1998 to 1999, and 1.9 percent from 1999 to 2000. CR and PR at Table LONG C-7.

[793] CR and PR at Table LONG C-7.

[794] CR and PR at Tables LONG-20 and LONG-C-7.

2000.[795] Overall, U.S. producers' capacity increased by 23.3 percent between 1996 and 2000, and was 3.6 percent higher in interim 2001 than in interim 2000.[796]

U.S. producers' capacity utilization rates were stable between 1996 and 2000: capacity utilization was 82.8 percent in 1996, 84.4 percent in 1997, 84.0 percent in 1998, 83.7 percent in 1999, and 83.0 percent in 2000.[797] Capacity utilization was 72.3 percent in interim 2001, as compared to 86.6 percent in interim 2000.[798] No party submitted evidence of any U.S. wire producer ceasing operations.[799] Thus, the record of this investigation does not indicate a significant idling of productive facilities in the carbon and alloy steel wire industry over the period examined.

U.S. shipments, measured by quantity, increased by 22.4 percent between 1996 and 2000. U.S. shipments increased from 2.65 million short tons in 1996, to 2.94 million short tons in 1997, 3.13 million short tons in 1998, 3.20 million short tons in 1999, and 3.25 million short tons in 2000.[800] U.S. shipments were 13.8 percent lower in interim 2001 than in interim 2000, measuring 1.50 million short tons in the first half of 2001, as compared to 1.73 million short tons over the same period in 2000.[801]

Net sales measured by quantity similarly increased every year between 1996 and 1999. Sales totaled 1.89 million short tons in 1996, 1.94 million short tons in 1997, 2.12 million short tons in 1998, and 2.18 million short tons in 1999. In 2000, net sales declined by 1.1 percent.[802] Net sales were 14.9 percent lower in interim 2001 than in interim 2000, measuring 1.09 million short tons in interim 2000, as compared to 927,262 short tons in interim 2001.[803] Net commercial sales' average unit sales values declined from $708 per short ton in 1996, to $706 in 1997, $693 in 1998, and $670 in 1999 and 2000. Net commercial sales' average unit sales values were lower in interim 2001, at $644 per short ton, than in interim 2000, when they were $661 per short ton.[804]

Overall, U.S. producers' ending inventories increased by 5 percent between 1996 and 2000, fluctuating from 161,161 short tons in 1996, to 155,267 short tons in 1997, 144,791 short tons in 1998,

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[795] CR and PR at Tables LONG-20 and LONG-C-7.

[796] CR and PR at Tables LONG-20 and LONG-C-7.

[797] CR and PR at Table LONG-C-7.

[798] CR and PR at Table LONG-C-7.

[799] Republic Technologies International, a producer of carbon and alloy steel wire (and other steel products), filed for bankruptcy in April 2000 but did not shutter its operations. CR and PR at Table OVERVIEW-11. *See* American Wire Producers Association Prehearing Brief at 2-17; American Wire Producers Association Posthearing Brief at 20-26.

[800] Measured by value, U.S. shipments totaled $1.6 billion in 1996, $1.8 billion in 1997, and $1.9 billion in 1998, 1999, and 2000. Their value was $859.2 million in interim 2001, as compared with $985.2 in interim 2000. CR and PR at Table LONG-C-7.

[801] CR and PR at Table LONG-C-7.

[802] The value of net sales rose 8.0 percent between 1996 and 2000, increasing steadily from $1.34 billion in 1996, to $1.37 billion in 1997, to $1.47 billion in 1998, then declining to $1.46 billion in 1999, and $1.44 billion in 2000. Net sales were worth $597.0 million in interim 2001, as compared with $720.0 million in interim 2000. CR and PR at Tables LONG-31 and LONG-C-7.

[803] CR and PR at Table LONG-C-7.

[804] CR and PR at Tables LONG-31 and LONG-C-7. For the carbon and alloy wire product on which the Commission collected pricing data, prices for the domestically-produced product stayed roughly the same throughout the period examined, never rising above $*** or below $*** per pound and measuring $*** per pound in both the first and last quarters of the period examined. Table LONG-95.

147,737 short tons in 1999, and 168,710 short tons in 2000. In interim 2001, inventories were 144,342 short tons compared with 130,271 short tons in interim 2000.[805]

The U.S. industry's market share held roughly steady throughout the entire period examined, never falling below 81.5 percent.[806] The U.S. producers' market share was 83.2 percent in 1996, declined slightly to 82.4 percent in 1997 and 1998, and to 81.7 percent in 1999, before increasing to 82.1 percent in 2000.[807] Industry market share was 81.5 percent in interim 2001, as compared to 82.3 percent in interim 2000.[808]

The data indicated that, overall, the industry conducted its domestic operations at a high level of profit. Operating income rose 28 percent from 1996 to 1999, though it declined by 15.8 percent over the next year.[809] Operating income as a ratio to net sales was 9.5 percent in 1996 and 1997, 9.1 percent in 1998, and peaked at 11.2 percent in 1999, before declining to 9.5 percent in 2000. The ratio was 7.9 percent in interim 2001, as compared to 11.9 percent in interim 2000. Five of 33 reporting firms operated at a loss in 1996, six in 1997, three in 1998, seven in 1999, nine in 2000, three in interim 2000, and 11 in interim 2001.[810] Based on the foregoing, we do not find that a significant number of firms in the carbon and alloy steel wire industry are unable to carry out production operations at a reasonable level of profit.

Employment, hours worked, and total wages paid also increased over the period examined. The number of production workers employed by the U.S. carbon and alloy steel wire industry rose 18.1 percent from 1996 to 2000. Specifically, employment increased from 4,733 workers in 1996, to 5,474 workers in 1997, before declining slightly to 5,445 workers in 1998, then rising to 5,455 workers in 1999, and to 5,591 workers in 2000.[811] Employment was 11 percent lower in interim 2001, at 4,983 workers, than in interim 2000, when it stood at 5,600 workers.[812]

Industry productivity was highest for any full year in 1996, at 281.3 tons per thousand hours. It declined to 260.4 tons per thousand hours in 1997, rose to 272.8 tons per thousand hours in 1998, increased again to 277.9 tons per thousand hours in 1999, then declined to 276.7 tons per thousand hours

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[805] The ratio of inventories to shipments declined from 6.0 percent in 1996 to 5.2 percent in 1997, declined further to 4.6 percent in 1998, and to 4.5 percent in 1999, then increased to 5.1 percent in 2000. The ratio was 4.8 percent in interim 2001, as compared with 3.7 percent in interim 2000. CR and PR at Table LONG-C-7.

[806] CR and PR at Table LONG-C-7.

[807] CR and PR at Table LONG-C-7.

[808] CR and PR at Table LONG-C-7.

[809] Operating income was also lower in the first half of 2001 compared to the same period one year later. Operating income was $47.0 million in interim 2001, as compared with $85.8 million in interim 2000. INV-Y-212, Table LONG-31, and CR and PR at Table LONG-C-7.

[810] INV-Y-212, Table LONG-31, and CR and PR at Table LONG-C-7.

[811] CR and PR at Table LONG-C-7.

[812] The number of hours worked increased by 26 percent between 1996 and 2000. Hours worked rose from 8.9 million in 1996, to 10.7 million in 1997, 10.9 million in 1998, 11.0 million in 1999, and 11.3 million in 2000. Hours worked were 4.9 million in interim 2001, as compared with 5.6 million in interim 2000. CR and PR at Table LONG-C-7. From 1996 to 2000, total wages paid by the industry increased by 40.8 percent. Specifically, wages paid increased from $120.2 million in 1996, to $149.9 million in 1997, $153.3 million in 1998, $157.6 million in 1999, and $169.2 million in 2000. Wages totaled $72.3 million in interim 2001, as compared with $84.2 million in interim 2000. Table LONG-C-7. Hourly wages rose by 11.8 percent between 1996 and 2000. They increased from $13.44 in 1996, to $13.95 in 1997, $14.09 in 1998, $14.34 in 1999, and $15.03 in 2000. Hourly wages were 0.8 percent lower in interim 2001, at $14.80 an hour, than in interim 2000, when they measured $14.92 an hour. CR and PR at Table LONG-C-7.

in 2000. Productivity was at 285.6 tons per thousand hours in interim 2001, as compared with its peak level of 287.5 tons per thousand hours in interim 2000.[813]

Based on consideration of the employment-related indicators during the period examined, we cannot conclude that there is significant unemployment or underemployment in the domestic industry.

The industry's capital expenditures fluctuated between 1996 and 2000.[814] Its research and development expenses increased steadily.[815]

In summary, we find that there has been no deterioration in the condition of the domestic industry during the period examined. Instead, its condition has been healthy and improving. Overall, we find that virtually all of the factors relevant to industry performance were positive during the period examined. Based on the industry's robust productivity, high production and capacity utilization rates, its steadily increasing shipments, high employment, profitability, capital spending, and healthy inventory levels, the evidence demonstrates no significant overall impairment in the position of the domestic industry. As a result, we conclude that the domestic carbon and alloy steel wire industry is not seriously injured. We therefore do not reach the issue of substantial cause.

3. Threat

Finding. We find that increased imports of carbon and alloy steel wire are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of serious injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic carbon and alloy steel wire industry. As that discussion indicated, the domestic industry's market share remained stable over the period examined, and output- and employment-related indicators increased from 1996 to 2000. The industry had consistently profitable performance and maintained operating margins between 9.1 and 11.2 percent from 1996 to 2000. The industry maintained its profitable performance in interim 2001 even though production, shipments, sales, and employment were below the level of the preceding year.

These facts led us to conclude that the domestic industry was not seriously injured. The data over the period examined also do not indicate the type of pervasive declining trends that would suggest there is a threat of serious injury. Our analysis of several additional factors further supports our conclusion that imports do not pose a threat of serious injury to the domestic industry.

Imports from all sources are trending downward. Imports of carbon and alloy steel wire decreased in absolute terms by 0.9 percent between 1999 and 2000. They were also 8.7 percent lower in interim 2001 than in interim 2000.[816] The decline in imports strongly suggests that imports do not present a threat of serious injury to the domestic industry that is clearly imminent. While import market

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[813] CR and PR at Table LONG-C-7.

[814] The industry spent $39.4 million on capital expenditures in 1996, $56.9 million in 1997, $73.2 million in 1998, $66.7 million in 1999, and $53.2 million in 2000. The amount spent on such expenditures in interim 2001 was $19.5 million, as compared with $23.8 million in interim 2000. INV-Y-212, Table LONG-31, and CR and PR at Table LONG-C-7.

[815] Research and development expenses increased from $1.8 million in 1996, to $2.1 million in 1997, and to $3.0 million in 1998, before declining to $2.7 million in both 1999 and 2000. The expenses totaled $1.3 million in interim 2001, as compared with $1.6 million in interim 2000. INV-Y-212, Table LONG-31.

[816] CR and PR at Tables LONG-9 and LONG-C-7.

share was slightly higher in interim 2001 than in interim 2000, the market share was only slightly above that in 1999, when the domestic industry was at its most profitable.[817]

We find that, even if imports were to increase, there would be no threat of serious injury to the domestic industry based on the experience of the industry over the period examined. Imports of carbon steel wire reached their highest point in 1999, the very year in which the U.S. industry achieved its greatest profitability and experienced its highest operating margins. While industry profitability and other indicators declined slightly in 2000 and interim 2001, so did imports. Consequently, given the lack of correlation between increased imports and serious injury during the period examined, we find there is no basis to conclude that the domestic industry would be threatened by serious injury even if the industry were faced with increased imports.

The industry appears able to generate capital for financing both the modernization of plants and equipment and its research and development efforts. Capital expenditures increased 35 percent between 1996 and 2000.[818] Its research and development expenses also increased by 47 percent over the same period.[819]

While there is significant aggregate foreign productive capacity accompanied by projections of increased capacity in the future,[820] these same circumstances existed from 1996 to 2000, but did not lead to increased imports being a substantial cause of serious injury. Instead, imports decreased in the more recent periods. In light of all of the factors discussed, we do not find that available foreign capacity alone is sufficient to indicate a clearly imminent threat of serious injury.

Neither U.S. or foreign market inventories of carbon and alloy steel wire are in such increased quantities, or are projected to increase beyond previous levels to such an extent, that additional supplies would necessarily be sold in the U.S. market in the imminent future.[821]

There is limited evidence that other nations maintain restraints on exports of carbon and alloy steel wire to third country markets, or on imports of such wire into third country markets, that could cause the wire to be diverted to the United States.[822] Furthermore, evidence in the record of the investigation indicates that foreign producers sell the bulk of their product in markets outside of the United States.[823]

In light of the foregoing, we conclude that increased imports are not a substantial cause of the threat of serious injury to the domestic industry producing carbon and alloy steel wire.

J. Carbon/Alloy and Stainless Steel Wire Rope

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[817] INV-Y-212, Table LONG-31, and CR and PR at Table LONG-C-7.

[818] INV-Y-212, Table LONG-31, and CR and PR at Table LONG-C-7.

[819] INV-Y-212, Table LONG-31.

[820] CR and PR at Table LONG-52.

[821] CR and PR at Tables LONG-C-7 and LONG-52.

[822] The American Wire Producers Association argued that Mexico recently increased duties on a wide range of steel imports, including wire, so that foreign producers are now encouraged to divert greater quantities of wire to the United States. American Wire Producers Association Prehearing Brief at 15 and Exhibit 3. At the hearing, the association's counsel responded to a question from Commissioner Devaney by stating that the association was trying to develop data with respect to which nations were most likely to be affected by the duties imposed by Mexico. He said he hoped to include the data in the American Wire Producers Association posthearing brief. Tr. at 1667 (Waite). However, the information was not included in the posthearing brief.

[823] CR and PR at Table LONG-52. Mexican wire producer DeAcero, S.A. de C.V. stated that any excess capacity in its operations would not be targeted at the United States, because internal consumption and home market sales constitute the bulk of its shipments. DeAcero, S.A. de C.V. Prehearing Brief at III-C-7.

We have found that carbon, alloy, and stainless steel wire rope, cable, strand, and cordate (collectively "rope") are not imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic rope industry.

1.. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Rope imports increased by 28.3 percent from 1996 to 2000. Imports were higher in 2000 than in any preceding year during the period examined. The imports rose from 239,777 short tons in 1996 to 280,410 short tons in 1997, to 287,720 short tons in 1998, 305,015 short tons in 1999, and 307,668 short tons in 2000.[824] Rope imports were 3.8 percent lower in interim 2001 than in interim 2000. They totaled 150,760 short tons in interim 2001, as compared to 156,709 short tons in interim 2000.[825]

The ratio of imports to domestic production decreased by *** percentage points from 1996 to 2000. The ratio totaled *** percent in 1996, *** percent in 1997, *** percent in 1998, *** percent in 1999, and *** percent in 2000.[826] The ratio was *** percent in interim 2001, as compared to *** percent in interim 2000.

Based on evidence in the record of this investigation, we determine that, in absolute terms, imports of carbon/alloy and stainless steel wire rope were in increased quantities over the period examined.

2. Serious Injury

Finding. We find that the domestic carbon/alloy and stainless steel wire rope industry is not seriously injured; that is, we find there has not been a "significant overall impairment in the position" of the domestic industry. In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures.

The data below are based on questionnaire responses submitted by 17 domestic producers of carbon and alloy and stainless steel wire rope accounting for an estimated 68 to 84 percent of all U.S. commercial shipments in the United States.[827] Four of these 17 producers produce both carbon and alloy rope and stainless steel wire rope.[828]

Domestic rope production increased *** percent between 1996 and 2000. U.S. production increased from *** short tons in 1996, to *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, and *** short tons in 2000.[829] Domestic production was *** short tons in interim 2001, as compared with *** short tons in interim 2000.[830]

Total domestic capacity was *** short tons in 1996, increased to *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, and *** short tons in 2000. Capacity was *** short tons in

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[824] INV-Y-209, Table LONG/STAINLESS-ALT2.

[825] INV-Y-209, Table LONG/STAINLESS-ALT2.

[826] INV-Y-209, Table LONG/STAINLESS-ALT2.

[827] CR and PR at LONG-4, CR and PR at Tables LONG-1 and LONG-D-1.

[828] CR and PR at Table LONG-D-1.

[829] INV-Y-209, Table LONG/STAINLESS-ALT2.

[830] INV-Y-209, Table LONG/STAINLESS-ALT2.

interim 2001, as compared with *** short tons in interim 2000.[831] Overall, U.S. producers' capacity increased by *** percent between 1996 and 2000, and was *** percent higher in interim 2001 than in interim 2000.[832]

The domestic industry had high capacity utilization rates throughout the period examined. Specifically, the capacity utilization rate of rope producers was *** percent in 1996, *** percent in 1997, *** percent in 1998, *** percent in 1999, and *** percent in 2000.[833] Capacity utilization was *** percent in interim 2001, compared with *** percent in interim 2000.[834] Based on this information, we do not find a significant idling of productive facilities in the industry.[835]

U.S. shipments, measured by quantity, increased by *** percent between 1996 and 2000. The value of those shipments similarly increased by *** percent over the same period.[836] U.S. shipments rose from *** short tons in 1996, to *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, and *** short tons in 2000.[837] Their quantity then declined. Shipments totaled *** short tons in interim 2001, as compared with *** short tons in interim 2000.[838]

Net sales measured by quantity also increased by *** percent between 1996 and 2000. In particular, sales totaled *** short tons in 1996, *** short tons in 1997, *** short tons in 1998, and *** short tons in 1999. In 2000, net sales declined by *** percent to *** short tons.[839] Net sales were *** percent lower in interim 2001, at *** short tons, than in interim 2000, when they totaled *** short tons.[840] Net commercial sales' average unit sales values with respect to carbon/alloy steel wire rope were $1,211 per short ton in 1996, $1,250 in 1997, $1,185 in 1998, $1,118 in 1999, and $1,116 in 2000. The average sales values for the carbon/alloy product totaled $1,069 per short ton in interim 2001, as compared to $1,093 per short ton in interim 2000.[841] Net commercial sales' average unit sales for stainless steel wire rope increased from $*** per short ton in 1996 to $*** in 1997, $*** in 1998, and

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[831] INV-Y-209, Table LONG/STAINLESS-ALT2.

[832] INV-Y-209, Table LONG/STAINLESS-ALT2.

[833] INV-Y-209, Table LONG/STAINLESS-ALT2.

[834] INV-Y-209, Table LONG/STAINLESS-ALT2.

[835] The Rope Committee in its prehearing and posthearing briefs stated that two U.S. steel wire rope manufacturers -- Rochester Corporation and Macwhyte Company -- were forced to exit the industry in 1998 and 1999, respectively, due to increased imports. The Rope Committee also stated that Paulsen Wire Corporation announced the liquidation of its assets due to injury by low-priced imports on October 1, 2001. Rope Committee Prehearing Brief at 25 and 26, and Posthearing Brief at 3-4 and Appendix A. However, the American Wire Rope Importers Association, Inc. (AWRIA), the Korean Iron & Steel Association, the Instanbul Minerals and Metals Exporters' Association, and Celik Halat ve Tel Sanayii A.S. (hereinafter, "Joint Rope Respondents") stated that, ***. Joint Rope Respondents Prehearing Brief at 16.

[836] The value of U.S. shipments increased from 1996 to 2000, from $*** in 1996, to $*** in 1997, $*** in 1998, $*** in 1999, and $*** in 2000. Their value was $*** in interim 2001, as compared with $*** in interim 2000. INV-Y-209, Table LONG/STAINLESS-ALT2.

[837] INV-Y-209, Table LONG/STAINLESS-ALT2.

[838] INV-Y-209, Table LONG/STAINLESS-ALT2.

[839] INV-Y-209, Table LONG/STAINLESS-ALT2.

[840] The value of net sales rose *** percent between 1996 and 2000, increasing from $*** in 1996, to $*** in 1997, and to $*** in 1998, before declining to $*** in 1999, and to $*** in 2000. Net sales totaled $*** in interim 2001, as compared with $*** in interim 2000. INV-Y-209, Table LONG/ STAINLESS-ALT2.

[841] CR and PR at Table LONG-C-7.

$*** in 1999, before declining slightly to $*** per short ton in 2000. The average unit sales values were lower in interim 2001, at $*** per short ton, than in interim 2000, when they were $*** per short ton.[842]

U.S. producers' end of period inventories increased by *** percent between 1996 and 2000, but declined by *** percent between the interim periods. U.S. producers' ending inventories were *** short tons in 1996, *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, and *** short tons in 2000. Inventories totaled *** short tons in interim 2001, as compared to *** short tons in interim 2000.[843]

U.S. producers' market share increased between 1996 and 2000. The domestic industry's market share measured *** percent in 1996, *** percent in 1997, *** percent in 1998, *** percent in 1999, and *** percent in 2000. U.S. producers' market share was *** percent in interim 2001, as compared with *** percent in interim 2000.[844]

The industry conducted its domestic operations at a reasonable level of profit. Operating income rose *** percent between 1996 and 2000, although it declined by *** percent between the interim periods.[845] Operating income as a ratio to net sales held roughly steady at *** percent in 1996, *** percent in 1997, *** percent in 1998, and *** percent in both 1999 and 2000. The ratio was *** percent in interim 2001, as compared to *** percent in interim 2000.[846] Based on these data, we conclude that the record does not indicate that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

Employment, hours worked, and total wages paid also increased over the period examined. The number of production workers employed by the U.S. rope industry increased *** percent from 1996 to 2000, rising from *** in 1996, to *** in 1997, *** in 1998, *** in 1999, and *** in 2000.[847] ***

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[842] INV-Y-212, Table STAINLESS-35. For the carbon and alloy wire rope product on which the Commission collected pricing data, prices for the domestically-produced product stayed roughly the same throughout the period examined, measuring between $*** and $*** per hundred feet, except during the second quarter of interim 2001, when its price anomalously was reported to fall to $*** per hundred feet. Table LONG-96.

With respect to the stainless steel wire rope product on which the Commission collected pricing data, U.S. prices fluctuated between $*** per 100 feet in the third quarter of 1996 and $*** per hundred feet in the first quarter of 1998, before peaking at $*** per 100 feet in the last quarter of 1998. The product's prices fluctuated moderately thereafter between $*** per 100 feet in the third quarter of 1999 and $*** per 100 feet in the second quarter of 2001. Table STAINLESS-92.

[843] The ratio of inventories to shipments fluctuated moderately from *** percent in 1996 to *** percent in 1997, before declining to *** percent in 1998, then increasing to *** percent in 1999, and to *** percent in 2000. The ratio was *** percent in interim 2001, as compared with *** percent in interim 2000. Table INV-Y-209, LONG/STAINLESS-ALT2.

[844] Table INV-Y-209, LONG/STAINLESS-ALT2.

[845] Operating income, which was $*** in 1996, rose to $*** in 1997, declined to $*** in 1998, then increased to $*** in 1999, before falling to $*** in 2000. Operating income measured $*** in interim 2001, as compared with $*** in interim 2000. INV-Y-209, Table LONG/STAINLESS-ALT2.

[846] INV-Y-209, Table LONG/STAINLESS-ALT2. In the carbon/alloy wire rope industry alone, *** firms reported operating losses in 1996 and 1997, *** in 1998, and *** in 1999 and 2000. *** carbon/alloy wire rope producers reported operating losses in interim 2001, as compared to *** in interim 2000. INV-Y-212, Table LONG-32. Only *** firm reported operating losses in the stainless wire rope industry, which occurred in interim 2001. INV-Y-212, Table STAINLESS-35.

[847] INV-Y-209, Table LONG/STAINLESS-ALT2.

workers were employed by the industry in interim 2001, as compared with *** in interim 2000.[848] Wages paid increased by *** percent between 1996 and 2000.[849]

Industry productivity was *** tons per thousand hours in 1996, *** tons per thousand hours in 1997, and *** tons per thousand hours in 1998. Productivity increased to *** tons per thousand hours in 1999, and to *** tons per thousand hours in 2000. Productivity reached a peak in interim 2000 at *** tons per thousand hours, and was only slightly lower in interim 2001, measuring *** tons per thousand hours.[850]

Based on the record concerning employment-related factors during the period examined, we conclude that there is not significant unemployment or underemployment in the domestic industry.

The industry's capital expenditures fluctuated between 1996 and 2000.[851] Its research and development expenses increased steadily.[852]

We find there has been no deterioration in the condition of the domestic industry during the period examined. Production, capacity, market share, capacity utilization, shipments, sales, employment all increased over the period examined, and the industry exhibited consistently profitable operating performance. Consequently, the evidence demonstrates no significant overall impairment in the position of the domestic industry. As a result, we conclude that the domestic rope industry is not seriously injured. We therefore do not reach the issue of substantial cause.

3. Threat

Finding. We find that the increased imports of rope are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of serious injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic industry. As that discussion indicated, the domestic industry's production, sales, and employment-related indicators increased over the period examined, inventories declined in relation to shipments, and the industry's market share remained stable. The industry exhibited consistently profitable performance and maintained operating margins between *** and *** percent from 1996 to 2000 and *** percent in interim 2001.[853]

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[848] The number of hours worked increased by *** percent between 1996 and 2000. Hours worked rose from *** in 1996, to *** in 1997, *** in 1998, *** in 1999, and *** in 2000. Hours worked were *** in interim 2001, as compared with *** in interim 2000. INV-Y-209, Table LONG/ STAINLESS-ALT2.

[849] Wages paid by the industry increased by *** percent from 1996 to 2000. Total wages paid increased from $*** in 1996, to $*** in 1997, $*** in 1998, $*** in 1999, and $*** in 2000. Wages in interim 2001, at $***, were only $*** less than in interim 2000. INV-Y-209, Table LONG/STAINLESS-ALT2. Hourly wages rose by *** percent between 1996 and 2000. They increased from $*** in 1996, to $*** in 1997, $*** in 1998, $*** in 1999, and $*** in 2000. Hourly wages were $*** in interim 2001, as compared with $*** in interim 2000. Table INV-Y-209, LONG/STAINLESS-ALT2.

[850] INV-Y-209, Table LONG/STAINLESS-ALT2.

[851] The industry spent $*** on capital expenditures in 1996, $*** in 1997, $*** in 1998, $*** in 1999, and $*** in 2000. The amount spent on such expenditures in interim 2001 was $*** compared to $*** in interim 2000. INV-Y-209, Table LONG/STAINLESS-ALT2.

[852] Research and development expenses increased from $*** in 1996, to $*** in 1997, $*** in 1998, $*** in 1999, and $*** in 2000. The expenditures totaled $*** in interim 2001, as compared with $*** in interim 2000. INV-Y-212, Table LONG 32, and CR and PR at Table STAINLESS-35.

[853] INV-Y-209, Table LONG/STAINLESS-ALT2.

These facts, among others, led us to conclude that the domestic industry was not seriously injured. The data over the period examined also do not indicate the type of pervasive declining trends that would suggest there is a threat of serious injury. Our analysis of several additional factors provides further support for our conclusion that imports do not pose a threat of serious injury to the domestic industry.

First, we find that even if imports were to increase, there would be no threat of serious injury to the industry based on the experience of the industry during the period examined. For example, capacity, production, shipments, productivity, and wages paid were at their highest levels in the rope industry in 2000, when imports were also at their highest levels. Consequently, we find there is no correlation between increased imports and any threat of serious injury to the industry in the near future.

Second, the data do not indicate that firms in the domestic industry are unable to generate sufficient capital to finance the modernization of their domestic plants and equipment. As previously discussed, the questionnaire data indicate that the domestic industry has enjoyed consistent profits and substantial operating margins. The industry's positive financial performance indicates that it should be able to generate funds internally to fund future expansion and that it should also be able to gain access to outside capital and credit markets.

Third, despite existing foreign productive capacity and certain projections of increased capacity,[854] these same circumstances existed from 1996 to 2000, but did not lead to increased imports being a substantial cause of serious injury. Instead, examining the most recent period within the context of the entire period examined, imports decreased in interim 2001. Thus, in light of all of the factors discussed, we do not find that available foreign capacity alone is sufficient to indicate a clearly imminent threat of serious injury.

Fourth, neither U.S. or foreign market inventories of carbon/alloy and stainless steel wire rope reflect projected increases beyond previous levels indicating that additional supply would necessarily be directed to the U.S. market in the imminent future.[855]

Finally, there is no evidence that other nations maintain restraints on exports of carbon/alloy and stainless steel wire rope to third country markets, or on imports of such wire rope into third country markets, that could cause the wire rope to be diverted to the United States. Furthermore, evidence in the record of the investigation indicates that foreign producers sell the bulk of their product in markets outside of the United States.[856]

In light of the foregoing, we conclude that increased imports are not a substantial cause of the threat of serious injury to the domestic industry producing carbon/alloy and stainless steel wire rope.

K. Carbon and Alloy Steel Nails, Staples, and Woven Cloth

We have found that carbon and alloy nails, staples, and woven cloth (collectively "nails") are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic nails industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

Imports of nails increased by 61.1 percent from 1996 to 2000. Rising from 408,001 short tons in 1996, to 434,756 short tons in 1997, the imports increased further to 516,416 short tons in 1998, to

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[854] CR and PR at Tables LONG-55 and STAINLESS-55.

[855] CR and PR at Tables LONG-55 and STAINLESS-55.

[856] CR and PR at Tables LONG-55 and STAINLESS-55.

624,990 short tons in 1999, and to 657,168 short tons in 2000.[857] The imports were 11.7 percent lower in interim 2001 than in interim 2000. They totaled 285,069 short tons in 2001, as compared to 322,921 short tons in interim 2000.[858]

The ratio of imports to domestic production rose by 41.6 percentage points from 1996 to 2000. The ratio was 67.8 percent in 1996, 70.3 percent in 1997, 82.3 percent in 1998, 101.2 percent in 1999, and 109.4 percent in 2000.[859] The ratio measured 112.4 percent in interim 2001, as compared to 104.0 percent in interim 2000.[860]

Based on evidence in the record of this investigation, we determine that, in absolute and relative terms, imports of nails were in increased quantities over the period examined.

2. Serious Injury

Finding. We find that the domestic nails industry is not seriously injured; that is, we find that there has not been a "significant overall impairment in the position" of the domestic industry. In making this finding, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures.

The data below are based on questionnaire responses submitted by 20 domestic nails producers accounting for an estimated 88 to 94 percent of all U.S. commercial shipments in 2000.[861]

Domestic production of nails increased from 601,961 short tons in 1996 to 618,245 short tons in 1997, and to 627,720 short tons in 1998. Production then declined to 617,711 short tons in 1999, and to 600,481 short tons in 2000.[862] Domestic production was 253,691 short tons in interim 2001, as compared to 310,563 short tons in interim 2000.[863] In sum, domestic production declined only 0.2 percent from 1996 to 2000, and was 18.3 percent lower in interim 2001 than in interim 2000.[864]

Total domestic capacity was 792,267 short tons in 1996, increased to 825,192 short tons in 1997, 840,492 short tons in 1998, 852,364 short tons in 1999, and 894,142 short tons in 2000. Capacity was 423,655 short tons in interim 2001, as compared to 452,337 short tons in interim 2000.[865] Overall, U.S. capacity increased by 12.9 percent between 1996 and 2000, and was 6.3 percent lower in interim 2001 than in interim 2000.[866]

U.S. producers' capacity utilization was more than 72 percent from 1996 to 1999, before declining to 67.2 percent in 2000.[867] Notwithstanding the declines in capacity utilization in the latter

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[857] CR and PR at Tables LONG-11 and LONG-C-9.

[858] CR and PR at Tables LONG-11 and LONG-C-9.

[859] CR and PR at Tables LONG-11 and LONG-C-9.

[860] CR and PR at Tables LONG-11 and LONG-C-9.

[861] CR and PR at LONG-4, CR and PR at Tables LONG-2 and LONG-D-1.

[862] CR and PR at Table LONG-C-9.

[863] CR and PR at Table LONG-C-9.

[864] CR and PR at Table LONG-C-9.

[865] CR and PR at Table LONG-C-9.

[866] CR and PR at Table LONG-C-9.

[867] Capacity utilization measured 75.3 percent in 1996, 74.3 percent in 1997, 74.0 percent in 1998, 72.3 percent in 1999, and 67.2 percent in 2000. Capacity utilization was 59.9 percent in interim 2001 compared to 68.7 percent

(continued...)

portion of the period examined, production did not show large annual fluctuations, either positive or negative, from 1996 to 2000, and production in 2000 was virtually unchanged from the 1996 level. Moreover, the record does not indicate that any domestic nails producer has entirely ceased production operations.[868]

The quantity of U.S. shipments fluctuated moderately between 1996 and 2000, rising from 596,065 short tons in 1996 to 596,359 short tons in 1997, and to 614,441 short tons in 1998.[869] In 1999, the shipments declined to 601,107 short tons. In 2000, the shipments totaled 595,174 short tons -- a level commensurate with that at the start of the period examined.[870]

Net sales measured by quantity fluctuated between 1996 and 2000. They totaled 493,127 short tons in 1996, declined to 466,412 short tons in 1997, rose to 486,064 short tons in 1998, and declined to 470,635 short tons in 1999. In 2000, net sales declined further to 451,007 short tons.[871] Net sales were 199,804 short tons in interim 2001, as compared with 241,769 short tons in interim 2000.[872] Net commercial sales' average unit sales values fluctuated moderately from $1,181 per short ton in 1996 to $1,247 in 1997, $1,240 in 1998, $1,258 in 1999, and $1,195 in 2000. The average sales values totaled $1,213 per short ton in interim 2001, as compared to $1,180 per short ton in interim 2000.[873]

The domestic industry's market share was 59.4 percent in 1996, 57.8 percent in 1997, 54.3 percent in 1998, 49.0 percent in 1999, and 47.5 percent in 2000. U.S. producers' market share was 48.2 percent in interim 2001, as compared with 49.4 percent in interim 2000.[874]

U.S. producers' ending inventories were 63,884 short tons in 1996, 74,655 short tons in 1997, 75,481 short tons in 1998, 82,572 short tons in 1999, and 82,155 short tons in 2000. Inventories totaled 67,684 short tons in interim 2001, as compared to 74,346 short tons in interim 2000.[875]

Profit and loss data for the industry indicate its domestic operations maintained substantially profitable operations during the period examined. Operating income, which was $61.1 million in 1996,

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[867] (...continued)
in interim 2000. CR and PR at Table LONG-C-9.

[868] Although the domestic producers discussed underutilized capacity in their submissions, they did not state that any domestic producer had ceased operations in their entirety as a result of increased imports. *See* American Wire Producers Association Prehearing Brief at 31-42 and Posthearing Brief at 4-9.

[869] The value of U.S. shipments also stayed roughly the same, measuring approximately $1.1 billion in each year from 1996 to 1999, before declining to $999.6 million in 2000. The value of U.S. shipments was $451.5 million in interim 2001, as compared with $520.1 million in interim 2000. CR and PR at Table LONG-C-9.

[870] The shipments totaled 264,794 short tons in interim 2001, as compared with 315,538 short tons in interim 2000. CR and PR at Table LONG-C-9.

[871] INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[872] The value of net sales declined by 7.5 percent between 1996 and 2000, falling from $582.3 million in 1996, to $581.8 million in 1997, then increasing to $602.5 million in 1998, before declining to $591.9 million in 1999, and to $538.9 million in 2000. Net sales totaled $242.5 million in interim 2001, as compared with $285.4 million in interim 2000. INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[873] CR and PR at Table LONG-C-9. For the nail product on which the Commission collected pricing data, prices for the domestically-produced product fluctuated between $*** and $*** per pound in 1996, 1997 and 1998, then increased to between $*** and $*** per pound in 1999, before returning to between $*** and $*** during the remainder of the period examined. Table LONG-97.

[874] CR and PR at Table LONG-C-9.

[875] The ratio of inventories to shipments increased from 10.5 percent in 1996 to 12.2 percent in 1997, before declining slightly to 12.1 percent in 1998, and increasing to 13.5 percent in 1999, and to 13.6 percent in 2000. The ratio was 12.6 percent in interim 2001, as compared with 11.6 percent in interim 2000. CR and PR at Table LONG-C-9.

declined to $52.0 million in 1997, rose to $59.0 million in 1998, then increased again to $68.3 million in 1999, before falling to $41.0 million in 2000.[876] Operating income measured $15.0 million in interim 2001 compared to $26.5 million in interim 2000.[877]

Operating income as a ratio to net sales was 10.5 percent in 1996, 8.9 percent in 1997, 9.8 percent in 1998, and peaked in 1999 at 11.5 percent. It then declined in 2000, but remained at a reasonable level of 7.6 percent. The ratio was 6.2 percent in interim 2001, as compared to 9.3 percent in interim 2000. The number of firms reporting operating losses fluctuated annually, ranging from none in 1998 to six in 2000 and interim 2001.[878] Nevertheless, many of the firms reporting operating losses in 2000 were relatively small enterprises. Firms reporting operating profits in 2000 were responsible for 68 percent of the quantity of that year's commercial sales.[879]

While certain producers within the nails industry have not performed well financially during portions of the period examined, on an aggregate basis the industry showed significant positive operating margins – sometimes in the double-digit range – throughout the period examined. In light of this, we conclude that the record does not indicate that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

Employment and hours worked fluctuated over the period examined. The number of production workers employed by the U.S. nail industry rose from 2,652 in 1996, to 2,702 in 1997, then declined to 2,684 in 1998, before rising again to 2,728 in 1999, and declining to 2,418 in 2000.[880] There were 2,074 workers employed by the industry in interim 2001, as compared to 2,515 in interim 2000. Overall, wages paid by the industry increased by 2.0 percent between 1996 and 2000, with wages increasing markedly between 1996 and 1999, and declining thereafter.[881] Hourly wages increased by 12.9 percent between 1996 and 2000, and were 5.5 percent higher in interim 2001 than in interim 2000.[882]

Industry productivity rose by 10.5 percent between 1996 and 2000. Productivity increased from 108.3 tons per thousand hours in 1996 to 111.8 tons per thousand hours in 1997, fell slightly to 109.6 tons per thousand hours in 1998, and to 109.3 tons per thousand hours in 1999, before rising to 119.6 tons per thousand hours in 2000. [883] Productivity reached a peak in interim 2001 at 127.7 tons per thousand hours, as compared to 119.8 tons per thousand hours in interim 2000.[884]

While the data reflect declines in employment during the latter portion of the period examined, we cannot conclude that these declines are significant enough to support a finding of serious injury, particularly when productivity increased sharply at the end of the same period and the industry remained reasonably profitable.

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[876] INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[877] INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[878] INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[879] *See* Producers' Questionnaires.

[880] The number of hours worked totaled 5.6 million in 1996, 5.5 million in 1997, 5.7 million in 1998, 5.7 million in 1999, and 5.0 million in 2000. Hours worked measured 2.0 million in interim 2001, as compared to 2.6 million in interim 2000. CR and PR at Table LONG-C-9.

[881] For example, wages paid were $79.5 million in 1996, $80.9 million in 1997, $88.3 million in 1998, and rose to $90.7 million in 1999. In 2000, wages declined to $81.1 million. Wages paid in interim 2001 were $33.6 million compared to $41.6 million in interim 2000. CR and PR at Table LONG-C-9.

[882] Hourly wages were $14.30 in 1996, $14.62 in 1997, $15.42 in 1998, $16.05 in 1999, and $16.15 in 2000. Hourly wages were $16.94 in interim 2001, as compared to $16.05 in interim 2000. CR and PR at Table LONG-C-9.

[883] CR and PR at Table LONG-C-9.

[884] CR and PR at Table LONG-C-9.

The industry's capital expenditures increased by 36.6 percent between 1996 and 2000.[885] Its research and development expenses were relatively high in 1996. After declining in 1997, those expenses held steady over the remainder of the period examined.[886]

In summary, the data indicate annual fluctuations in many of the factors examined. Several of the output-related factors, such as the quantity of production and shipments, showed little change from 1996 to 2000, while employment showed some declines over the latter portion of the period examined. Nevertheless, one facet of domestic industry performance remained consistent throughout the period examined: profitability. The domestic industry maintained strong operating margins throughout the period. Consequently, the record does not indicate the type of significant overall impairment in the position of the domestic industry sufficient to constitute serious injury. Accordingly, we conclude that the domestic nail industry is not seriously injured. We therefore do not reach the issue of substantial cause.

3. Threat

Finding. We find that the increased imports of nails are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of serious injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic industry. As that discussion indicated, despite annual fluctuations in many of these factors, there is no basis for a serious injury finding in light of the consistent profitability and strong operating margins of the domestic nails industry. Indeed, the industry maintained operating margins well above the level we would consider indicative of serious injury in 2000 and interim 2001, although during both periods the industry lost market share and most output- and employment-related indicators fell. In light of the industry's strong financial performance, we conclude that the data do not indicate the type of pervasive declining trends that would suggest a threat of serious injury.

The record indicates that the industry is capable of making significant capital expenditures. While the $17.0 million in 2000 industry capital expenditures was below the 1999 level, it was above the level of every other full year in the period examined, and was 36.6 percent above the 1996 level.[887] Based on this information, we determine the industry is able to generate capital to modernize its plants and equipment.

There is no evidence that other nations maintain restraints on exports of carbon and alloy steel nails, staples, or woven cloth to third country markets, or on imports into third country markets, that could cause the products to be diverted to the United States. Furthermore, evidence in the record of the investigation indicates that foreign producers sell their products to other nations as well as the United States.[888] Additionally, neither U.S. or foreign market inventories of nails reflect increases beyond

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[885] The industry spent $12.4 million on capital expenditures in 1996, $13.0 million in 1997, $15.9 million in 1998, $24.8 million in 1999, and $17.0 million in 2000. The amount spent on such expenditures in interim 2001 was $2.2 million compared to $11.0 million in interim 2000. INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[886] Research and development expenses totaled $4.3 million in 1996, $2.8 million in 1997, $2.4 million in 1998, $2.5 million in 1999, and $2.6 million in 2000. The expenses totaled $1.2 million in interim 2001, as compared to $1.3 million in interim 2000. INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[887] INV-Y-212, Table LONG-33, and CR and PR at Table LONG-C-9.

[888] CR and PR at Table LONG-58.

previous levels indicating that additional supply would necessarily be directed to the U.S. market in the imminent future.[889] Finally, imports declined substantially between interim 2000 and interim 2001.[890]

In light of the foregoing, we conclude that increased imports are not a substantial cause of the threat of serious injury to the domestic industry producing carbon and alloy steel nails, staples, and woven cloth.

[889] CR and PR at Table LONG-58.

[890] As stated previously, the imports measured 285,069 short tons in 2001 compared to 322,921 short tons in interim 2000. CR and PR at Tables LONG-11 and Long-C-9.

SECTION VI: CERTAIN CARBON AND ALLOY TUBULAR PRODUCTS[891]

A. Domestic Industry Producing a Like or Directly Competitive Product

Finding. As stated below, we find that there are four domestic industries producing articles like the corresponding imported articles subject to investigation within the tubular products category: (1) welded pipe, other than oil country tubular goods (OCTG); (2) seamless pipe (other than OCTG); (3) OCTG, welded and seamless; and (4) fittings, flanges, and tool joints.[892] [893]

1. Description of Products Under Investigation

The starting point for our analysis of the domestic industry producing a like or directly competitive article is with the imported product or products subject to investigation as set forth in the President's request (as well as the request of the Senate Committee on Finance). The general product category under consideration in this section is certain carbon and alloy pipe and tube ("tubular products"). The Commission collected data in this investigation on five separate product types within this broad category.[894]

Welded carbon and alloy pipe and tube are tubular products that have a weld seam that runs either longitudinally or spirally along the length of the product. U.S. mills produce welded pipe from hot-rolled sheet or from plate[895] generally purchased in the merchant market, although producers that manufacture plate or hot-rolled coils account for a significant share of welded tubular production.[896] Welded tubular products are produced by bending flat-rolled steel products to form a hollow shape, usually circular, with overlapping or abutting seams. These products are then fastened along the seam by longitudinal or spiral welding, although clipping, riveting, and forging are also used to fasten a seam.[897] Welded pipe is generally produced on electric resistance weld (ERW) mills, although smaller sizes are often produced on continuous weld mills[898] and larger sizes can also be produced on submerged arc weld mills.[899]

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[891] Unless otherwise stated, this section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, Commissioner Miller, and Commissioner Hillman.

[892] Unless stated otherwise, in these views the terms "pipes," "tubes," and "tubular products" are used interchangeably. These terms are also used interchangeably in common usage and generally in the Harmonized Tariff Schedule, and this is the practice the Commission has followed previously.

[893] We find, and there is no dispute, that in each case the domestic article is "like" the corresponding imported product. Since we have found that there are domestic articles "like" the imported articles, we did not need to reach the question of whether there are "directly competitive" domestic articles.

[894] The five data collection categories are welded pipe, other than OCTG; seamless pipe other than OCTG; welded OCTG; seamless OCTG; and fittings, flanges, and tool joints.

[895] CR and PR at TUBULAR-1.

[896] *Compare* CR and PR Table FLAT-1 *with* CR and PR Table TUBULAR-1.

[897] CR and PR at TUBULAR-2.

[898] *Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela,* Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 at CIRC-I-18-19 (July 2000).

[899] *Certain Welded Large Diameter Line Pipe From Japan and Mexico,* USITC Pub. 3400 at Table D-1 (March 2001).

Seamless carbon and alloy tubular products have no joint along the longitudinal axis of the product. Seamless products are produced from billets, which in many instances are produced by the same firm. They are manufactured by several methods, including hot-rolling, hot extrusion, deep drawing of a disc, forging, and casting. U.S. mills employ several hot-rolling processes, including piercing, or rolling on a mandrel or a plug.[900] Seamless mills require significantly more capital investment than welded mills.[901]

OCTG are tubular steel products, either seamless or welded, that have undergone a special finishing process and which meet rigorous standards set by the American Petroleum Institute (API) for use in oil and gas wells. OCTG products, which include casing, tubing, and drill pipe, generally are stronger and more reliable than other tubular products since they are used under more demanding conditions (e.g., extreme stress, high pressure and extreme temperature).[902]

Casing and tubing may be seamless or welded, but all drill pipe is seamless.[903] Seamless OCTG is formed on manufacturing lines that form other types of seamless pipe and, similarly, welded OCTG is formed on manufacturing lines that form other types of welded pipe. Finishing operations for non-OCTG products are often performed in the plant in which the pipe is formed, but seamless and welded pipe produced to be made into OCTG is generally shipped to a separate facility for finishing.[904] These finishing operations, which make the finished tubular product more durable or easier to use, can include heat treatment, threading, coupling, coating and "upsetting" (forging).[905]

In general, firms that produce tubular products tend to specialize by pipe-making process, i.e., seamless or welded. Only six of thirty reporting domestic producers of welded pipe reported that they also produced seamless pipe (either OCTG or non-OCTG) in 2000; of these six, few were major producers of both welded and seamless product in 2000.[906]

Fittings, flanges, and tool joints are carbon and alloy steel products used in connecting pipe. Also included in this product category are a variety of other pipe connecting devices, including couplings and nipples. Fittings and flanges generally are used for connecting the bores of two or more pipes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture.[907] Fittings are made primarily from welded and seamless tubular products, while flanges are fabricated from forgings, and generally finished in a separate manufacturing facility; the forgings are primarily

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[900] CR and PR at TUBULAR-1.

[901] Tr. at 2654 (Hamrick); at 2756-57 (Barbier). *See also* Tr. at 2554 (Usher).

[902] For example, casing must be sufficiently strong to carry its own weight and to resist both external pressure and pressure within the well. Tubing must be strong enough to support its weight, that of the oil or gas, and that of any pumping equipment suspended on the string. Drill pipe must have sufficient tensile strength to support its own weight, the weight of the contained drilling fluids, and that of drill collars and the drill bit. Drill pipe also is subject to stress caused by shear and vibration, and consequently fatigue. *Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 at I-16, 18 (June 2001).

[903] CR and PR at TUBULAR-1-2; CR at TUBULAR-55; PR at TUBULAR-43.

[904] CR and PR at TUBULAR-1.

[905] CR at TUBULAR-51; PR at TUBULAR-39.

[906] CR and PR at Table TUBULAR-1.

[907] CR and PR at TUBULAR-2.

made using a casting process. Fittings and flanges generally are produced by different firms in different facilities and on different equipment from seamless and welded tubular products.[908]

A tool joint is a heavy coupling element with coarse tapered threads that is designed to sustain the weight of the drill stem, withstand the strain of repeated connection and disconnection, and provide a leakproof seal. Tool joints may be welded to the pipe, screwed onto the pipe, or both screwed and welded.[909] Tool joints are not produced in the same facilities as fittings and flanges.[910]

In addition to the general differences outlined above, there are also distinctions in the physical characteristics and uses of tubular products. Welded tubular products (other than OCTG) are used in the conveyance of water, petrochemicals, oil products, natural gas, and other substances in industrial piping systems. Generally, welded tubular products are slightly less reliable and durable than seamless tubular products because of the presence of a welded seam.[911] The (non-OCTG) welded pipe in this investigation includes standard pipe and pipe used primarily for mechanical, line, pressure, and structural purposes. Many of these pipes are produced by the same companies. Welded non-OCTG line pipe used in the movement of oil and gas is produced to standards set by API, while many other forms of welded pipe are produced to standards set by the American Society for Testing and Materials (ASTM) and the American Water Works Association (AWWA).[912]

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[908] CR at TUBULAR-51; PR at TUBULAR-39. Fittings and flanges are produced by both integrated and non-integrated producers. An integrated producer will produce fittings forgings or flange forgings, and then convert those into fittings or flanges, respectively. A non-integrated producer will purchase fittings forgings or flange forgings and perform the conversion steps. Id. *See also* Committee on Pipe and Tube Imports Posthearing Injury Brief at 12.

[909] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 (June 2001), at I-19.

[910] Tr. at 2626 (Kriesberg); Tr. at 2649-50 (Mendoza).

[911] CR and PR at TUBULAR-2.

[912] The American Iron and Steel Institute (AISI) defines standard pipe as pipe "ordinarily used for low-pressure conveyance of air, steam, gas, water, oil, or other fluids for mechanical applications. It is used primarily in machinery, buildings, sprinkler systems, irrigation systems, and water wells rather than in pipe lines or utility distribution systems. It may carry fluids at elevated temperatures which are not subject to external heat applications. It is usually produced in standard diameters and wall thicknesses to ASTM . . . specifications." AISI defines mechanical tubing as "welded or seamless tubing produced in a large number of shapes or varied chemical composition in sizes 3/16 inch to 10 3/4 inches O.D. inclusive for carbon and alloy material. It is not normally produced to meet any specification other than that required to meet the end use. It is produced to meet exact O.D. and decimal wall thickness." AISI defines line pipe as pipe "used for transportation of gas, oil, or water generally in a pipeline or utility distribution system. It is produced to API . . . and AWWA (American Water Works Association) specifications." AISI defines pressure tubing as tubing "used to convey fluids at elevated temperatures or pressures, or both, and is suitable to be subjected to heat applications. It is produced to exact O.D. and decimal wall thickness in sizes ½ inch to 6 inches O.D. inclusive, usually to specifications such as ASTM. AISI defines structural pipe and tubing as "welded or seamless pipe and tubing generally used for structural or load-bearing purposes *above ground* by the construction industry, as well as for structural members in ships, trailers, farm equipment and other similar uses. It is produced in nominal wall thicknesses and sizes to ASTM specifications in round, square, rectangular or other cross-section shapes." American Iron and Steel Institute, Instructions for Reporting Steel Shipment Statistics, January 1988; definition cited in *Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 at CIRC-I-17-18 (July 2000).

Seamless products (other than OCTG) are used in the conveyance of high pressure or temperature water, steam, oil products, natural gas, and other substances in industrial pipe systems.[913] Whereas welded pipe more commonly is used to transport liquids at or near atmospheric pressure, seamless pipe is more commonly used in demanding applications that require exceptional strength, high pressure containment, and a great degree of reliability.[914] As with welded pipe, seamless pipe is made to meet various standards and specifications set by API and ASTM, depending on the intended application. The basic forms of seamless pipe, including standard, line, and pressure pipe, as well as condenser and boiler tubing, are made by the same producers on the same mills as other types of seamless pipe.[915]

OCTG are tubular steel products used in oil and gas wells. OCTG casing is used as the structural retainer for the walls of oil and gas wells, while OCTG tubing is used within casing to convey oil or gas to ground level; drill pipe is used to convey power to a rotary drilling tool below ground level.[916] Both welded and seamless casing and tubing OCTG can be used in many of the same applications and they compete with each other in the marketplace.[917] The record also indicates that demand for OCTG, whether seamless or welded, is affected primarily by the level of drilling activity,[918] whereas demand for other types of seamless and welded pipe is primarily driven by the general level of economic activity.[919] As a result, demand for OCTG and non-OCTG often do not coincide.

As noted above, fittings, flanges, and tool joints are all used to join or cap pipe. Fittings are used primarily to join pipe, with butt-weld pipe fittings being used to create a permanent joint.[920] Flanges are used to join pipe in non-permanent connections, and are designed to facilitate the disassembly of lengths of pipe.[921] Tool joints are screwed and/or welded onto lengths of unfinished drill pipe to produce finished drill pipe.[922]

The channels of distribution for the various pipe and tube products tend to be specialized depending on the market served. For example, some distributors specialize in certain forms of pipe, such as OCTG sold to firms engaged in exploration for oil and gas.[923] Other distributors specialize in pipe products sold primarily to the construction industry for use in HVAC (heating, ventilating, and air conditioning) and other piping systems that allow for the transmission of water, steam, oil, gas, and

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[913] CR and PR at TUBULAR-1.

[914] *Certain Welded Large Diameter Line Pipe From Japan and Mexico*, USITC Pub. 3400 at CR/PR at I-4, note 11 (March 2001).

[915] *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, Germany, and Italy*, Invs. Nos. 701-TA-362 and 731-TA-707-710 (Review), USITC Pub. 3429 at I-15 (June 2001).

[916] CR and PR at TUBULAR-1.

[917] Tr. at 2487 (Clark); at 2531 (Hamilton, Chaddick); and at 2554 (Usher).

[918] CR at TUBULAR-56; PR at TUBULAR-44.

[919] CR at TUBULAR-55; PR at TUBULAR-43; Committee on Pipe and Tube Posthearing Injury Brief at 7-8; Tr. at 2609-10 (Usher).

[920] Tr. at 2520 (Coulas).

[921] Tr. at 2520 (Coulas).

[922] CR and PR at TUBULAR-2; *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 at I-19 (June 2001).

[923] Tr. at 2503-04 (Chaddick); Tr. at 2506 (Stewart); *but see* Tr. at 2508, 2520 (Ketchum)(Red Man Pipe & Supply Co., Tulsa, Oklahoma, is not only a significant distributor of OCTG but also sells seamless and welded line pipe and butt-weld pipe fittings).

chemicals in commercial and residential structures, including high-rise structures.[924] Fittings and flanges, on the other hand, are often distributed with other tubular products.[925]

2. Analysis

In considering whether to evaluate tubular products separate or as a whole, we used the general framework that we articulated in section II.A above. As we explained in that section, we give particular attention in safeguards investigations to commonality of productive resources, examining whether and to what extent different products share common production facilities and processes.[926] We also consider the products' physical characteristics, end uses, and marketing channels.

We initially discuss the argument of the United Steel Workers of America (USWA) and U.S. Steel that the Commission should find a single domestic industry producing all pipe and tube products.[927] We do not believe that a finding of one industry covering all tubular products would be appropriate. Based on the evidence in the record, we find four domestic industries.

There are some basic similarities among all tubular products. All are made of carbon or alloy steel and are of similar shape and chemistry. There is some degree of overlap between products within the five categories in terms of how and where produced and how used. There is also some competition between pipe made by different processes. For example, seamless and welded OCTG are substitutable in some applications, and the record indicates that the price difference between them in these applications is relatively small. Many types of pipe are made to meet certain standards established by industry standards groups, such as API and ASTM. Channels of distribution tend to cut across the various types of tubular products, with commodity grades within a type of product more likely to be sold by distributors, and specialty grades and large order purchases more likely sold directly to end users.

However, there are significant differences in the physical properties, manufacturing processes, uses, channels of distribution, and demand of the tubular products that fall within the five categories. Most pipe is made to standards that reflect its intended use, and this affects the physical properties of the pipe. These differences begin with the chemistry of the steel in the billet or hot-rolled strip, and continue through the forming and finishing process. Pipe made through the seamless process is considered to be more reliable, and is preferred in environmentally difficult applications, including deepwater applications. Pipe used in OCTG applications must meet higher standards than pipe used in line pipe, which in turn must meet higher standards than so-called standard pipe. To meet these higher standards, OCTG is generally finished at a separate facility and not at the forming facility, where it may undergo further heat treating and other steps to enhance durability.

The tubular products covered by the five data gathering categories are made through two very different processes, and there are different methods under each of those processes. The seamless process generally begins with a billet and may involve piercing or rolling on a mandrel or a plug, so that the formed pipe product has no seam. The billets used as inputs are often produced by the firm that operates the seamless mill. The welding process, on the other hand, generally begins with coiled hot-rolled steel strip, which proceeds through rollers to form the tube and make the weld. Weld mills generally purchase

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[924] Transcript of injury hearing at 2502 (Strittmatter).

[925] CR at TUBULAR-55; PR at TUBULAR-43.

[926] Additionally, as we stated in the discussion on flat products, when we consider product groupings consisting of products in several different HTSUS classifications, we give less emphasis to the factor of customs treatment in our analysis. The five tubular product types on which the Commission collected data encompassed over 100 HTSUS classifications.

[927] U.S. Steel Prehearing Injury Brief at 1; USWA Prehearing Injury Brief at 1-6.

flat-rolled steel input in the merchant market. The equipment for making seamless and welded pipe is very different, and seamless mills are more capital intensive. Seamless pipe cannot be made on a weld mill, and welded pipe cannot be made on a seamless mill. Moreover, few firms make substantial volumes of both welded and seamless pipe. Fittings and flanges generally are made by a separate group of firms that do not produce tubular products.[928]

As discussed above, the channels of distribution and demand for tubular products vary according to the type of product. For instance, the channels of distribution tend to be specialized depending on the market served. Certain distributors tend to specialize in certain forms of pipe, such as OCTG sold to firms engaged in exploration for oil and gas.

In view of the significant differences in production processes and facilities, physical properties, uses, channels of distribution, and demand, we conclude that the various tubular products in this investigation are not produced by a single domestic industry, but by several separate industries. While all of the subject pipe and tube products, including pipe fittings made from pipe, are made from steel and are similar in appearance in that they are generally round, they differ significantly in their physical properties and uses depending on the steel chemistry, manufacturing process, and special finishing.

a. Domestic Industry Producing Seamless and Welded OCTG

Having found that all tubular products in this investigation should not be considered to be produced by a single domestic industry, we next considered whether seamless and welded OCTG producers should be considered as a single domestic industry.[929] We find that seamless and welded OCTG are produced by a single domestic industry because they share a commonality in certain physical properties, uses, finishing processes, channels of distribution, and some overlap in production.

OCTG pipe, seamless or welded, must meet certain API specifications – that is, must have certain physical properties -- in order to be sold for use in "downhole" (oil and gas well) applications. While the initial stages of the production process are different, the finishing stages for seamless and welded OCTG are similar. Seamless and welded OCTG may be subject to heat treating, upsetting,[930] threading and coupling, hydrostatic testing, and cutting to length. The same processor may finish both seamless and welded OCTG in the same facility.[931]

The record indicates that in the domestic market welded OCTG and seamless OCTG products compete with each other even though there is largely no competition among non-OCTG welded and seamless products.[932] In fact, seamless and welded OCTG are often used interchangeably in the U.S. market,[933] based on criteria established by the purchaser.[934] The record also indicates that the price difference between OCTG produced by the seamless method and by the welded method in these

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[928] CR and PR at Table TUBULAR-1.

[929] U.S. Steel, the Committee on Pipe and Tube Imports, and Joint Respondents supported treating OCTG as a single like product, while the European Steel Tube Association opposed it. Grant Prideco argued that the Commission should find that drill pipe is a separate like product.

[930] "Upsetting" is a forging process in which the ends of the pipe are heated and the end walls thickened.

[931] Office of Industries memorandum dated Oct. 15, 2001.

[932] Transcript of injury hearing at 2487 (Clark).

[933] CR and PR at TUBULAR-60; transcript of injury hearing at 2554 (Usher).

[934] Transcript of injury hearing at 2531 (Hamilton); at 2531-32 (Chaddick).

applications is relatively small.[935] Nevertheless, we recognize that seamless and welded OCTG do not overlap in all applications. Because of its greater strength, only seamless OCTG will satisfy some of the more stringent API requirements such as for drill pipe.[936] Because of its strength and reliability, seamless OCTG is also preferred in deep water applications.[937] These minor differences do not outweigh the fact that welded OCTG and seamless OCTG products compete strongly with each other.

Demand for OCTG – both welded and seamless – is driven primarily by the level of drilling activity, which in turn is primarily driven by oil and gas prices.[938] In comparison, demand for other seamless and welded pipe products is driven by industrial production, construction, and the general economic situation.[939]

The evidence in the record also indicates that seamless and welded OCTG are sold through the same channels of distribution.[940] Moreover, end users normally purchase OCTG from the same distributor to ensure consistent quality, availability, equipment fitting, and convenience. As a practical consideration, distributors therefore typically carry a variety of OCTG, and casing, tubing, and drill pipe generally move through the same channels of distribution.[941]

We also considered arguments that drill pipe should be viewed as a separate like or directly competitive product.[942] While the record provides some support for such a finding, we find on the basis of the record that drill pipe producers are not a separate industry. First, there is an overlap among the firms that make the seamless pipe used in the production of drill pipe, casing, and tubing.[943] Second, although the firms that finish drill pipe and casing and tubing are different, the finishing process is similar in that both processes involve heat treating and end finishing operations.[944] Third, the record shows that demand for drill pipe is affected by the same factors as demand for casing and tubing: the level of drilling activity and the rig count.[945]

As part of our analysis, we also considered whether we should view producers of all seamless pipe, including seamless OCTG, as a single domestic industry and producers of all welded pipe,

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[935] One industry participant at the Commission's injury hearing estimated the price difference between welded OCTG and seamless OCTG at 5 to 7 percent. Transcript of injury hearing at 2532 (Chaddick).

[936] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 at I-18 (June 2001).

[937] Transcript of injury hearing at 2531 (Chaddick).

[938] *Compare* the trends in rig count and in energy prices *with* apparent U.S. consumption of OCTG. CR and PR at Tables TUBULAR-42, 44, 50.

[939] CR at TUBULAR-55-56; PR at TUBULAR-43-44.

[940] Transcript of injury hearing at 2531 (Chaddick).

[941] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 at I-20 (June 2001): To meet customer needs, distributors, as a practical consideration, typically carry all three products. Id. at I-20. But the evidence indicates that drill pipe can be sold through separate channels of distribution. Tr. at 2620 (Chaddick, Stewart, Ketchum).

[942] Grant Prideco Posthearing Injury Brief at 3-5.

[943] For example, Koppel, Timken, and U.S. Steel, which produce seamless drill pipe, also produce OCTG seamless casing and tubing (Koppel and U.S. Steel) or seamless tubing (Timken). *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 (June 2001), at I-22.

[944] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 (June 2001), at I-19.

[945] Grant Prideco Posthearing Injury Brief at 8.

including welded OCTG, as a separate domestic industry. We concluded that we should not, for many of the same reasons that we concluded that we should not find that all tubular products are produced by a single domestic industry.

As discussed above, while seamless OCTG may be formed in the same plants and on the same equipment as other seamless pipe products, and welded OCTG similarly may be formed in the same plants on the same equipment as other welded pipe products, OCTG products generally leave the forming mill unfinished and must undergo additional finishing before being shipped to the final customer. In addition, because of the conditions under which they are used, OCTG products are subject to particularly rigorous API and other standards that most other pipe products do not need to meet. Finally, OCTG products and other pipe and tube products are sold into different markets and demand is driven by different economic factors. OCTG is dedicated for use downhole in the extraction of oil and gas, and other types of seamless and welded pipe are used in distinct applications, either the conveyance of liquids or gas or in construction/mechanical applications. Demand for OCTG products is driven primarily by the level of oil and gas exploration, while demand for other pipe products is driven primarily by the overall level of activity in the general economy, which do not necessarily coincide and can, in fact, move in opposition to one another.[946]

In view of the above, we conclude that the evidence in the record supports a finding that seamless and welded OCTG are produced by a single domestic industry, separate from other forms of seamless and welded pipe.

b. Domestic Industry Producing Welded Pipe Other Than OCTG

We have found the remaining welded pipe products in this investigation, that is, non-OCTG welded pipe, to be produced by a single domestic industry. As indicated above, the various forms of welded pipe are made by the same process, largely by the same firms, in the same facilities and on the same equipment and are used for the same purposes, namely the conveyance of steam, water, oil, gas, and other fluids. Although large pipe is more likely than small diameter pipe to be sold directly to end users, there is substantial overlap in the channels of distribution of all welded pipe.[947]

We considered arguments that we should find that large diameter line pipe (pipe 16 inches or over in outside diameter) is a separate like product from other welded pipe.[948] Based on the record of this investigation, we find that welded large diameter line pipe is not produced by a separate domestic industry. While welded large diameter line pipe is generally made on mills designed to make large pipe, these mills also are capable of producing other types of large diameter pipe, such as pipe for water

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[946] Tr. at 2610 (Usher); Committee on Pipe and Tube Posthearing Injury Brief at 7-11.

[947] CR at TUBULAR-51, PR at TUBULAR-39. *See also Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 at CIRC-I-19, CIRC-II-1 (July 2000): The majority (72.5 percent in January-September 1999) of domestic production of circular welded pipe carbon steel pipe (defined as pipe not over 16 inches in outside diameter) are sold to warehousing distributors, and most of the remainder (24.7 percent in January-September 1999) is sold to directly to end-users; and *Certain Welded Large Diameter Line Pipe From Japan and Mexico*, USITC Pub. 3400 at I-16 (March 2001): Between 20 and 23 percent of shipments of subject welded large diameter line pipe by the domestic producers were sold to the distributor market, and the remainder to the end user/project market during 1998-2000.

[948] European Steel Tube Association prehearing brief on injury (welded line pipe) at 3-6.

transmission, piling, and structural members.[949] A substantial portion of welded large diameter line pipe is made by the ERW process,[950] which is the process used to make virtually all types of welded pipes.[951] Moreover, many of the firms that produce welded large diameter line pipe also produce other welded pipe that is less than 16 inches in outside diameter.[952] In view of the above, we see no reason to treat producers of large diameter line pipe differently from other welded pipe producers, or to find them to be outside the continuum of welded pipe production.

c. Domestic Industry Producing Seamless Pipe Other Than OCTG

We find that producers of seamless non-OCTG pipe are a separate domestic industry. Seamless pipe (other than OCTG) includes pipe referred to in the trade as standard, line, pressure, and boiler pipe. All such pipe share the same basic physical characteristics, are made by the same process, and in many cases are made by the same producers in the same mills as other types of seamless pipe.[953] Although sold in different grades and sizes, all such pipe is generally used for the conveyance of steam, water, oil, gas, petrochemicals, chemicals, and other fluids in refineries, chemical plants, and energy generation plants.[954] Much of such pipe is sold through the same channels of distribution, through master distributors (who tend to carry larger, stock inventory) and other, generally smaller, distributors.[955]

We considered arguments made by importers that we should find that boiler pipe and certain specialty types of seamless line pipe are separate like or directly competitive products because they meet separate standards and are used in distinct applications.[956] [957] However, as in the case of welded pipe, we find the production of various seamless pipe products to constitute a continuum of production without a clear dividing line. They are made in the same facilities on the same equipment by many of the same

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[949] *Certain Welded Large Diameter Line Pipe From Japan and Mexico*, USITC Pub. 3400 at I-5-6 (March 2001). Such large diameter pipe is purchased by liquid and transmission companies, hammer companies, construction contractors, platform fabricators, and pipe distributors. Id.

[950] In 2000, 45.6 percent of domestic welded large diameter line pipe was produced by the ERW process as compared to 54.4 percent by the SAW process. *Certain Welded Large Diameter Line Pipe From Japan and Mexico*, USITC Pub. 3400 at Table 1-2 (March 2001). ERW pipe is normally produced in sizes from 2 3/8 inches through 24 inches outside diameter. Id. at I-5. For a description of the ERW and SAW processes, see id. at I-6-7.

[951] *Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 at CIRC-I-19 (July 2000).

[952] Of the seven firms that reported the capability to produce welded large diameter line pipe in 2000, three of those firms also indicated that they produced smaller sizes of welded pipe in 1998. Comparing a producer charts *Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 at Table CIRC-1-4 (July 2000) with a producer chart in *Certain Welded Large Diameter Line Pipe From Japan and Mexico*, USITC Pub. 3400 at Table 1-1 (March 2001).

[953] CR and PR at TUBULAR-1; *see also* Tr. at 2540 (Schagrin).

[954] CR and PR at TUBULAR-1.

[955] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 at II-1 (June 2001).

[956] European Steel Tube Association Posthearing Injury Brief on Seamless Tubular Products Other Than OCTG at 7; European Steel Tube Association Posthearing Injury Brief on Seamless Line Pipe at 5.

[957] Babcock & Wilcox Posthearing Injury Brief at 1.

producers.[958] [959] They also have the same use in that they are all used to convey oil, gas, and water under pressure or at elevated temperature.[960]

d. Domestic Industry Producing Fittings, Flanges, and Tool Joints

We next considered whether we should treat producers of fittings, flanges, and tool joints as one domestic industry or as several. The parties presented various arguments on the issue. For example, the Committee on Pipe and Tube Imports argued in its prehearing brief that fittings and flanges should be grouped with welded non-OCTG products to form one like product on the basis that fittings and flanges are used in conjunction with welded pipe and generally are made from welded pipe.[961] In its posthearing brief, the Committee on Pipe and Tube Imports changed its position and asserted that fittings and flanges should be a separate like product category.[962] Other representatives of domestic producers argued either that the Commission has the flexibility to define fittings and flanges as one or separate products,[963] or should find one industry producing three separate like products.[964] The Joint Respondents argued that fittings, flanges, and tool joints comprise a basket of special purpose products that are non-interchangeable by definition with seamless and welded pipe.[965]

We find that the producers of fittings, flanges, tool joints, and the other carbon and alloy products used to connect or cap tubular products constitute one domestic industry. By one estimation, this category consists of about one-third flanges, one-third butt-weld pipe fittings, and one-third other products, such as screwed fittings, couplings, pipe nipples, tower rings, and adapters.[966] At least two large domestic firms produced both fittings and flanges during the period examined.[967] While these products can be produced from different feedstock,[968] all are used for the same purpose – to facilitate the assembly or disassembly of pipe, or to close apertures.[969] The manufacturing processes used to produce

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[958] *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, Germany, and Italy*, Invs. Nos. 701-TA-362 and 731-TA-707-710 (Review), USITC Pub. at I-15 (June 2001); *see also* Tr. at 2540 (Schagrin, Hooper); at 2540-41 (Hecht).

[959] We observe that producers manufacture a range of seamless tubular products with diverse and overlapping chemistries. *See, e.g.,* Timken Posthearing Injury Brief at 1-2 and exh. 1.

[960] CR and PR at TUBULAR-1; *see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, Germany, and Italy*, Invs. Nos. 701-TA-362 and 731-TA-707-710 (Review), USITC Pub. at I-13-14 (June 2001).

[961] Committee on Pipe and Tube Imports Prehearing Injury Brief at IV-4-5.

[962] Committee on Pipe and Tube Imports Posthearing Injury Brief at 11-13.

[963] Mills Iron Works, et al. Prehearing Injury Brief at 3.

[964] Boltex Manufacturing, et al., Posthearing Injury Brief at 3-6.

[965] Joint Respondents Prehearing Injury Brief for Product Regarding Carbon and Alloy Steel Flanges, Fittings, and Tool Joints (Product 22) at 6-7.

[966] Boltex Manufacturing, et al., Posthearing Injury Brief at 4, notes 3 and 4.

[967] Weldbend Corp. produces butt-weld fittings and flanges. Tr. at 2520 (Coulas). Trinity Industries Fitting Group produces butt-weld fittings, but exited the flange business earlier in 2001, allegedly due to import competition. Tr. at 2518 (Graham).

[968] For example, butt-weld fittings are made from seamless pipe, while 90 percent of couplings and pipe nipples are made from welded pipe. Committee on Pipe and Tube Imports Posthearing Injury Brief at 11-13.

[969] For example, fittings connect sections of piping systems, and butt-weld pipe fitting provide the most

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flanges and butt-weld pipe fittings, which make up an estimated two-thirds of this category, are similar in a number of respects, typically incorporating heat-treating, machining, beveling, and washing. Furthermore, the channels of distribution are similar.[970] The evidence indicates that domestic and imported fittings and flanges are generally commodity products that are made to the same specifications and used for the same applications.[971]

Like fittings and flanges, tool joints are used to join sections of pipe, in this case drill pipe. As indicated above, a tool joint is a heavy coupling element with coarse tapered threads that is designed to sustain the weight of the drill stem, withstand the strain of repeated connection and disconnection, and provide a leakproof seal. Tool joints may be welded to the pipe, screwed onto the pipe, or both screwed and welded. Most commonly, tool joints are permanently welded to the pipe.[972] [973]

For the foregoing reasons, we find that there are four domestic industries producing articles like or directly competitive with the imported articles in the tubular products category: welded pipe other than OCTG, seamless pipe other than OCTG, welded and seamless OCTG, and fittings, flanges, and tool joints.

B. Welded (Non-OCTG) Pipe Industry

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met. Imports of welded pipe other than OCTG increased steadily throughout most of the period examined in both absolute terms and relative to domestic production, with the largest increase occurring in 2000. Imports increased from 1.57 million short tons in 1996 to 1.86 million short tons in 1997 and 2.26 million short tons in 1998, declined slightly to 2.12 million short tons in 1999, and then surged to 2.63 million short tons in 2000. Imports increased by 24.2 percent in quantity between 1999 and 2000, which was the largest annual percentage increase of the period examined, and in 2000 were at their highest level of the period examined. Imports continued at a very high level in interim 2001, only slightly (1.7 percent) below the level of the same period of 2000. Imports were 1.41 million short tons in interim 2001, compared to 1.44 million short tons in the same period of 2000.[974] Thus, imports of welded (non-OCTG) pipe have increased in absolute terms.[975]

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[969] (...continued)
permanent form of connection. Flanges enable sections of piping systems to be disconnected and then reconnected. Tr. at 2520 (Coulas).

[970] Boltex Manufacturing, et al. Posthearing Injury Brief at 3-4.

[971] Mills Iron Works, et al., Prehearing Injury Brief at 3. *See also* Tr. at 2514 (Berger); Tr. at 2516 (Zidell); Tr. at 2522 (Bernobich).

[972] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 at I-19 (June 2001).

[973] We note that although the Commission definition of category 22 included tool joints, no domestic producers provided data related to the domestic production of tool joints during the injury phase of this investigation.

[974] CR and PR at TUBULAR-C-4.

[975] ESTA argues imports of welded line pipe decreased in the most recent period, based on data they have compiled for 2001. ESTA Posthearing Injury Brief at 8-9. ESTA provided extensive documentation regarding product entered as plate by Berg Steel Pipe Corporation into its foreign trade zone (FTZ) – but entered for customs purposes as imports for consumption of welded line pipe – for this limited period in a separate submission. *See*
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Imports of welded (non-OCTG) pipe also increased relative to domestic production, with the largest increase in the ratio occurring at the end of the period examined, between 1999 and 2000, and into 2001.[976] Thus, imports have increased relative to domestic production as well as in absolute terms.

2. Increased Imports Are a Substantial Cause of the Threat of Serious Injury to the Domestic Industry

Finding. We find that increased imports of welded pipe are a substantial cause of the threat of serious injury: that is, we find that serious injury – a "significant overall impairment in the position" of the domestic industry – due to imports is "clearly imminent," and that increased imports of welded pipe are an important cause, and a cause not less than any other cause, of the threat of serious injury to the domestic industry.

a. Conditions of Competition

The domestic and imported welded pipe products are regarded as interchangeable in most applications.[977] For the most part they are commodity products and must meet common standards regarding materials, dimensions, and testing established by consensus organizations such as API and ASTM. Manufacturing processes and technology are similar throughout the world. U.S. purchasers reported that domestic and imported products were generally competitive and used in the same applications.[978]

Apparent U.S. consumption increased rapidly between 1996 and 1998, rising from 6.01 million short tons to 7.14 million short tons. After rising by 8.1 percent in 1997 and by 10.0 percent in 1998, however, apparent U.S. consumption has stabilized, fluctuating by less than 1 percent per year in 1999

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[975] (...continued)
ESTA submission of October 9, 2001. We note that Berg only provided data for interim 2001, whereas Berg has conducted similar activities in prior years included in our period examined. *See, e.g., Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea*, Invs. Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final), USITC Pub. 3273 (Jan. 2000) at IV-5. Thus adjusting data for only one part of the period examined may be misleading. In any event, even if these quantities are excluded, the overall year-to-year trend in imports is not changed; nor is the fact that January-June 2001 imports are higher than imports during the immediately preceding six-month period (July-December 2000). Accordingly, these data do not alter our conclusion that imports increased, or (as described below) that increased imports are a substantial cause of the threat of serious injury.

[976] In 1996, the ratio of imports to production was 33.8 percent. The ratio increased to 36.4 percent in 1997 and 41.9 percent in 1998, fell slightly to 40.8 percent in 1999, and then increased sharply to 55.0 percent in 2000. The ratio of imports to production was 55.9 percent in interim 2001, comparable to the 56.8 percent level in the same period of 2000. CR at TUBULAR-11; PR at TUBULAR-8.

[977] A majority of respondents to the Commission's purchasers' questionnaire indicated that they purchase both domestic and imported welded pipe. CR/PR at Table TUBULAR-51. While purchasers indicated that either they or their buyers were usually aware of the country of origin of the welded pipe products purchased, purchasers indicated that quality and adherence to industry recognized standards, followed by price and cost competitiveness, were the most important factors in purchasing decisions. Id. at TUBULAR-65-66. *See also Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 at CIRC-I-19, II-3 (July 2000), comparing domestic and imported circular welded pipe under 16 inches in outside diameter, including production methods.

[978] CR at TUBULAR-61-63; PR at TUBULAR-49-51.

and 2000.[979] As noted above, demand for welded pipe is driven by industrial production, construction, and overall economic activity.

Domestic production of welded pipe rose during the early part of the investigation, reaching its highest level in 1998 at 5.40 million short tons. It declined by 3.9 percent to 5.19 million short tons in 1999 and by 7.9 percent to 4.78 million short tons in 2000. Production was 0.2 percent lower in interim 2001 than in interim 2000.[980]

Domestic capacity rose 22 percent during the period examined, from 6.86 million short tons in 1996 to 8.37 million short tons in 2000, with the largest one-year increase occurring in the middle of the period, between 1997 and 1998 (7.1 percent). Domestic capacity has increased by smaller amounts recently (by 4.4 percent between 1999 and 2000, and by 0.5 percent between interim 2000 and interim 2001).[981]

Foreign producers' capacity and production rose between 1996 and 1998, and declined in 1999 and 2000; both were both higher in interim 2001 than in interim 2000.[982]

b. Analysis

In finding that the domestic industry is threatened with serious injury, we considered carefully the evidence in the record relating to the listed statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, research and development expenditures, imports, and foreign capacity and production.

The data below are based on questionnaire responses submitted by 32 producers of U.S. non-OCTG welded pipe estimated to account for between 59 and 81 percent of U.S. production during the period examined, based on comparisons with public industry data.[983]

We first consider the condition of the domestic industry producing welded non-OCTG pipe products. We then discuss the evolution of imports and their effects on domestic producers. Our discussion covers developments over the period examined as well as what is likely to occur in the imminent future.

(1) Industry condition

We consider the industry's overall current condition to be weak. Although it has not yet reached the point of serious injury, such injury appears imminent based on the development of the industry over the period we have examined.

The years 1996 to 1998 were a period of generally good health for the domestic industry producing welded tubular products. As apparent U.S. consumption increased, production, shipments, the

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[979] Apparent U.S. consumption was at its highest level in 2000 (7.2 million short tons), and was the same in interim 2000 and interim 2001 (3.8 million short tons). CR and PR at TUBULAR C-4.

[980] CR and PR at TUBULAR-C-4.

[981] CR and PR at TUBULAR-C-4.

[982] Foreign producers' capacity and production reached their highest level of the period examined in 1998, at 21.25 million tons and 16.55 million tons, respectively. Capacity was 21.03 million tons in 1999 and 20.80 million tons in 2000, and 10.89 million tons in interim 2001 as compared to 10.74 million short tons in interim 2000. Production was 15.62 million tons in 1999 and 15.09 million tons in 2000, and 7.98 million tons in interim 2001 as compared to 7.86 million tons in interim 2000. CR and PR at Table TUBULAR-30.

[983] CR and PR at TUBULAR-3.

number of production workers, and capital expenditures all increased significantly, and the industry earned solid profits. The year 1999 was a year of mixed performance for the industry: production, capacity utilization, number of production workers, unit sales prices, and capital expenditures declined, whereas shipment volume increased and profitability remained stable. In 2000, the industry's fortunes declined significantly for most important trade and employment indicators. Industry profits were cut in half and more than one-third of producers reported operating losses. In the first half of 2001, while some factors showed similar results compared to the first-half of 2000, such as production, shipments, and number of workers, the downward trend in unit sales prices continued, along with further reduction in operating profits (to 3.2 percent of net sales) and capital expenditures.

Domestic production increased between 1996 and 1998, in conjunction with rising levels of aggregate apparent U.S. consumption. Since 1998, however, domestic production has declined, despite stable levels of apparent U.S. consumption. It was lower in 2000 than any other year of the period examined except 1996. Domestic production declined by 3.9 percent in 1999, and by 7.9 percent in 2000, and was 0.2 percent lower in interim 2001 than in the same period of 2000.[984]

Domestic welded pipe capacity increased during the period examined, and was at its highest level in 2000.[985] U.S. capacity growth largely tracked the increase in apparent U.S. consumption of welded pipe.[986] However, the recent decline in domestic production coupled with the increase in domestic capacity resulted in a significant decline in capacity utilization beginning in 1999 and continuing through 2000, and in interim 2001 compared to interim 2000. The capacity utilization rate for the industry fluctuated during the first three years of the period examined (66.7 percent in 1996, 71.9 percent in 1997, and 70.7 percent in 1998), and then declined sharply to 63.8 percent in 1999 and 56.2 percent in 2000. This rate was 53.2 percent in interim 2001 as compared to 53.4 percent in the same period of 2000.[987]

U.S. producers' shipments, as measured in quantity, increased through 1999, but then fell by 9.1 percent in 2000, and remained stable (at slightly lower levels) in the first half of 2001.[988] The average unit values of such sales rose from 1996 to 1997-98, then fell in 1999-2000 to their lowest point of the period examined, and were 7.7 percent lower in interim 2001 as compared to the same period of 2000.[989]

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[984] Production was 4.65 million short tons in 1996, 5.13 million short tons in 1997, and 5.40 million short tons in 1998, and then fell to 5.19 million short tons in 1999 and 4.78 million short tons in 2000. Domestic production was 2.526 million short tons in interim 2001 as compared to 2.531 million short tons in the same period of 2000. CR and PR at Table TUBULAR C-4.

[985] U.S. producers' average capacity was 6.86 million short tons in 1996, and increased to 7.04 million short tons in 1997, 7.54 million short tons in 1998, 8.02 million short tons in 1999, and 8.38 million short tons in 2000. U.S. producers' average capacity was 4.69 million short tons in interim 2001 (half year basis), virtually the same as in the same period of 2000 (4.67 million short tons). CR and PR at Table TUBULAR-C-4.

[986] The increase in average annual capacity of approximately 1.5 million short tons during the period examined was slightly above the 1.2 million short ton increase in domestic consumption that occurred during that period. We note that U.S. producers maintain capacity to export, and that exports have accounted for as much as 475,000 tons of production during the period examined. CR and PR at Table TUBULAR-C-4.

[987] CR and PR at Table TUBULAR-C-4.

[988] U.S. producers' shipments were 4.43 million short tons in 1996, increased to 4.63 million short tons in 1997, 4.88 million short tons in 1998, and 5.00 million short tons in 1999, and then fell to 4.54 million short tons in 2000. U.S. producers' shipments were 2.43 million short tons in interim 2001 as compared to 2.40 million short tons in the same period of 2000. CR and PR at Table TUBULAR-C-4.

[989] The average unit value was $606 per short ton in 1996, rose to $621 in 1997 and $622 in 1998, and then fell 5.3 percent to $589 in 1999 and remained at that level in 2000. The average unit value was $545 per short ton in

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The share of the U.S. market held by U.S. producers fluctuated during the first four years of the period examined, but then declined sharply in 2000. This decline continued into 2001. Specifically, U.S. producers held a market share of 73.8 percent in 1996, 71.3 percent in 1997, 68.3 percent in 1998, and 70.2 percent in 1999. In 2000, however, the share of the U.S. market held by U.S. producers fell to 66.3 percent. U.S. producers' market share was even lower – 63.2 percent – in interim 2001.[990]

Domestic producers' profitability as measured in operating income was at its highest level during the period examined in 1998, and at its lowest full-year level in 2000. Operating income in interim 2001 was significantly below the level of the comparable period of 2000.[991] The ratio of operating income to sales followed a similar trend. The ratio was 8.6 percent in 1996 and 1997, and then declined to 8.3 percent in 1998, 8.1 percent in 1999, and then fell sharply to 4.3 percent in 2000. The ratio was 3.2 percent in interim 2001, which was below the ratio in the same period of 2000 (4.7 percent). The number of firms reporting operating losses increased over the period examined, particularly in recent years, rising from 3 of 31 firms in 1996 to 4 of 31 in 1997 and 5 of 32 in 1998. By 1999, however, more than one-third of U.S. producers reported operating losses, an elevated level that continued throughout the remainder of the period examined.[992]

Two plants closed in 2000 and 2001. Laclede Steel Corp. closed its East Alton, Illinois, weld mill in 2000, and closed its remaining mill in Fairless Hills, Pennsylvania, in August 2001, when it announced that it was liquidating.[993] According to one industry official, it was unlikely that either mill would be purchased by another firm and reopened.[994]

The number of production workers and total industry wages rose through 1998 but then fell in 1999 and 2000, and were close to their lowest levels of the period examined in 2000.[995] The number of production workers increased from interim 2000 to interim 2001; the total number of hours worked in interim 2001 actually fell (7.3 million, as compared to 7.8 million in the same period of 2000).[996] Wages paid generally followed the trend in number of production workers, rising through 1998 and then declining in 1999 and 2000. Wages paid were 4.0 percent lower in interim 2001 than in the same period of 2000.[997]

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[989] (...continued)
interim 2001 as compared to $590 per short ton in the same period of 2000. CR and PR at Table TUBULAR-C-4.

[990] CR and PR at Table TUBULAR-C-4.

[991] Operating income of reporting domestic producers rose from $241.0 million in 1996 to $269.2 million in 1997 and $276.3 million in 1998, but then fell to $246.6 million in 1999 and to $118.5 million in 2000. Operating income was $43.3 million in interim 2001 compared to $68.9 million in the same period of 2000. Industry operating income, as measured in dollars per ton, followed a similar trend: such operating income, which averaged $55 per ton in 1996-1998, fell to $49 per ton in 1999 and to $25 per ton in 2000. In interim 2001, operating income was $18 per ton, as compared to $28 per ton in the same period of 2000. CR and PR at Table TUBULAR-C-4.

[992] CR and PR at Table TUBULAR-C-4.

[993] Committee on Pipe and Tube Imports Prehearing Injury Brief at IV-13; Tr. At 2467 (Feeney).

[994] Tr. at 2467 (Feeney).

[995] The number of production workers was 6,539 in 1996, rose to 6,994 in 1997 and to 7,097 in 1998, but then declined to 6,890 in 1999 and to 6,736 in 2000. The number of production workers was 6,820 in interim 2001 as compared to 6,741 in the same period of 2000. CR and PR at Table TUBULAR-C-4.

[996] CR and PR at Table TUBULAR-C-4.

[997] Wages paid were $245.5 million in 1996, rose to $277.4 million in 1997 and to $279.9 million in 1998, and then fell to $273.0 million in 1999 and to $267.2 million in 2000. Wages paid $135.3 million in interim 2001 as compared to $140.9 million in the same period of 2000. CR and PR at Table TUBULAR-C-4.

Labor productivity, as measured in tons per thousand hours, rose through 1998, but then fell in 1999 and 2000, and was at its lowest level of the period examined in 2000. Productivity was higher in interim 2001 than in the comparable period of 2000.[998]

U.S. producer inventories increased between 1996 and 2000 and were at their highest level in 2000, the last full year of the period examined. U.S. producer inventories were 3.2 percent higher in interim 2001 than in the same period of 2000.[999] The ratio of U.S. producer inventories to shipments was also at its highest level of the period examined in 2000, and was higher in interim 2001 than in the same period of 2000.[1000]

Industry capital expenditures during the period examined rose through 1998 and have since declined; and industry capital expenditures were lower in interim 2001 than in the same period of 2000.[1001] Industry research and development expenses during the period examined rose through 1998, fell in 1999, and rose in 2000; they were lower in interim 2001 than in the same period of 2000.[1002]

As discussed above, in view of the declining trends in most of the industry's performance factors beginning in 1999 and continuing through 2000 and into 2001, particularly the decline in industry production, capacity utilization, shipments, number of workers, and profitability in 2000, we find that the domestic industry is approaching a state of serious injury.

(2) Imports

As described above, imports increased significantly in actual terms during the period examined, with the largest one year increase (24.2 percent) occurring in 2000, the last year of the period examined. They reached their highest level, 2.63 million short tons, in 2000, which represented an increase of over 500,000 short tons over the 1999 level of 2.12 million short tons. Imports remained at a high level in interim 2001 (1.41 million short tons), essentially unchanged from the level in the same period of 2000 (1.44 million short tons).[1003]

The ratio of imports to production also increased during the period examined from 33.8 percent in 1996 to 55.0 percent in 2000, the highest level of the period examined. Most of this increase occurred

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[998] Productivity was 331.2 tons per thousand hours worked in 1996, rose to 338.6 tons in 1997 and to 347.4 tons in 1998, and then fell to 340.4 tons in 1999 and to 315.5 tons in 2000. The level was 345.5 tons in interim 2001 as compared to 322.6 tons in the same period of 2000. CR and PR at Table TUBULAR-C-4.

[999] End of period U.S. producer inventories were 678,744 short tons in 1996 and rose to 726,153 short tons in 1997, 778,333 short tons in 1998, 778,785 short tons in 1999, and 790,173 short tons in 2000. End of period U.S. producer inventories were 814,008 short tons on June 30, 2001, as compared to 788,609 short tons on June 30, 2000. CR and PR at Table TUBULAR-C-4.

[1000] The ratio was 14.7 in 1996, fell to 14.5 in 1997 and remained at that level in 1998, and then increased to 15.0 in 1999 and 16.7 in 2000. The ratio was 16.3 in interim 2001 as compared to 15.9 in 2000. CR and PR at Table TUBULAR-C-4.

[1001] Capital expenditures were $59.0 million in 1996, rose to $145.1 million in 1997 and $229.4 million in 1998, and then fell sharply to $106.4 million in 1999 and $90.5 million in 2000. Capital expenditures were $24.6 million in interim 2001 as compared to $39.5 million in the same period of 2000. CR and PR at Table TUBULAR-C-4.

[1002] Research and development expenses were $3.24 million in 1996, rose to $3.55 million in 1997 and $3.93 million in 1998, fell to $3.60 million in 1999, and rose to $3.87 million in 2000. Research and development expenses were $1.73 million in interim 2001 as compared to $1.93 million in the same period of 2000. CR and PR at Table TUBULAR-18.

[1003] On a half-year basis, imports were 1.44 million tons in first half 2000, fell to 1.19 million tons in second half 2000, then rose again to 1.41 million tons in first half 2001. CR and PR at Table TUBULAR-C-4.

between 1999 (when the ratio was 40.8 percent) and 2000. The ratio remained at a high level in interim 2001 (55.9 percent), slightly below the level of the same period of 2000 (56.8 percent).[1004]

The share of the domestic market held by imports also increased during the period examined, from 25.0 percent in 1996 to 33.7 percent in 2000, with the bulk of the increase occurring between 1999 (when the share was 26.6 percent) and 2000. The share of the market held by imports was higher in interim 2001 (35.2 percent) than in the same period of 2000 (34.4 percent).[1005]

Thus, the volume of imports and the share of the domestic market held by imports increased significantly during the period examined, with the largest one-year increase occurring in 2000. These increases held firm in interim 2001.

The increase in imports from 1996 to 1998 was substantial, but was largely absorbed by the expanding U.S. market. However, apparent U.S. consumption leveled off from 1998 to 2000. The substantial further increase in imports in 2000 captured significant market share from domestic producers and led directly to reductions in numerous industry indicators, as described above, including capacity utilization, shipments, number of production workers and other employment indicators, and operating income.

As imports increased, their average unit value (AUV) declined.[1006] Import AUVs were much lower in 1999, 2000, and interim 2001 than earlier in the period.[1007] Similarly, the AUVs for U.S. shipments of welded pipe were significantly lower in 1999 and 2000 than in 1996-98; AUVs declined sharply in interim 2001 compared to interim 2000.[1008] The AUVs for imports were consistently below domestic AUVs, by substantial margins.

Pricing data collected for two individual welded tubular products also show overall declines in import and domestic prices over the period examined, with imports generally underselling the domestic product. These pricing data show domestic prices falling in 1998 and early 1999, rebounding somewhat by early 2000 and then falling again through 2000 and mid-2001. These trends correspond to the large increases in imports that occurred in both 1998 and 2000, and continued high levels in interim 2001.

Purchasers of tubular products indicated that price was a key factor in their purchasing decisions, behind only quality.[1009] Moreover, nearly all purchasers indicated that imported and domestic welded non-OCTG products made to the same grade and specification were generally used in the same applications.[1010] We find that imported and domestic welded tubular products are broadly interchangeable such that price plays an important role in the market. We find the underselling by imports to be significant in light of the importance of price and the general substitutability of domestic and imported product.

Overall, we find that imports have had a negative effect on the domestic industry over the period we have examined, particularly during the recent years of the period. The surge in imports, decline in

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[1004] CR and PR at Table Tubular-6.

[1005] CR and PR at Table TUBULAR-C-4.

[1006] We are cautious of placing undue weight on AUV information, as it is influenced by issues of product mix.

[1007] The average unit value for U.S. imports from all sources was $571 in 1996, $570 in 1997, and $565 in 1998, and then fell sharply to $503 in 1999 and was $517 in 2000 and $508 in interim 2001. CR and PR at Table TUBULAR-C-4.

[1008] The average unit value per ton was $606 in 1996, increased to $621 per ton in 1997 and $622 per ton in 1998, and then fell to $589 per ton in 1999 and 2000. The average unit value was much lower in interim 2001 ($545 per ton) than in the same period of 2000 ($590 per ton). CR and PR at Table TUBULAR-C-4.

[1009] CR and PR at Table TUBULAR-53. Domestic producers indicated that price was an important consideration in customer purchasing decisions. Tr. at 2474 (Mitch); Tr. at 2479 (Baker); Tr. at 2496 (Eisenberg).

[1010] CR at TUBULAR-61-63; PR at TUBULAR-49-51.

domestic producers' market share, and fall in prices coincided with the decline in industry indicators, which largely occurred in 1999 and 2000 and continued into 2001. Domestic production fell in 2000 even though domestic consumption was increasing. Industry income and other factors including employment, inventories, capacity utilization, and capital expenditures all declined in 2000.[1011]

We further find that increased imports are likely to cause serious injury to the domestic industry in the imminent future. As described above, the industry's condition has deteriorated significantly to a point near serious injury. Increased imports at underselling prices have played a key role in bringing about this negative trend. As described below, we have strong reason to conclude that these trends will continue into the future so as to cause serious injury to the domestic industry.

Foreign welded pipe capacity increased during the period examined. It reached its highest level in 1998 and declined marginally during 1999-2000. Foreign capacity was higher in interim 2001 than in the same period of 2000.[1012] Similarly, foreign production reached a peak in 1998, declined somewhat in 1999 and 2000, and was higher in interim 2001 than in the same period of 2000.[1013]

Foreign producer exports were increasingly directed towards the U.S. market during the period examined, particularly in 2000.[1014] The share of foreign producers' shipments exported to the U.S. market rose sharply in 2000 (from 8.9 percent in 1999 to 12.6 percent in 2000), and continued at a high level in interim 2001 (13.0 percent), as compared to the same period of 2000 (14.0 percent).[1015] [1016]

[1011] The surge in imports also coincided with the closing of Laclede Steel's two weld mills in 2000 and 2001 and the firm's exit from the industry, which the company's president attributed to the surge in imports of welded pipe in 2000 and 2001 and the impact on company orders. David Higbee, President and CEO of Laclede stated that the "impact of these imports on our order volume has been devastating." As quoted in *Metal Bulletin* (Aug. 2, 2001) at 3, as cited in Committee on Pipe and Tube Imports Prehearing Injury Brief at IV-13.

[1012] During the period examined, foreign capacity ranged from a low of 20.19 million short tons in 1996 to a high of 21.25 million short tons in 1998 and was 20.80 million short tons in 2000. Based on responses to Commission importer questionnaires, it is projected to increase to 21.12 million short tons for full year 2001 and 21.27 million short tons in 2002. CR and PR at Table Tubular-30.

[1013] Foreign production increased during the early years of the period examined and peaked at 16.55 million short tons in 1998, before declining to 15.62 million short tons in 1999 and 15.09 million short tons in 2000. It is projected to rise significantly in full year 2001 to 17.61 million short tons, and then decline to 17.26 million short tons in 2002. CR and PR at Table TUBULAR-C-4.

[1014] Foreign producers reported that their exports to the U.S. market were 1.16 million in 1996, fell to 978,587 in 1997, rose to 1.45 million in 1998, declined slightly to 1.42 million in 1999, and then rose sharply to 1.91 million in 2000. Foreign producers projected that their exports to the U.S. market will decline to 1.88 million short tons in full year 2001 and 1.78 million short tons in 2002. CR and PR at Table TUBULAR-30.

[1015] Foreign producers reported that their share of shipments sent to the U.S. market was 7.5 percent in 1996, 6.2 percent in 1997, 8.7 percent in 1998, 8.9 percent in 1999, and 12.6 percent in 2000. It was 13.0 percent in interim 2001 as compared to 14.0 percent in the same period of 2000. They reported that the share of shipments exported to other markets was 25.5 percent in 1996 and increased to 27.8 percent in 1997 and 31.3 percent in 1998, and then declined 29.3 percent in 1999 and to 26.2 percent in 2000. The share was 30.9 percent in interim 2001 as compared to 25.9 percent in the same period of 2000. They reported that the share sold in home markets was 61.9 percent in 1996, 61.4 percent in 1997, 56.1 percent in 1998, 58.1 percent in 1999, and 57.1 percent in 2000. The share was 52.9 percent in interim 2001 as compared to 56.1 percent in the same period of 2000. CR and PR at Table TUBULAR-30.

[1016] Foreign producer inventories fluctuated over the period examined. U.S. importers' inventories fluctuated during the period examined, and increased by 77.2 percent between 1999 and 2000, and were at their highest full-year level of the period examined in 2000. U.S. importers' inventories were higher in interim 2001 than in the same

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Even with growing exports to the United States, foreign producers as a whole maintained substantial available capacity with which to increase production. Available capacity in 2000 equaled 5.7 million tons, an amount equivalent to well over half the annual U.S. market for welded tubular products. This unused capacity was at its highest level of the period examined in 2000. Given the current state of the domestic industry, if even a small amount of this available capacity were used to further increase exports to the United States, the effect would be such as to place the domestic industry in a state of serious injury. Given the capital intensive nature of steel production, we believe that there would be an incentive for these foreign producers to seek to more fully utilize their productive assets by increasing production and sales. Over the period examined, the U.S. market became more and more an export market of choice for foreign producers. We see no reason why this trend would not continue unabated in the imminent future.[1017]

We also considered other possible causes of the current condition of the domestic industry, as well as respondents' arguments that no future threat of serious injury exists. Several respondents argued that increased domestic capacity had a negative impact on prices and therefore on the condition of the domestic industry.[1018] The increase in capacity (1.5 million tons) was only modestly higher than the increase in domestic consumption of welded pipe (1.2 million tons) over the period examined. Thus, the increase was not inconsistent with the overall increase in consumption during the period examined – apparent U.S. consumption increased by 73 percent of the amount of the increase in capacity. We do not view this differential as excessive or as contributing in more than a minor way to the condition of the industry in 2000 or interim 2001.

Joint Respondents argue that the declining profitability is explained by events pertaining to a significant domestic producer that raised the company's costs but are unrelated to imports.[1019] While certain company costs appear to have increased, the main reason for the decline in the company's financial performance was the substantial drop in the unit value of company sales beginning in 1999.[1020] As discussed above, this decline was largely the result of the substantial increased imports. Moreover, excluding this company does not substantially alter the downward trend in industry profitability described earlier.

We considered whether the antidumping orders in place on some welded non-OCTG products from several countries reduce the current or likely imminent impact of imports. The orders cover only a

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[1016] (...continued)
period of 2000. U.S. importers' inventories were 6,440 short tons in 1996, rose to 9,166 short tons in 1997, rose to 20,942 short tons in 1998, fell to 13,176 short tons in 1999, and then rose sharply to 23,348 short tons in 2000. U.S. importers' inventories rose to 15,857 short tons in interim 2001 from 13,901 short tons in the same period of 2000. CR and PR at Table TUBULAR-39.

[1017] Foreign producers project significantly increased production in 2001 and 2002 over 2000 levels. They further project that this increased production would be directed solely to export markets other than the United States. We do not find this projection to be wholly credible. Exports to third country markets have fallen substantially since 1998, although they did increase somewhat between interim 2000 and interim 2001. At the same time, exports to the United States rose significantly over the period examined, particularly in 1998 and 2000. Exports to the United States also rose in first half 2001 (1.06 million tons) compared to second half 2000 (0.82 million tons). While increased production is understandable, given available capacity, we find that a meaningful portion of this increase, enough to push the industry into a state of serious injury, is likely to be directed to the U.S. market in the imminent future. CR and PR at Table TUBULAR-30.

[1018] *See, e.g.*, Joint Respondents Prehearing Injury Brief on Welded Tubular Products Other Than OCTG at 45.

[1019] Joint Respondents Prehearing Injury Brief on Welded Tubular Products Other Than OCTG at 14-15. Our discussion of this issue is framed in general terms to avoid referencing business proprietary information.

[1020] OINV-Y-212.

limited number of welded pipe products and, of those, only imports from a limited number of countries. Moreover, the orders were issued between 1984 and 1989 and thus were in place before the start of the period examined.[1021] They clearly did not preclude the surge in imports in 2000 and continued high level of imports in 2001, or even prevent a surge in imports from countries covered by the orders.[1022] Given these increases despite the existence of the orders, these pre-existing orders do not provide a basis to conclude that imports would not continue to increase in the imminent future.[1023]

Several respondents argue that the industry is not threatened with serious injury because the market for large diameter line pipe has begun to surge and will continue to expand in the imminent future.[1024] We agree with respondents that available information indicates that there has been a recent increase in demand for large diameter line pipe and that projections are for continued growth due to rising demand for pipeline projects. We also agree that rising demand tends to ameliorate the impact of a given volume of imports. However, large diameter line pipe is only a portion of this industry -- an estimated 20 to 30 percent of the overall welded product category.[1025] Indeed, even with a recent rise in large diameter line pipe demand, overall demand for covered welded tubular products has been relatively constant on a full year basis since 1998, as well as between interim periods. Thus, we do not consider the likely increased demand for large diameter line pipe as eliminating the threat of serious injury.

For all of the reasons we have discussed, we conclude that increased imports pose a real and imminent threat of serious injury to the welded pipe industry.

5. NAFTA imports

a. NAFTA Findings of Chairman Koplan and Commissioner Miller

(1) Canada

Finding. For the reasons set forth below, we find that imports of welded pipe other than OCTG from Canada account for a substantial share of total imports and contribute importantly to the threat of serious injury caused by the imports.

[1021] CR and PR at Table OVERVIEW-1.

[1022] For example, imports from Thailand, which are covered by the orders, increased by 69,621 tons, or 248.2 percent, between 1998 and 2000 and undersold the domestic product by double digit margins in 2000 and the first half of 2001. Committee on Pipe and Tube Imports Posthearing Injury Brief at 19, exhibits 3, 5. Imports have also increased by significant amounts since 1998 from Korea (68,418 tons, or 19.5 percent), Taiwan (18,762 tons, or 40.1 percent), and Turkey (30,440 tons, or 317.9 percent). In the case of Korea, such imports undersold the domestic product by margins up to 8.8 percent in 2000 and the first half of 2001, and in the case of Taiwan and Turkey generally undersold the domestic product by double digit margins in 2000 and the first half of 2001 in quarters for which data were reported. Committee on Pipe and Tube Imports Posthearing Injury Brief at 15-17, 21-22.

[1023] The pending antidumping investigation on welded non-alloy steel pipe from China is not a basis to conclude that imports will not increase. It would be speculative to attempt to determine the outcome of that investigation or its effect on any imports in the imminent future. The Commission made an affirmative determination in the preliminary phase of this investigation in July 2001, and made negative determinations in the other investigations considered at that time. *See Circular Welded Non-Alloy Steel Pipe From China, Indonesia, Malaysia, Romania, and South Africa,* Invs. Nos. 731-TA-943-947 (Preliminary), USITC Pub. 3439 (July 2001).

[1024] *See, e.g.,* European Steel Tube Association Prehearing Injury Brief at 11-13.

[1025] CR at TUBULAR-55; PR at TUBULAR-43.

Canada was the top supplier of welded non-OCTG products to the United States for each of the most recent three years in the period examined. The quantity of imports from Canada from 1998 to 2000 was 141 percent greater than the quantity of imports from the second largest source during this three year period. From 1998 to 2000 Canada accounted for at least 35 percent of the quantity of all imports during each year in this period.[1026] As a result, we find that imports from Canada constitute a substantial share of total imports.

No domestic producer of welded tubular products took a position regarding NAFTA exclusions during the injury phase of this investigation. The United Steelworkers of America stated that imports from Canada do not contribute importantly to the serious injury experienced by the domestic industry and should not be included in the scope of the Commission's remedy recommendations.[1027]

We also find that Canadian imports have contributed importantly to the threat of serious injury caused by imports. We acknowledge that imports from Canada decreased in interim 2001 while imports from non-NAFTA countries increased and that certain U.S. producers are integrated with Canadian producers. Despite these facts, imports from Canada, which were relatively stable in 1999 even though imports from non-NAFTA countries fell, increased significantly in 2000.[1028] In addition, imports from Canada increased their market share by value from 10.8 percent in 1999 to 14.2 percent in 2000, its highest level for any full year during the period examined.[1029] Canada's import market share remained relatively stable during 1999, a year when the import market share of non-NAFTA countries fell by 3.3 percentage points.[1030] Moreover, the record indicates that in 2000 Canadian producers shipped a significant amount of their production outside Canada's borders, with almost all of these exports being shipped to the United States.[1031]

In light of these facts and particularly the fact that Canada accounted for such a large percentage of total welded pipe other than OCTG to the U.S., we find that imports from Canada contribute importantly to the threat of serious injury caused by imports. Consequently, our affirmative determination for welded non-OCTG products includes imports from Canada.

b. Mexico

Finding. We find that imports of welded pipe other than OCTG from Mexico account for a substantial share of total imports and contribute importantly to the threat of serious injury caused by the imports.

Mexico was among the top five suppliers of welded non-OCTG products to the United States in each of the most recent three years in the period examined. Mexico was the fourth largest supplier each

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[1026] CR and PR at Table TUBULAR-C-4; INV-Y-180, Welded non-OCTG data. Canada also was the largest supplier of welded non-OCTG to the United States in interim 2000 when it supplied 42.5 percent of all imports and in interim 2001 when it supplied 31.5 percent of all imports.

[1027] USWA Prehearing Injury Brief at 114.

[1028] CR and PR at Table TUBULAR-C-4. Specifically, the quantity of imports from Canada decreased by 1.1 percent from 1998 to 1999 and increased by 27.0 percent from 1999 to 2000. In comparison, imports from non-NAFTA countries declined by 13.9 percent from 1998 to 1999 and increased by 25.9 percent from 1999 to 2000.

[1029] CR and PR at Table TUBULAR-C-4.

[1030] CR and PR at Table TUBULAR-C-4.

[1031] CR and PR at Table TUBULAR-31.

year during 1998-2000.[1032] Accordingly, we find that imports from Mexico constitute a substantial share of total imports.

The quantity of imports from Mexico increased by 94.7 percent from 1996 to 2000, as compared to a 67.0 percent increase for all welded tubular imports during the same period. In 1999, U.S. imports from Mexico increased by 32.1 percent while total imports declined by 6.4 percent.[1033] The record also shows that imported welded non-OCTG products from Mexico undersold domestic products by substantial margins. During the investigation period, Mexican welded pipe undersold the domestic product in all 34 instances in which comparisons were possible by margins ranging from 0.6 percent to 35.8 percent.[1034]

For these reasons, we find that imports from Mexico contribute importantly to the threat of serious injury caused by imports. Consequently, our affirmative determination for welded non-OCTG products includes imports from Mexico.

b. NAFTA Findings of Vice Chairman Okun and Commissioner Hillman

(1). Canada

Finding. We find that imports of welded pipe from Canada account for a substantial share of total imports, but do not contribute importantly to the threat of serious injury caused by the imports.

Canada was the top supplier of welded pipe to the United States for each of the most recent three years in the period examined.[1035] Canada supplied 35.8 percent of the quantity of all imports in 1998, 37.8 percent in 1999, and 38.7 percent in 2000.[1036] Consequently, we find that imports from Canada constitute a substantial share of total imports.

We do not, however, find that imports from Canada have contributed importantly to the threat of serious injury caused by imports. Because our determination with respect to imports of welded pipe is based on the threat of serious injury, our focus is directed mainly to the most recent import trends. Imports from Canada increased their share of total imports from 1998 to 2000. However, imports from Canada, like those from Mexico but unlike those from non-NAFTA countries, declined in the first half of 2001 relative to the first half of 2000. Indeed, imports of welded pipe from Canada were more than 27 percent lower in the first half of 2001 than in the first half of 2000.[1037]

We have also considered the presence of imports of welded pipe in the U.S. market. Imports from Canada have consistently held approximately 11 percent of the U.S. market. In 2000, market share increased to 14.2 percent. We note that, even in that year, import volume and market share gains were disproportionately in the first six months of the year. By the first half of 2001, however, the market share held by imports from Canada had returned to 11.6 percent.[1038]

[1032] INV-Y-180 at Table G20.

[1033] CR and PR at Table TUBULAR-C-4.

[1034] CR and PR at Table TUBULAR-65.

[1035] INV-Y-180 at Table G20.

[1036] CR and PR, Table TUBULAR-6. The figures for interim 2000 and interim 2001 are 42.5 percent and 31.5 percent respectively. *Id.*

[1037] CR and PR, Table TUBULAR-6.

[1038] CR and PR, Table TUBULAR-C-4. A significant portion of the 2000 increase was pursuant to a pipeline

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Furthermore, we observe that the price levels of imports from Canada show mainly overselling or underselling, depending on the product. We find it significant that the prices of imports from Canada were substantially higher than those for other import sources in the high-volume standard pipe product for which the Commission collected pricing data. Indeed, such welded pipe from Canada not only was priced higher than comparable pipe from other import sources, it was priced higher than comparable domestic pipe. Moreover, prices for such welded pipe from Canada remained relatively stable in 2001, unlike prices for comparable pipe from other import sources or from domestic producers, which declined.[1039]

For mechanical pipe or ornamental tubing, prices for the Canadian product, like those for other imported product, undersold comparable domestic pipe. The volumes of these products, however, were small compared to those for standard pipe; moreover, Canadian volumes declined substantially beginning in 2000.[1040] Accordingly, we place less weight on these pricing data.

Finally, consistent with the most recent import trends, exports of welded pipe from Canada to the United States are projected to decline in 2001 and 2002 to their lowest levels since 1997.[1041] This stands in sharp contrast to the levels of exports to the United States projected by non-NAFTA countries, which are expected to increase to levels higher than any experienced between 1996 and 2000.[1042]

Based on our analysis, on balance, we conclude that imports from Canada did not contribute importantly to the threat of serious injury experienced by the domestic welded pipe industry.[1043] Consequently, our affirmative determination concerning welded pipe does not encompass imports from Canada.

(2) Mexico

Finding. We find that imports of welded pipe from Mexico account for a substantial share of total imports, but do not contribute importantly to the threat of serious injury caused by the imports.

Mexico was the fourth-largest supplier of welded pipe to the United States for each of the most recent three years in the period examined.[1044] Mexico supplied 6.2 percent of the value of all imports in 1998, 8.8 percent in 1999, and 7.2 percent in 2000.[1045] Consequently, we find that imports from Mexico constitute a substantial share of total imports.

We do not, however, find that imports from Mexico have contributed importantly to the threat of serious injury caused by imports. Because our determination with respect to imports of welded pipe is based on the threat of serious injury, our focus is directed mainly to the most recent import trends. Imports from Mexico increased their share of total imports from 1998 to 1999, but declined as a share of

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[1038] (...continued)
project contract; the Canadian company's shipments under this contract have been completed. Canadian Respondents Prehearing Brief at 6.

[1039] CR and PR, Table TUBULAR-58.

[1040] CR and PR, Table TUBULAR-59.

[1041] CR and PR, Table TUBULAR-31

[1042] CR and PR, Tables TUBULAR-30-32.

[1043] We are unaware of any "exceptional circumstances" that would lead us to combine imports from Canada and Mexico in our analysis.

[1044] INV-Y-180 at Table G20.

[1045] CR and PR, Table TUBULAR-6. The figures for interim 2000 and interim 2001 are 7.1 percent and 6.8 percent respectively. *Id.*

imports in 2000. Moreover, imports from Mexico, like those from Canada but unlike those from non-NAFTA countries, declined in the first half of 2001 relative to the first half of 2000. Indeed, imports of welded pipe from Mexico were 5.3 percent lower in the first half of 2001 than in the first half of 2000.[1046]

We have also considered the presence of imports of welded pipe in the U.S. market. Imports from Mexico have consistently held less than 3 percent of the U.S. market. By the first half of 2001, the market share held by imports from Mexico was 2.5 percent.[1047]

The pricing data collected by the Commission indicate that Mexican welded pipe tended to undersell comparable domestic welded pipe products. We note, however, that Mexican product was absent from the U.S. market in the high-volume standard pipe product in 2000 and 2001.[1048] Because our finding is based on threat of serious injury, which is a prospective analysis, the limited recent pricing data lead us to place somewhat less weight on these pricing data.

Finally, consistent with the most recent import trends, exports of welded pipe from Mexico to the United States are projected to decline in 2001, before increasing somewhat in 2002.[1049] Home market sales are projected to increase sharply, and will remain a substantial portion of overall sales by the welded pipe industry in Mexico.[1050]

Based on our analysis, on balance, we conclude that imports from Mexico did not contribute importantly to the threat of serious injury experienced by the domestic welded pipe industry.[1051] Consequently, our affirmative determination concerning welded pipe does not encompass imports from Mexico.[1052]

[1046] CR and PR, Table TUBULAR-6.

[1047] CR and PR, Table TUBULAR-C-4.

[1048] CR and PR, Table TUBULAR-58 and 59.

[1049] CR and PR, Table TUBULAR-32.

[1050] CR and PR, Table TUBULAR-32.

[1051] We are unaware of any "exceptional circumstances" that would lead us to combine imports from Canada and Mexico in our analysis.

[1052] We note that we would have reached the same result on injury had we excluded imports from Canada and Mexico from our injury analysis. Exclusion of imports from Canada and Mexico does not alter our analysis of factors with respect to import levels or trends. Imports from sources other than the NAFTA countries increased by 80.7 percent from 1996 to 2000 and by 20.2 percent in the first half of 2001 relative to the first half of 2000. Non-NAFTA imports had major increases of 20-30 percent in every period except 1999. *See* CR and PR, Table TUBULAR-4.

Similarly, with respect to market share, non-NAFTA imports increased from 13.1 percent in 1996 to 19.8 percent in 2000, and were 22.7 percent of the market in the first half of 2001, compared to 18.9 percent in the first half of 2000. *Id.*

Moreover, prices for standard pipe and mechanical pipe from non-NAFTA sources undersold comparable domestic products in every quarter for which data were available. CR and PR, Tables TUBULAR-58-59. For both products, the prices of pipe from non-NAFTA countries fell over the period examined, including during the most recent quarter or quarters for which data are available. *Id.*

Finally, excluding Canada and Mexico from the database does not appreciably alter projections for foreign production, capacity, and exports to the United States. Indeed, capacity, production, and exports to the United States from non-NAFTA countries are all projected to reach new peaks during the period 2001-2002. CR and PR, Tables TUBULAR-30-32.

Consequently, the conclusions we have made concerning increased imports are equally applicable whether or not Canada and Mexico are included among the imports evaluated.

C. Fittings, Flanges, and Tool Joints Industry

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met. Imports of fittings and flanges steadily increased in both absolute terms and relative to domestic production during the period examined, with the largest increase occurring at the end of the period. Imports increased by 30.8 percent from 1996 to 2000, including 15.3 percent between 1999 and 2000. Imports were 32.1 percent higher in interim 2001 than in the same period of 2000.[1053]

The ratio of imports to U.S. production also increased significantly during the period examined, rising from 50.5 percent in 1996 to 69.7 percent in 2000, and was at its highest full-year level in 2000. The ratio in interim 2001 (88.8 percent) was substantially above the level of the same period of 2000 (59.4 percent).[1054]

Thus, imports of fittings, flanges, and tool joints are entering the United States in increased quantities.

2. The Domestic Industry Is Seriously Injured

Finding. For the reasons stated below, we find that the domestic industry is seriously injured: that is, we find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is seriously injured, we considered carefully the evidence in the record relating to the listed statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures.

The domestic industry has seen a substantial deterioration in its overall condition over the 1996-2000 period we examined, and this continued into 2001. Some indicators, such as production, shipments, number of production workers, hours worked, and net sales, initially increased in the first one or two years of the period.[1055] However, by 2000, even these indicators had declined substantially from 1996 levels. Other indicators experienced a steady decline since 1996. Most telling, solid industry operating profits at the opening of the period were steadily eroded until by 2000 the industry recorded an operating loss. The nearly across-the-board declines in indicia of the health of the domestic industry lead us to conclude that the industry is experiencing serious injury.[1056] We describe below the specific trends in the various indicators.

During the period 1996-2000, domestic production declined by 5.3 percent. Domestic production was relatively stable during the first three years of the period examined and then fell sharply

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[1053] Imports were at their highest level of the period examined in 2000 (135,399 short tons), and were significantly above the level of the second highest year, 1999 (117,461 short tons). Imports in interim 2001 were 81,380 short tons, well above the level of the same period in 2000 (61,588 short tons). The value of total imports also increased substantially during the period examined (45.9 percent), and between 1999 and 2000 (19.3 percent), and was at its highest full-year level in 2000 ($307.9 million). The value of imports was significantly higher in interim 2001 ($182.3 million) than in the same period of 2000 ($144.7 million). CR and PR at Table TUBULAR-C-6.

[1054] CR and PR at Table TUBULAR-8.

[1055] CR and PR at Table TUBULAR-C-6.

[1056] The industry's similarly poor overall performance in interim 2001 confirms that it is seriously injured.

(by 11.9 percent) in 1999. Domestic production then increased slightly (by 4.1 percent) in 2000, but production in interim 2001 fell sharply (11.6 percent) from the level in the same period of 2000.[1057]

Industry capacity increased by small amounts during the first four years of the period examined and then fell in 2000. Capacity was lower in interim 2001 than in the same period of 2000.[1058] Beginning in 1998, the domestic industry experienced several plant closures, idling fitting and flange capacity. For example, Trinity Fittings, the ***-largest producer in 2000,[1059] closed facilities throughout the South between 1998 and 2001. In early 1998, Trinity closed its fittings and flanges production facility in Cynthiana, Kentucky. In late 1998, the company closed its forge shop in Russelville, Arkansas. In late 2000, Trinity closed its flange forging and finishing facility in Ackerman, Mississippi, and in early 2001 it closed its flange facility in Houston, Texas, effectively halting its flange production.[1060]

Capacity utilization declined during the first four years of the period examined and then increased in 2000, but remained substantially below the level of 1996. Capacity utilization was lower in interim 2001 than in the same period of 2000. Capacity utilization was 76.3 percent in 1996 and then fell to 74.1 percent in 1997 and 70.9 percent in 1998. It then fell sharply to 61.4 percent in 1999, and partially recovered to 67.4 percent in 2000, due in part to a decline in capacity that year. Capacity utilization was 65.2 percent in interim 2001, below the level of 70.4 percent in the same period of 2000.[1061] In light of the foregoing, we find that the domestic industry has experienced the significant idling of productive facilities, including underutilization and closing of facilities.

U.S. shipments, as measured in quantity and value, rose from 1996 to 1997 and have declined in each year since. They were at their lowest level of the period examined in 2000, and both indicators were lower in interim 2001 than in the same period of 2000.[1062] Average unit values of such shipments were at their highest level of the period examined in 1996, and were at their lowest level in 2000; average unit values were lower in interim 2001 than in the same period of 2000.[1063]

U.S. producers' share of the domestic market has fallen each year since 1997, with the largest decline occurring in 2000. U.S. producers' market share was sharply lower in interim 2001 as compared to the same period of 2000. U.S. producers' market share was 65.0 percent in 1996 and rose slightly to

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[1057] Domestic production was 204,972 short tons in 1996, rose to 220,881 short tons in 1997, its highest level of the period examined, and then fell slightly to 211,648 short tons in 1998. It then fell sharply to 186,490 short tons in 1999 and then recovered modestly to 194,175 short tons in 2000, still well below the 1996-1998 levels. Production was 91,669 short tons in interim 2001, well below the level in the same period of 2000 (103,707 short tons). CR and PR at Table TUBULAR-C-6.

[1058] Capacity peaked at 303,797 short tons in 1999, up slightly from the 1997 and 1998 levels of 298,105 short tons and 298,347 short tons, respectively. It fell to 288,054 short tons in 2000. Capacity was 140,510 short tons in interim 2001, down from 147,294 short tons in the same period of 2000. CR and PR at Table TUBULAR-C-6.

[1059] CR and PR at Table TUBULAR-1.

[1060] Tr. at 2518 (Graham); Mills Iron Works, et al. Prehearing Injury Brief at 16.

[1061] CR and PR at Table TUBULAR-C-6.

[1062] U.S. shipments were 192,422 short tons in 1996, rose to 214,472 short tons in 1997, the highest level of the period examined, and then fell marginally to 212,379 short tons in 1998. U.S. shipments then declined sharply (by 8.7 percent) in 1999 to 193,890 short tons, and by an additional 2.4 percent in 2000 to 189,313 short tons. U.S. shipments were 92,954 short tons in interim 2001, as compared to 96,284 short tons in the same period of 2000. CR and PR at Table TUBULAR-C-6.

[1063] The average unit value was $2,012 per ton in 1996, and fell to $1,983 per ton 1997, rose to $1999 per ton in 1998, fell to $1,974 per ton in 1999 and fell to $1,944 per ton in 2000. The average unit value was $2,038 per ton in interim 2001 as compared to $2,100 per ton in the same period of 2000. CR and PR at Table TUBULAR-C-6.

67.1 percent in 1997 and then fell to 64.5 percent in 1998, 62.3 percent in 1999, and 58.3 percent in 2000. U.S. producers' market share was 53.3 percent in interim 2001, well below the market share of 61.0 percent in the same period of 2000.[1064]

The domestic industry's profitability, as measured by operating income, declined each year through 1999, and the industry operated at a loss in 2000.[1065] The ratio of operating income to net commercial sales followed the same trend, falling from 8.9 percent in 1996 to 7.7 percent in 1997, 4.6 percent in 1998, 2.4 percent in 1999, and (0.1) percent in 2000. The ratio was 3.7 percent in interim 2001 as compared to 1.7 percent in the same period of 2000.[1066]

In the first three years of the period examined, nearly all reporting firms in the industry operated at a profit. However, since 1999, nearly half the firms reporting data have operated at a loss. In 1996 none of the 16 reporting firms operated at a loss; and in 1997 and 1998, two of 17 reporting firms operated at a loss. However, in 1999, eight of 18 reporting firms operated at a loss, and in 2000 eight of 17 reporting firms operated at a loss. In interim 2001, seven of 17 reporting firms operated at a loss, as compared to eight of 17 in the same period of 2000.[1067]

In sum, the domestic industry experienced decreases in the quantity, value, and average unit value of its U.S. shipments, notwithstanding increases in apparent U.S. consumption. The domestic industry's market share declined continuously after 1997, with particularly substantial decreases in 2000 and 2001. The domestic industry's financial performance weakened throughout the period 1996-2000, moving into operating losses by 2000.[1068] No more than two producers reported operating losses in 1996-98, compared to 7-8 producers (out of 17-18) during 1999-2001.[1069] In light of the foregoing, we find that a significant number of firms are unable to carry out domestic production operations at a reasonable level of profit.

The number of production and related workers employed by the domestic industry declined over the period examined, as did the number of hours worked by such employees. Industry employment (number of production workers) rose from 1996 to 1998, and has declined since 1998; employment was lower in interim 2001 than in the same period of 2000.[1070] Total hours worked increased sharply from 1996 to 1997, then declined steadily to a level in 2000 that was 5.5 percent below 1996. Hours worked fell by 2.4 percent from interim 2000 to interim 2001.[1071] Industry productivity fluctuated during the period examined, increasing marginally from 1996 (27.1 tons per thousand hours) to 2000 (27.2 tons per thousand hours). Productivity was markedly lower in interim 2001 (25.6 tons per thousand hours) than

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[1064] CR and PR at Table TUBULAR-C-6.

[1065] Operating income was higher in interim 2001 than in the same period of 2000. Industry operating income was $37.3 million in 1996, and then declined to $35.0 million in 1997, $20.6 million in 1998, and $9.2 million in 1999. The industry had an operating loss $216,000 in 2000. The industry had operating income of $7.0 million in interim 2001, as compared to $3.2 million in the same period of 2000. CR and PR at Table TUBULAR-C-6.

[1066] CR and PR at Table TUBULAR-C-6.

[1067] CR and PR at Table TUBULAR-20.

[1068] CR and PR at Table TUBULAR-C-6.

[1069] CR and PR at Table TUBULAR-20.

[1070] Employment rose in the initial period of the investigation from 2,703 workers in 1996 to 3,112 in 1998, the highest level of the period, and then fell 6.0 percent in 1999 to 2,925 workers, and fell an additional 8.7 percent in 2000 to 2,671 workers. Employment was 2,612 workers in interim 2001, as compared to 2,736 in the same period of 2000. CR and PR at TUBULAR-C-6.

[1071] CR and PR at TUBULAR-C-6.

in the same period of 2000 (28.3 tons per thousand hours).[1072] Total wages paid increased overall, as a result of consecutive increases in wage rates in 1997 and 1998, but have fallen since 1998 as a result of declining hours worked and an absence of wage rate growth.[1073] In light of the foregoing, we find significant unemployment or underemployment within the domestic industry.

We also examined several additional factors relevant to the condition of the domestic industry. U.S. producers' inventories showed no discernible trend.[1074] Industry capital expenditures fell continuously during the period examined, and were at their lowest level in 2000. The largest one-year decline (24.3 percent) occurred in 2000.[1075] Industry research and development expenses declined each year of the period examined through 1999 and then rose in 2000. Research and development expenses were higher in interim 2001 than in the same period of 2000.[1076]

In summary, virtually all of the indicators of industry condition declined in 1999 and 2000 and were substantially below levels earlier in the period examined. Industry production, shipments, capacity utilization, profitability, capital expenditures, employment, wages, and market share all declined, and most of the declines were greatest in 1999 and 2000. The industry operated at a loss in 2000. Nearly half the reporting domestic producers operated at a loss in 1999, 2000, and interim 2001. While several of the indicators increased slightly in 2000 from 1999 levels, or in interim 2001 as compared to the same period of 2000, they remained at depressed levels in 2000 and interim 2001. Thus, we find the domestic industry to be seriously injured.

4. Causation

Finding. We find that the increased imports of fittings, flanges, and tool joints are an important cause, and a cause not less than any other cause, of serious injury to the domestic industry. Accordingly, we find that increased imports of fittings, flanges, and tool joints are a substantial cause of serious injury to the domestic industry.

[1072] CR and PR at Table TUBULAR-C-6.

[1073] CR and PR at Table TUBULAR-20. Declining hours worked do not reflect productivity gains, since productivity increased only marginally. *Id.* Wages paid peaked at $84.0 million in 1998, and then declined to $74.7 million in 1999 and $74.0 million in 2000. Wages paid were $37.52 million in interim 2001, as compared to $37.54 million in the same period of 2000. CR and PR at Table TUBULAR-C-6.

[1074] U.S. producers' ending inventories were 61,311 shorts tons in 1996, rose to 65,715 short tons in 1997, fell to 62,779 short tons in 1998 and 56,567 short tons in 1999, and then rose to 60,315 short tons in 2000. U.S. producers' ending inventories declined to 57,922 short tons in interim 2001 from 64,524 short tons in the same period of 2000. The ratio of domestic producer inventories to total shipments followed a similar trend, although it was highest in 1996, at 31.1 percent, and then fell to 29.7 percent in 1997, 28.8 percent in 1998, and to 28.3 percent in 1999, its lowest level of the period examined. The ratio increased to 30.9 percent in 2000. The ratio was lower in interim 2001 (30.3 percent) than in the same period of 2000 (32.4 percent). CR and PR at Table TUBULAR-C-6.

[1075] Capital expenditures were $19.3 million in 1996 and then fell to $18.6 million in 1997, and $17.0 million in 1998, $14.9 million in 1999, and $11.3 million in 2000. Capital expenditures were higher in interim 2001 ($7.5 million) than in the same period of 2000 ($5.3 million). CR and PR at TUBULAR-C-6.

[1076] Research and development expenses were $465,000 in 1996 and fell to $375,000 in 1997, $84,000 in 1998, and $74,000 in 1999, and then rose to $109,000 in 2000. Research and development expenses were $148,000 in interim 2001 as compared to $74,000 in the same period of 2000. CR and PR at Table TUBULAR-15.

a. Conditions of Competition

Pipe connection products are diverse (flanges, butt-weld fittings, other fittings, including couplings and nipples, and tool joints), but in general are used to join or cap pipe. Many of the products are commodity grade, produced to standards and specifications established by standards and testing bodies such as ASTM, API, and AWWA. Fittings and flanges are often distributed with other tubular products, and purchasers stated that demand for them is driven by utilities, automotive products, and import competition in downstream markets.[1077] Demand for tool joints is connected with OCTG demand, since tool joints are used in manufacturing finished drill pipe.[1078] Purchasers of fittings and flanges reported that imported and domestically produced fittings and flanges produced to the same grade and specification are used in the same applications.[1079] Once the standards are met, price and cost competitiveness often become the most important factor.[1080]

Apparent U.S. consumption of fittings and flanges increased by 9.7 percent between 1996 and 2000, with most of this increase occurring between 1996 and 1997. Demand was less volatile thereafter, until interim 2001, when it rose by 10.4 percent over interim 2000.[1081]

Domestic producers' capacity increased by 7.4 percent over the period examined, somewhat less than the growth rate in consumption. Domestic capacity reached its highest level of the period examined in 1999, and declined by 5.2 percent in 2000, and by an additional 4.6 percent in interim 2001 compared to interim 2000.[1082] As indicated above, Trinity Fitting Group, a domestic producer, has closed plants in Kentucky, Arkansas, Mississippi, and in early 2001, Texas, effectively exiting the flange business. Domestic production fluctuated during the period examined, and was 5.3 percent lower in 2000 than in 1996; domestic production was 11.6 percent lower in interim 2001.[1083]

Foreign producers' reported capacity increased throughout the period examined, and was 19.5 percent higher in 2000 than in 1996. It rose in interim 2001 compared to interim 2000. Foreign producers' production, on the other hand, fluctuated, and was higher in 2000 than in 1996, and higher in interim 2001 than in interim 2000. Foreign producers became more export-oriented during the period examined. Their share of total shipments exported also fluctuated, but was higher in 2000 at 60.5 percent (60.6 percent in interim 2001) than at the beginning of the period examined (58.9 percent in 1996). The share shipped to the U.S. market also fluctuated but was at its highest level at the end of the period examined, 19.0 percent in 2000 and 19.2 percent in interim 2001. Foreign producers' capacity utilization rate also fluctuated during the period examined, and was 58.4 percent in 2000 and 70.4 percent in interim 2001,[1084] indicating available capacity for additional production.

b. Analysis of Factors

As indicated above, imports of fittings and flanges have increased in both actual terms and relative to domestic production. Imports increased in actual terms by 30.8 percent (as measured in

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[1077] CR at TUBULAR-55; PR at TUBULAR-43.

[1078] CR at TUBULAR-55; PR at TUBULAR-43.

[1079] CR at TUBULAR-62; PR at TUBULAR-50.

[1080] CR at TUBULAR-59; PR at TUBULAR-47; Tr. at 2514 (Berger); Tr. at 2516 (Zidell); Tr. at 2524 (Keilers).

[1081] CR and PR at Table TUBULAR-C-6.

[1082] CR and PR at Table TUBULAR-C-6.

[1083] CR and PR at Table TUBULAR-C-6.

[1084] CR and PR at Table TUBULAR-36.

quantity) during the course of the investigation, and by 15.3 percent between 1999 and 2000. Imports were 32.1 percent higher in interim 2001 than in the same period of 2000. Imports increased in each year of the period examined and were at their highest level of the period in 2000.[1085]

Imports have taken an increasingly larger share of the domestic market each year since 1997, with the largest increase occurring in 2000. The market share captured by imports also increased sharply in interim 2001 as compared to the same period of 2000. The share of the domestic market held by imports was 35.0 percent in 1996 and fell to 32.9 percent in 1997 and then rose to 35.5 percent in 1998, 37.7 percent in 1999, and 41.7 percent in 2000. The share of the market held by imports was 46.7 percent in interim 2001, well above the market share of 39.0 percent in the same period of 2000.[1086] The steady increase in volume of imports, and the increase in import market share, especially since 1997, coincided with the deterioration of the condition of the domestic industry described above.

Information on prices was mixed. The AUVs of domestic shipments fluctuated from 1996 to 1998, then fell somewhat from 1998 to 2000; they were lower in interim 2001 compared to interim 2000. The AUVs of imports fluctuated but increased overall during the period. Import AUVs were generally above domestic AUVs.[1087] By contrast, pricing information gathered by the Commission on a butt weld fitting product[1088] showed that imports from non-NAFTA sources and Mexico (there were no reported imports from Canada) undersold the domestic product in each quarterly period for which data were provided. The data further showed that the margin of underselling was at its highest level in 2000 and January-June 2001. Non-NAFTA imports have been priced at more than 20 percent below the domestic product since the fourth quarter of 1999.[1089] Domestic prices for the butt-weld product fell slightly during the period, before rising in the final quarter.[1090] Import prices for this product fell significantly over the period, particularly since 1998.

Purchasers of tubular products indicated that price was a key factor in their purchasing decisions, behind only quality.[1091] Moreover, nearly all purchasers indicated that imported and domestic fittings and flanges made to the same grade and specification may be used in the same applications. We find that such broad interchangeability indicates that price plays an important role in the market. In light of these facts, we find the product-specific evidence of underselling to be significant.

In sum, the steady and large increase in imports, which captured an increasing share of the U.S. market, led to erosions in such industry indicators as production, capacity utilization, shipments, and employment indicators. Lower production and shipments meant fewer sales over which to spread fixed costs, contributing to increased unit costs. The increasing presence of imports, in at least some cases at

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[1085] The ratio of imports to domestic production also increased significantly during the period examined, from 50.5 percent in 1996 to 69.7 percent in 2000, and was at its highest full-year level in 2000. This was significantly above the level of 55.3 percent in 1998 and 63.0 percent in 1999. The ratio in interim 2001 (88.8 percent) was substantially above the level of the same period of 2000 (59.4 percent). CR and PR at Table TUBULAR-15.

[1086] CR and PR at Table TUBULAR-C-6.

[1087] We are cautious of placing undue weight on AUV information, as it may be influenced by issues of product mix.

[1088] Carbon steel butt-weld fitting, 6 inch nominal diameter, 90 degree elbow, long radius, standard weight, meeting ASTM A-234, grade WPB or equivalent specification.

[1089] CR and PR at Table TUBULAR-61.

[1090] We observe that the domestic producers' attempt to raise prices in that final quarter, even in a period of rising demand, resulted in a substantial loss of volume.

[1091] CR and PR at Table TUBULAR-53. Domestic producers of fittings and flanges and a distributor of fittings testified that price was an important consideration in customer purchasing decisions. Tr. at 2516 (Zidell); Tr. at 2518 (Graham); Tr. at 2520 (Ketchum); Tr. at 2523 (Bernobich).

substantial underselling margins, prevented the industry from recouping increased costs through higher prices; instead, prices fell somewhat over the period. Accordingly, we find that imports are a substantial cause of serious injury.[1092]

Respondents argued that none of the injury data in the Commission prehearing staff report can be correlated to import volumes. They allege that when import volumes increased by the greatest margin, domestic industry operating income increased by the greatest margin.[1093] The evidence in the record does not support respondents' contentions. Imports increased by the greatest margin of the period examined in 2000 (15.3 percent), and the domestic industry operated at a loss that year, its worst year of the period examined. This occurred notwithstanding a 4.3 percent increase in apparent U.S. consumption of fittings and related products that year.[1094] While it is true that industry profit margins also fell sharply in 1999 when the quantity of imports increased by only a small amount (0.3 percent), the unit value of imports fell that year by 7.1 percent, domestic consumption fell by 5.5 percent, and the share of the market held by imports that year increased to 37.7 percent from 35.5 percent in 1998.[1095]

Respondents also contend that segments of the market are wholly or partially closed to imports due to Approved Manufacturers' Lists.[1096] However, it is questionable how much, if any, impact that such lists have on limiting import competition in fittings and flanges. Domestic fittings and flanges producers who appeared at the Commission's injury hearing testified that approved manufacturer lists have been expanded to include many foreign producers of fittings and flanges, and approved lists of butt-weld pipe fittings suppliers include firms in Italy, Thailand, Japan, the United Kingdom, Austria, France, Germany, Canada, and Mexico.[1097] More generally, approved manufacturer lists do not appear to have been an insurmountable hurdle to imports entering the U.S. market, as they increased by over 30 percent from 1996 to 2000, and by another 32 percent between interim 2000 and 2001.

Respondents also alleged that causes other than imports were responsible for any injury experienced by the domestic industry. First, respondents assert that the industry's performance is related to factors such as the business cycle in the oil and gas industry.[1098] A certain portion of domestic production is used for oil- and gas-related purposes and thus would be affected by market dynamics in that sector. However, to the extent that the industry's performance is related to the business cycle in the oil and gas industry, this should mean that the industry's financial performance should have been strong in 2000 and into 2001 because demand for OCTG and other oil and gas related products was very strong during that period. In fact, consumption of fittings and flanges was 4.3 percent higher in 2000 than in 1999, and was 10.4 percent higher in interim 2001 than in interim 2000. However, the financial

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[1092] Domestic producers cited increased imports as the cause of injury to the domestic industry. In the questionnaire sent to fittings producers, the Commission asked recipients to identify the factors, from a list of 13, including imports, that are adversely impacting the domestic industry. Recipients were given the option of identifying more than one factor. Of those responding, 16 producers identified imports, and one identified the general economic downturn. No other factors were identified. Persons testifying at the public hearing also cited imports. One company official asserted that declining sales volumes and profits caused by imports have forced his firm to shelve plans for capital investment, severely impairing the firm's competitiveness and efficiency. Tr. at 2517 (Zidell).

[1093] Bebitz et al. posthearing brief at 11-17.

[1094] CR and PR at Table TUBULAR-C-6.

[1095] CR and PR at Table TUBULAR-C-6.

[1096] Bebitz et al. Posthearing Injury Brief at 11-17.

[1097] Tr. at 2516-17 (Zidell); at 2522-23 (Bernovich).

[1098] Joint Respondents Prehearing Injury Brief on Product 22, Carbon Steel Flanges, Fittings, and Tool Joints, at 49.

performance of the fittings industry was at its lowest level in 2000, and the profit level in interim 2001, while positive, remained well below the level of earlier years in the period examined on an annualized basis.[1099]

Respondents also claim that the domestic industry's capacity expansion and intra-industry price competition led to injury.[1100] The industry did add capacity over the period examined, but at a rate less than the increase in apparent consumption.[1101] Thus, the increase in capacity would not be expected to place substantial pressure on domestic prices. Nor have respondents identified what has changed over the period examined such that competition among domestic producers alone would turn a solidly profitable industry into one experiencing operating losses.

Respondents allege that the decreasing profitability of the domestic has resulted from industry facilities that are inefficient or outdated, and that domestic producers are unable to obtain sufficient forgings used in domestic production.[1102] These allegations are not supported by record information.

Respondents also claim that the industry suffered from a shortage of qualified workers.[1103] While a few producers noted worker shortages at certain times, the claim of a worker shortage is inconsistent with the fact that the domestic industry reduced its production workers by 6 percent from 1998 to 1999, another 8.7 percent from 1999 to 2000, and by 4.5 percent between interim 2000 and interim 2001. These reductions coincided with reduced industry production, shipments, and market share, as imports increased.

Finally, respondents claim that purchaser consolidation explains any negative price effects experienced by the industry.[1104] In support, respondents cite one domestic producer who indicated that consolidation had negatively impacted price levels, but also had the benefit of reducing shipping costs. In general, purchaser consolidation would be expected to place some pressure on domestic prices. However, any consolidation would not explain the reduction in domestic production, shipments, employment, and other non-price indicators that occurred during the period examined.

In summary, we find that the increase in imports of fittings is an important cause of the serious injury to the domestic fittings industry and not less important than any other cause, and therefore have made an affirmative determination.

5. NAFTA Findings

For the reasons set forth below, we find that imports of fittings from Canada and Mexico account for a substantial share of total imports and are contributing importantly to the serious injury to the domestic fittings industry.

[1099] CR and PR at Table TUBULAR-C-6.

[1100] Joint Respondents Prehearing Injury Brief on Product 22, Carbon Steel Flanges, Fittings, and Tool Joints, at 53, 59.

[1101] CR and PR at Table TUBULAR-C-6.

[1102] Joint Respondents Prehearing Injury Brief on Product 22, Carbon Steel Flanges, Fittings, and Tool Joints, at 51, 53.

[1103] Joint Respondents Prehearing Injury Brief on Product 22, Carbon Steel Flanges, Fittings, and Tool Joints, at 58.

[1104] Joint Respondents Prehearing Injury Brief on Product 22, Carbon Steel Flanges, Fittings, and Tool Joints, at 52.

Imports from Canada. Canada was the third largest supplier of fittings, flanges, and tool joints in each of the three recent years and thus was among the top five suppliers.[1105] Thus, we find that imports from Canada account for a substantial share of total imports.

We also find that imports from Canada have contributed importantly to the serious injury. Imports from Canada have accounted for an increasing share of total imports. Since 1998, imports from Canada have increased more than twice as fast (39.4 percent) as imports from all sources (15.6 percent), and Canada accounted for 24.8 percent of the total increase in imports from all sources since 1998. These imports accounted for 9.8 percent of total imports in 1998, 9.9 percent in 1999, and 11.9 percent in 2000, and for 10.0 percent of the total imports in interim 2001 as compared to 12.1 percent in the same period of 2000. Imports from Canada have increased by a significant amount since 1998, rising from 11,510 short tons that year to 11,649 short tons in 1999, and then increasing 37.7 percent to 16,046 short tons in 2000. Imports from Canada were 9.9 percent higher (8,178 short tons) in interim 2001 than in the same period of 2000 (7,441 short tons).[1106]

There was no product-specific pricing data for imports from Canada. The AUVs for imports from Canada were generally twice as high as AUVs of other imports or of the domestic product. We hesitate to draw any definitive conclusions from this fact given that the category contains a mix of products at many different price points, and that Canadian imports gained significant market share over the period examined, notwithstanding their higher AUVs. The overwhelming number of purchasers indicated that the Canadian product and U.S. product produced to the same grade and specification are generally used in the same applications.[1107] [1108]

Accordingly, we find that imports from Canada have contributed importantly to the serious injury.

Imports from Mexico. Mexico has been one of the top five suppliers of fittings in each of the three most recent years. Mexico was the largest supplier in both 1998 and 2000, and the second largest supplier in 1999. Mexico was also the largest supplier during interim 2001.[1109] Thus, imports from Mexico account for a substantial share of total imports.

We also find that imports from Mexico have contributed importantly to the serious injury. Although imports from Mexico sharply decreased during 1998-1999, imports had surged to an exceptionally high level in 1998 (46 percent higher than the next highest year during 1996-2000), and thus contributed importantly to the import surge. Imports from Mexico then rose in 2000, and were

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[1105] INV-Y-180 at G22.

[1106] CR and PR at Table TUBULAR-C-6.

[1107] CR at TUBULAR-62; PR at TUBULAR 50.

[1108] Chairman Koplan concurs that imports of fittings, flanges and tool joints from Canada account for a substantial share of total imports, but finds that they do not contribute importantly to the serious injury caused by the imports. The AUVs for imports from Canada were dramatically higher than the AUVs of the domestic product and imports from non-NAFTA countries. Specifically, the AUVs of Canadian imports exceeded the AUVs of domestic net commercial sales by 210 percent to 242 percent during each full year of the investigation period, while the AUVs of Canadian imports exceeded the AUVs of U.S. imports from non-NAFTA countries by 218 percent to 240 percent during the same period. *See* CR and PR at Table TUBULAR-C-6. Based upon this evidence, Chairman Koplan finds that imports from Canada do not compete to a significant degree with products produced by the domestic industry. Accordingly, he finds that imports of fittings, flanges and tool joints from Canada do not contribute importantly to the serious injury caused by the imports.

[1109] INV-Y-180 at Table G22.

higher in interim 2001.[1110] We note that imports from all sources increased at a faster rate during 1998-2000. Total imports remained relatively flat during 1998-1999 before increasing by 15.3 percent in 2000. Imports from Mexico accounted for 23.8 percent of total imports in 1998, 15.6 percent in 1999, and 13.9 percent in 2000; they accounted for 12.3 percent of the total imports in interim 2001 as compared to 14.0 percent in interim 2000. Imports from Mexico were 27,868 short tons in 1998, fell to 18,268 short tons in 1999, and then increased to 18,761 short tons in 2000. Imports in interim 2001 were 15.9 percent higher (9,976 short tons) than in the same period of 2000 (8,610 short tons).[1111]

The record shows that imported fittings from Mexico undersold domestic fittings by substantial and increasing margins. The weighted average prices of Mexican fittings collapsed in 2000 and interim 2001, falling from *** per fitting in the fourth quarter of 1999 to *** in 2001. During this time margins of underselling more than doubled, from *** percent to *** percent.[1112] A domestic industry official testified at the Commission's injury hearing that imports of Mexican fittings were being offered for sale in the United States at prices 43 to 68 percent below the prices of his firm.[1113] [1114]

D. Seamless and welded OCTG industry

1. Increased imports

Finding. We find that the statutory criterion of increased imports is met. Imports of seamless and welded OCTG increased significantly during the period examined, and were at their highest level in 2000, the last full year of the period examined. This increase continued into 2001, and imports were significantly higher in interim (January-June) 2001, than in the corresponding period in 2000.

The increase during the period examined was irregular but clear. Imports of seamless and welded OCTG totaled 231,460 short tons in 1996, increased to 411,821 short tons in 1997, then declined to 343,154 short tons in 1998, fell further to 170,168 short tons in 1999, and then rose sharply to 720,244 short tons in 2000.[1115] Imports rose from 314,344 short tons in interim 2000 to 576,971 short tons in interim 2001.[1116] The ratio of imports to production increased from 10.7 percent to 19.7 percent during 1996-1998; decreased to 13.6 percent in 1999, and rose sharply to 28.5 percent and 39.9 percent during

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[1110] CR and PR at Table TUBULAR-C-6.

[1111] CR and PR at Table TUBULAR-C-6.

[1112] CR and PR at Table TUBULAR-61.

[1113] Tr. at 2522 (Coulas).

[1114] Commissioner Hillman concurs that imports of fittings and flanges from Mexico account for a substantial share of imports, but finds that imports from Mexico do not contribute importantly to serious injury. Imports from Mexico increased by 62.8 percent from 1996 to 1998, but then fell back substantially in 1999 and 2000. Overall, from 1996 to 2000, imports from Mexico increased by a significantly lower rate (9.6 percent) than imports from all countries (30.8 percent) or imports from non-NAFTA countries (32.2 percent). Between interim 2000 and interim 2001, imports from Mexico increased by 15.9 percent, compared to 32.1 percent for imports from all countries and 38.8 percent for imports from non-NAFTA countries. Due to the lower growth rates, Mexico's share of total imports fell from 1996 to 2000, and from interim 2000 to interim 2001. Imports of butt-weld pipe fittings from Mexico undersold the comparable domestic product by large and increasing margins over the POI. On balance, based on the substantially lower growth rate of imports from Mexico compared to other imports, and the absolute decline in imports from Mexico during the latter part of the period examined, Commissioner Hillman finds that imports from Mexico do not contribute importantly to serious injury.

[1115] CR and PR at Tables TUBULAR C-3, C-5.

[1116] CR and PR at Tables TUBULAR C-3, C-5.

2000 and interim 2001, respectively.[1117] Thus, imports increased both in absolute terms and relative to domestic production.

2. The Domestic Industry Is Not Seriously Injured

Finding. For the reasons stated below, we find that the domestic industry is not seriously injured: that is, we do not find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is not seriously injured, we considered carefully the evidence in the record relating to the listed statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, research and development expenditures, and foreign capacity and production.

The data below are based on questionnaire responses submitted by 14 U.S. OCTG producers estimated to account for virtually all U.S. production during the period examined.[1118]

Domestic production fluctuated considerably during the period examined and was at its second highest level in 2000, which was more than double (102.3 percent higher) the 1999 level. Domestic production was 20.8 percent higher in interim 2001 than in the same period of 2000.[1119]

Industry capacity increased during the period examined and was at its highest level in 2000. Capacity was 1.7 percent higher in interim 2001 than in the same period of 2000.[1120] The industry's capacity utilization rate fluctuated significantly during the period examined, and was at its second highest level in 2000. The capacity utilization rate was 62.5 percent in 1996, rose to 75.0 percent in 1997, fell sharply to 48.0 percent in 1998 and 36.7 percent in 1999, and then rose sharply to 65.1 percent in 2000. The capacity utilization rate was 74.6 percent in interim 2001 as compared to 63.0 percent in the same period of 2000.[1121] Accordingly, we do not find that there is a significant idling of productive facilities in the domestic industry.

U.S. producers' shipments followed a similar trend and were also at their second highest level of the period examined in 2000.[1122] The average unit value of U.S. producers' shipments declined overall but rose at the end of the period examined.[1123]

[1117] Derived from CR and PR at Table TUBULAR-C-ALT-1.

[1118] CR and PR at TUBULAR-4.

[1119] Domestic production was 2.17 million short tons in 1996, rose to 2.72 million short tons in 1997, fell sharply to 1.74 million short tons in 1998 and 1.25 million short tons in 1999, and then rose to 2.53 million short tons in 2000. Domestic production in interim 2001 was 1.45 million short tons as compared to 1.20 million short tons in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1120] Industry capacity rose from 3.47 million short tons in 1996 to 3.62 million short tons in 1997 and 3.63 million short tons in 1998, fell to 3.41 million short tons in 1999, and then rose to 3.89 million short tons in 2000. Capacity was 1.93 million short tons in interim 2001 as compared with 1.90 million short tons in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1121] CR and PR at Table TUBULAR-C-ALT1.

[1122] Shipments were 1.98 million short tons in 1996, rose to 2.48 million short tons in 1997, fell sharply to 1.60 million short tons in 1998 and 1.13 million short tons in 1999, and then almost doubled (rose 90.6 percent) to 2.17 million short tons in 2000. U.S. producers' shipments were 1.31 million short tons in interim 2001, 26.8 percent above the level of the same period of 2000 (1.04 million short tons). CR and PR at Table TUBULAR-C-ALT1.

[1123] The average unit value was $720 per ton in 1996, increased to $765 per ton in 1997 and $833 per ton in 1998, fell to $671 per ton in 1999, and then increased to $698 per ton in 2000. The average unit value in interim

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Domestic producers' share of the domestic market declined irregularly during the period examined, and was at its lowest level in 2000. Domestic producers' market share was 89.6 percent in 1996, and then declined to 85.8 percent in 1997 and 82.4 percent in 1998, rose to 87.0 percent in 1999, and then fell to 75.1 percent in 2000. It was lower in interim 2001 (69.4 percent) than in same period of 2000 (76.7 percent).[1124] However, the increase in market share held by imports in 2000 and interim 2001 coincided with a very large increase in apparent U.S. consumption of OCTG. Apparent U.S. consumption in 2000 (2.89 million short tons) was the second highest of the period examined, and more than double the 1999 level (1.31 million short tons).[1125] Domestic production supplied a large portion of this increase.

Industry profitability, as measured in terms of operating income or loss, fluctuated widely during the period examined, and was relatively high at the end of the period examined, including 2000 and interim 2001.[1126] The ratio of operating income (or loss) to sales followed a similar trend. The ratio was 4.8 percent in 1996, rose to 8.1 percent in 1997, fell to 5.2 percent in 1998 and (15.1 percent) in 1999, and then increased to 7.6 percent in 2000. The ratio was 15.5 percent in interim 2001 as compared to 3.2 percent in the same period of 2000.[1127]

The number of firms reporting operating losses followed the same trend. Three of 13 reporting firms operated at a loss in 1996, none of 14 in 1997, 4 of 14 in 1998, 9 of 13 in 1999, and only 1 of 14 in 2000. None of the 14 reporting firms reported that they operated at a loss during interim 2001, as compared to 3 of 12 reporting firms in the same period of 2000.[1128] According, we do not find that a significant number of firms in the industry are unable to carry out domestic production operations at a reasonable level of profit.

Industry employment, as measured in production workers, fluctuated during the period examined, and was at its second highest full-year level in year 2000, 36.9 percent above the 1999 level.[1129] Wages paid followed the trend in employment and were at their second highest level of the period examined in 2000.[1130] Wages paid were higher in interim 2001 ($114.6 million) than in the same period of 2000 ($90.4 million).[1131] Industry productivity, as measured in terms of tons produced per

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[1123] (...continued)
2001 was $786 per ton as compared to $677 per ton in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1124] CR and PR at Table TUBULAR-C-ALT1.

[1125] CR and PR at Table TUBULAR-C-ALT1.

[1126] Operating income was $76.1 million in 1996, rose to $167.8 million in 1997, fell sharply to $76.3 million in 1998 and a loss of $124.9 million in 1999. The industry returned to profitability in 2000, with operating income of $130.0 million. Operating income was $173.6 million in interim 2001 as compared to $23.8 million in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1127] CR and PR at Table TUBULAR-C-ALT1.

[1128] CR and PR at Tables TUBULAR-17, 19.

[1129] The number of production workers was 16.4 percent higher in interim 2001 than in the same period of 2000. The number of production workers was 3,972 in 1996, increased to 4,533 in 1997, fell to 3,718 in 1998 and 3,096 in 1999, and then rose to 4,237 in 2000. The number of production workers was 4,570 in interim 2001 as compared to 3,896 in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1130] Total wages paid were $169.9 million in 1996, increased to $202.4 million in 1997, and then fell to $153.4 million in 1998 and $126.2 million in 1999, and then increased to $188.9 million in 2000. CR and PR at Table TUBULAR-C-ALT1.

[1131] CR and PR at Table TUBULAR-C-ALT1.

thousand hours, increased during the period examined, and was at its highest full-year level in 2000.[1132] Accordingly, we do not find that there is significant unemployment or underemployment within the domestic industry.

Domestic end of period inventories increased irregularly over the period examined, but tended to follow changes in production and shipments.[1133] Capital expenditures fluctuated, and were at their second highest level of the period examined in 2000.[1134] Industry research and development expenditures remained relatively steady during the period examined and were rising at the end of the period.[1135]

In summary, the strong rebound in industry production and sales, capacity utilization, employment, and profitability in 2000 and interim 2001, which showed the industry to be operating at among the best levels of the period examined, does not indicate that the industry is seriously injured. Other factors examined, including increased inventories and the decline in domestic producers' market share, which in other cases might suggest injury, are more reflective in this instance of the increase in domestic production (in the case of inventories) and the very large increase in OCTG consumption (in the case of market share) that benefitted domestic producers, and do not indicate serious injury in this investigation.

Domestic industry representatives conceded that the financial data gathered by the Commission for the period through June 30, 2001, were "strong."[1136] The industry argued in its briefs and at the injury hearing that the condition of the industry had changed significantly since the end of June and that the industry was either threatened with serious injury or suffering actual serious injury.[1137] It argued that falling domestic OCTG orders and prices, rising domestic OCTG inventories, and continuing high levels of imports had resulted in a decline in domestic industry production, worker layoffs, and a downward revision of earnings estimates.[1138] However, while domestic producers provided some anecdotal information in support of this alleged change in trends, we do not find it sufficient to overcome the

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[1132] Productivity was 246.8 tons per thousand hours in 1996, increased to 262.5 tons per thousand hours in 1997, fell to 226.8 tons per thousand hours in 1998 and 194.4 tons per thousand hours in 1999, and then increased to 268.0 tons per thousand hours in 2000. Productivity was 267.2 tons per thousand hours in interim 2001 as compared to 261.4 tons per thousand hours in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1133] Domestic end-of-period inventories were 241,178 short tons in 1996 and rose to 254,010 short tons in 1997, fell to 216,752 short tons in 1998 and 205,246 short tons in 1999, and then increased to 320,320 short tons in 2000, their highest level of the period examined. Domestic end-of-period inventories were 316,886 short tons in interim 2001 as compared to 260,538 short tons in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1134] Capital expenditures were $27.9 million in 1996, rose to $59.8 million in 1997 and $95.4 million in 1998, fell to $64.7 million in 1999, and increased to $70.9 million in 2000. Capital expenditures were $26.9 million in interim 2001 as compared to $38.3 million in the same period of 2000. CR and PR at Table TUBULAR-C-ALT1.

[1135] Research and development (R&D) expenses were $4.40 million in 1996, rose to $5.09 million in 1997, fell to $5.04 million in 1998 and to $3.73 million in 1999, and then rose to $5.09 million in 2000. R&D expenses were higher in interim 2001 ($3.89 million) than in same period of 2000 ($3.48 million). CR and PR at Tables TUBULAR-26, 28.

[1136] Tr. at 2590 (Narkin).

[1137] Tr. at 2589 (Usher): "If I were sitting here in March, I would not be making the argument that we were in difficult times, but today we are. I mean, it just shows you how fast this business changes." *See also* Tr. at 2590 (Usher) ("I would say today it is actual injury"); Tr. at 2590 (Narkin) ("[I]f we were writing that brief today, you know, I think it's quite possible we might argue serious injury.")

[1138] Tr. at 2463-66 (Usher); Tr. at 2583 (Dunn); Tr. at 2583-84 (Narkin); Tr. at 2584 (Schagrin); Tr. at 2584-85 (Vaughn).

comprehensive data gathered by the Commission for the period through June 30, 2001, which show the domestic industry's condition to be positive during the period examined, with the exception of 1999.

3. Increased Imports Are Not a Substantial Cause of the Threat of Serious Injury

Finding. We find that increased imports are not a substantial cause of the threat of serious injury; that is, we find that "a significant overall impairment in the position" of the domestic industry due to imports is not "clearly imminent." We also examined the various indicators relevant to the question of threat of serious injury. In examining those indicators we look for declining trends that would indicate that serious injury, although not yet occurring, is clearly imminent. While there is some recent anecdotal information that suggests that the trends in certain data may be turning downward, the data that the Commission collected for the period through June 30, 2001, show that the trends in most indicators are up and suggest that the condition of the industry was improving through June 2001, not worsening. As the data set out in the preceding section show, in 2000 and in interim 2001 (as compared to the same period in 2000), domestic production and shipments were up, domestic capacity and capacity utilization were up, employment was up, and industry profitability was up significantly. Industry capital expenditures remained strong.

As described above, imports fluctuated significantly over the period examined, first rising in 1997, falling sharply in 1999, then rising by a huge margin in 2000, and rising significantly from interim 2000 to interim 2001. The pattern of import increases and decreases followed changes in domestic demand, which was volatile over the period. From 1999 to 2000, imports captured substantial market share, rising from 13.0 percent to 24.9 percent of apparent consumption. Import market share increased from 23.3 percent in interim 2000 to 30.6 percent in interim 2001.

Ordinarily, increases of this magnitude in the volume and market share of imports over a short period of time would be expected to be harmful to domestic producers. However, as discussed above, the domestic industry's performance, with the exception of 1999 when demand plummeted, showed few signs of serious injury. In particular, the industry's condition in 2000, and in interim 2001, was strong. This suggests that, at least over the period for which we collected data, any impact of imports was outweighed by the impact of changes in demand for OCTG. Apparent consumption of OCTG was at its full-year peak in 2000, and increased strongly from interim 2000 to interim 2001. On a full-year basis, consumption in interim 2001 was at a higher level than any full year during the period.

The domestic industry has argued that demand conditions have taken a substantial turn for the worse after June 2001, the end of the period for which we collected information. As we described above, it is our view that information on the period after our period of investigation, which is necessarily anecdotal, cannot outweigh the clear information pertaining to the period through June 30, 2001.[1139]

We also examined data provided by foreign producers with respect to capacity, exports, and U.S. importers' inventories. The data show that foreign capacity has been relatively stable in recent years and, if anything, has declined slightly.[1140] While the foreign producers possess excess capacity, particularly for welded OCTG, the amount of the excess has not increased over the period. The share of

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[1139] We also note that the information on demand conditions in the period subsequent to our period of investigation is mixed. *Compare* U.S. Steel Prehearing Injury Brief at 18-25, *with* Joint Respondents' Posthearing Injury Brief at 5-10.

[1140] Foreign producers' projections for full year 2001 and 2002 suggest a further small decline. Foreign producers project that their full year 2001 exports to the United States will be below the 2000 level, and that exports to the United States will fall further in 2002. CR and PR at Tables TUBULAR-27, 33.

foreign producers' shipments destined for the U.S. market increased from 4.2 percent in 1999 to 10.1 percent in 2000, as exports to the U.S. market rose in 2000. However, as noted above, even a relatively large increase in imports was not injurious in this case.

Neither foreign producer-held inventories, which fluctuated over the period, nor import inventories held by U.S. importers, suggest a threat of serious injury. The ratio of U.S. importers' end of period inventories to U.S. shipments for seamless OCTG was at its lowest level of the period examined in 2000, 2.2 percent. The ratio was 14.2 percent in 1996, 23.9 percent in 1997, 45.7 percent in 1998, and 11.7 percent in 1999. The ratio was 4.9 percent in interim 2001 as compared to 3.7 percent in the same period of 2000. The ratio for welded OCTG was at its second lowest level of the period examined in 2000, 5.1 percent. This compares with 16.0 percent in 1996, 9.9 percent in 1997, 19.6 percent in 1998, and 2.2 percent in 1999. The ratio was 7.1 percent in interim 2001 as compared to 3.0 percent in the same period of 2000.[1141]

While the increase in domestic producers' inventories in 2000 and interim 2001 might be suggestive of an impending decline in industry indicators, we believe that in this case it largely reflected the large increase in domestic production during that period. On the other hand, importers' inventories, as measured in terms of ratio of inventories to U.S. shipments, were at or close to their lowest levels of the period examined in 2000, indicating no buildup that would overhang the market and threaten prices. With regard to the increase in market share held by imports (and corresponding loss in the domestic industry's market share), another indicator of an impending decline in industry conditions, we believe that it reflects in large part the very substantial increase in domestic consumption of OCTG in 2000 and interim 2001 that benefitted both domestic producers and importers.

In conclusion, we determine that increased imports of OCTG are not a substantial cause of serious injury or the threat of serious injury to the domestic OCTG industry.

E. Seamless Pipe Industry

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met. Imports of seamless pipe increased irregularly in both absolute terms and relative to domestic production during the period examined. Imports were 444,874 short tons in 1996, rose to 469,751 short tons in 1997, and 661,528 short tons in 1998, their highest level during the period examined. Imports fell to 407,134 short tons in 1999, and then increased to 562,920 short tons in 2000, their second highest level of the period examined. Imports were higher in interim 2001 (300,600 short tons) than in the same period of 2000 (287,819 short tons).[1142]

The ratio of imports to production also increased from 42.5 percent in 1996 to 46.5 percent in 1997, and 70.5 percent in 1998, the highest full-year level of the period examined, and then declined to 54.5 in 1999. The ratio then increased to 67.0 percent in 2000. The ratio then climbed to 74.2 percent in interim 2001 compared to 64.1 percent in interim 2000.[1143]

In view of the above information, we find that seamless pipe is being imported into the United States in increased quantities in both absolute terms and relative to domestic production.

[1141] CR and PR at Table TUBULAR-39.

[1142] CR and PR at Table TUBULAR-C-2.

[1143] CR and PR at Table TUBULAR-10.

2. The Domestic Industry Is Not Seriously Injured

Finding. For the reasons stated below, we find that the domestic industry is not seriously injured: that is, we do not find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is not seriously injured, we considered carefully the fact that the domestic industry maintained significant profitability in each year of the period examined as well as the fact that the economic indicators of the industry declined most in the year in which apparent consumption declined dramatically. In addition, we considered the evidence in the record relating to the listed statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, research and development expenditures, and foreign capacity and production.

The data below are based on questionnaire responses submitted by 10 U.S. seamless pipe producers estimated to account for virtually all (approximately 96 percent) of U.S. production during the period examined.[1144]

We do not find that a significant number of domestic firms are unable to carry out domestic production operations at a reasonable level of profit. The industry showed a relatively strong operating profit in each year of the period examined, as well as in interim 2001 and the same period of 2000.[1145] Operating profit rose through 1997, fell in 1998 and 1999, and rose in 2000. Operating profit was higher in interim 2001 than in the same period of 2000.[1146] The ratio of operating income to sales followed a similar trend. The ratio was 16.6 in 1996, rose to 18.1 in 1997, fell to 11.8 in 1998 and 5.9 in 1999, and then rose to 10.6 in 2000. The ratio was 12.6 in interim 2001 as compared to 8.8 in the same period of 2000.[1147] We particularly note that operating income and the ratio of operating income to sales remained relatively strong in 1999, a year in which apparent consumption fell by 28.6 percent.

Most of the reporting firms were profitable over the investigation period. In the first three years of the investigation, none of eight reporting firms operated at a loss. In the fourth year, four of nine reporting firms operated at a loss, but in the fifth year, only one of nine reporting firms operated at a loss. In interim 2001, three of the nine reporting firms operated at a loss, as compared with one of nine reporting firms in the same period of 2000.[1148]

We find overall that there is significant idling of productive facilities, but take note of the substantial improvement in production and capacity utilization from 1999 to 2000. Domestic production fell by 28.5 percent from 1996 to 1999, but then rose 12.4 percent from 1999 to 2000; production was 9.8 percent lower in interim 2001 compared to interim 2000.[1149] U.S. producers' shipments followed the same overall trend, reaching a low-point in 1999, then rising in 2000, for an overall decline of 19.0

[1144] CR and PR at TUBULAR-3.

[1145] CR and PR at Table TUBULAR-C-2.

[1146] Industry operating income was $155.9 million in 1996, rose to $175.8 million in 1997, fell to $101.4 million in 1998 and $40.2 million in 1999, and then increased to $80.5 million in 2000. Operating income was $46.8 million in interim 2001 as compared to $34.7 million in the same period of 2000. CR and PR at Table TUBULAR-C-2.

[1147] CR and PR at Table TUBULAR-C-2.

[1148] CR and PR at Table TUBULAR-16.

[1149] U.S. production was at its highest full-year level of the period examined at 1.05 million short tons in 1996. U.S. production fell to 1.01 million short tons in 1997, 937,932 short tons in 1998, and 746,838 short tons in 1999, and then rose to 839,701 short tons in 2000. U.S. production in interim 2001 was 404,993 short tons as compared to 448,868 short tons in the same period of 2000. CR and PR at Table TUBULAR-C-2.

percent from 1996 to 2000; shipments fell 6.1 percent from interim 2000 to interim 2001.[1150] Industry capacity fell by 4.6 percent from 1996 to 2000, and by 6.0 percent from interim 2000 to interim 2001.[1151] As a result of declining, then rising, production, capacity utilization declined from 68.2 percent in 1996 to 47.7 percent in 1999, then rose to 57.4 percent in 2000.

U.S. producers' share of the U.S. market declined irregularly during the period examined, from 67.6 percent in 1996 to 57.2 percent in 2000, its second lowest full-year level of the period.[1152] U.S. producers' market share was 56.3 percent in interim 2001 as compared to 59.0 percent in the same period of 2000.[1153]

In view of the overall declines in production, shipments, capacity utilization, and domestic market share from 1996 to 2000, we conclude that there is significant idling of productive facilities in this industry. However, our finding is tempered by the significant recent improvement in most of these indicators, from 1999 to 2000, and by the fact that there were no significant facility closures during the period examined.

We find that there is significant unemployment and underemployment within the domestic industry. Industry employment remained relatively stable during 1996-1998 and declined over the remainder of the period, for an overall decline of 9.5 percent.[1154] Wages paid increased in the second and third years of the period examined, fell in the fourth year, and then increased in the fifth year, for an overall decline of 6.4 percent. Wages paid were lower in interim 2001 than in interim 2000.[1155] Worker productivity fell during the first four years of the period examined, then rose by 8.9 percent in 2000 for an overall decline of 12.3 percent. Productivity fell again in interim 2001, compared to interim 2000.[1156]

We also examined several additional indicators of the industry's condition. U.S. producers' inventories declined during the first four years of the period examined, and then increased in the fifth year, 2000. Inventories were lower in interim 2001 than in interim 2000.[1157] Industry capital

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[1150] U.S. producers' shipments were 928,262 short tons in 1996, increased to 1.01 million short tons in 1997, fell to 882,122 short tons in 1998 and 695,252 short tons in 1999, and then increased to 751,603 short tons in 2000. U.S. producers' shipments were 388,016 short tons in interim 2001 as compared to 413,422 short tons in the same period of 2000. CR and PR at Table TUBULAR-C-2.

[1151] Capacity was 1.53 million short tons in 1996, rose to 1.57 million short tons in 1997, fell to 1.55 million short tons in 1998, rose to 1.57 million short tons in 1999, and then fell to 1.46 million short tons in 2000. Capacity was 6.0 percent lower in interim 2001 (688,167 short tons) than in the same period of 2000 (732,298 short tons). CR and PR at Table TUBULAR-C-2.

[1152] U.S. producers' market share was 67.6 percent in 1996, increased to 68.3 percent in 1997, fell to 57.1 percent in 1998, rose to 63.1 percent in 1999, and fell to 57.2 percent in 2000. CR and PR at Table TUBULAR-C-2.

[1153] CR and PR at Table TUBULAR-C-2.

[1154] The number of production workers was 2,557 in 1996, and fell to 2,545 in 1997, 2,533 in 1998, 2,351 in 1999, and 2,313 in 2000. The number of production workers was 2,278 in interim 2001 as compared with 2,344 in the same period of 2000. CR and PR at Table TUBULAR-C-2.

[1155] Wages paid were $120.9 million in 1996, rose $123.4 million in 1997 and $124.5 million in 1998, fell to $111.2 million in 1999, and increased to $113.1 million in 2000. Wages paid were $54.1 million in interim 2001 as compared to $56.5 million in the same period of 2000. CR and PR at Table TUBULAR-C-2.

[1156] Productivity was 210.4 tons per thousand hours in 1996, fell to 205.0 tons per thousand hours in 1997, 191.8 tons per thousand hours in 1998, and 169.3 tons per thousand hours in 1999, and then rose to 184.4 tons per thousand hours in 2000. Productivity was 175.5 tons per thousand hours in interim 2001 as compared to 182.9 tons per thousand hours in the same period of 2000. CR and PR at Table TUBULAR-C-2.

[1157] Ending inventories were 127,003 short tons in 1996, fell to 107,286 short tons in 1997, 95,711 short tons in

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expenditures rose through 1998 and fell in 1999 and 2000, to a level just below the 1996 level. Capital expenditures were lower in interim 2001 than in the same period of 2000.[1158] Research and development expenditures fluctuated during the first three years of the period examined and then declined in 1999 and 2000, and were lower in interim 2001 than in the same period of 2000.[1159]

In summary, the data present a mixed picture as to whether the domestic industry is seriously injured. There were annual fluctuations in many of the factors examined, highlighted by a steep decline in industry performance in 1999, a year in which apparent U.S. consumption collapsed. Several of the output-related factors, such as the quantity of production and shipments, showed moderate changes between 1996 and 1998, followed by sharp declines in 1999 and solid recoveries in 2000, while employment showed declines over the latter portion of the period of investigation. Nevertheless, one facet of domestic industry performance remained consistent throughout the period examined: profitability. The domestic industry maintained strong operating margins throughout the period, other than in 1999. On balance, we find that the record does not indicate the type of "significant overall impairment" in the position of the domestic industry sufficient to constitute serious injury. Accordingly, we conclude that the domestic seamless pipe industry is not seriously injured.

4. Increased Imports Are Not a Substantial Cause of the Threat of Serious Injury

Finding. We find that increased imports are not a substantial cause of the threat of serious injury; that is, we find that "a significant overall impairment in the position" of the domestic industry due to imports is not "clearly imminent." As the data set out in the preceding section show, most of the factors relevant to the condition of the industry were higher in 2000 than in 1999. Domestic production and shipments were up in 2000, and U.S. producers' operating income was up 100 percent. While capacity was down in 2000, capacity utilization was up. Employment was down slightly, but wages paid were up. The ratio of inventories to domestic shipments was stable. Although several of the factors were lower in interim 2001 as compared to the same period of 2000, there was no marked decline in any of them; in fact, several factors showed improvement, including profitability and the ratio of inventories to shipments. The more general declines in several factors, such as market share and capital expenditures, when viewed against other factors that were stable or improving, do not provide a sufficient basis for concluding that serious injury is imminent.

As described above, imports fluctuated significantly over the period examined, rising in 1997 and again in 1998 to the highest full-year level of the period examined. Imports fell sharply in 1999 to their lowest full-year level of the period examined, and then rose in 2000, but the 2000 level was still well below the 1998 level. Imports were higher in interim 2001 than in interim 2000. With the

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[1157] (...continued)
1998, and 85,626 short tons in 1999, and then increased to 93,954 short tons in 2000. Ending inventories were 89,692 short tons in interim 2001 as compared to 213,016 short tons at the same time in 2000. CR and PR at TUBULAR-C-2.

[1158] Capital expenditures were $25.7 million in 1996, rose to $50.4 million in 1997 and $74.7 million in 1998, and then fell to $43.0 million in 1999 and $20.0 million in 2000. Industry capital expenditures were $5.8 million in interim 2001 as compared to $8.4 million in the same period of 2000. CR and PR at TUBULAR-C-2.

[1159] Research and development expenditures were $3.57 million in 1996, fell to $3.38 million in 1997, rose to $3.52 million in 1998, and then fell $3.13 million in 1999 and $2.39 million in 2000, their lowest level of the period examined. Research and development expenditures were $617,000 in interim 2001 as compared to $1.22 million in the same period of 2000. CR and PR at TUBULAR-20.

exception of interim 2000 and interim 2001, the pattern of import increases and decreases followed changes in domestic demand, which was volatile over the period.

Import market share also fluctuated over the period examined, falling in 1997, rising in 1998, falling in 1999, and rising in 2000. Imports accounted for a significant share of the U.S. market throughout the period examined, accounting for between 31.7 percent (in 1997) and 42.9 percent (in 1998) of the U.S. market. Imports captured increased market share between 1999 and 2000, rising from 36.9 percent to 42.8 percent of apparent consumption. Imports' market share was 41.2 percent in interim 2000 and 43.0 percent in interim 2001.[1160]

Although imports increased fairly substantially over the period examined, the increase did not prove injurious. In fact, from 1998 to 1999, 1999 to 2000, and again between interim periods, increased import volumes and market share were accompanied by increased industry operating profits; similarly, decreased import volumes and market share were accompanied by decreased industry operating profits. It appears that, at least for the period examined in this investigation, industry performance has been more closely tied to changes in apparent consumption of seamless pipe than to changes in imports.

Moreover, the record does not indicate that an injurious increase in imports is likely in the imminent future. We examined foreign producers' capacity and exports to the U.S. market. The data show that foreign producers' seamless pipe capacity, which reached its highest level of the period examined in 1998, declined in 1999 and 2000.[1161] Foreign producers' exports to the U.S. market fluctuated during the period examined and were at their highest level in 1998 and their lowest level in 1999.[1162] Foreign producers' capacity utilization data indicate that while foreign producers possess some excess capacity to ship to the U.S. market, the amount of excess was lowest in 2000. Data show that foreign producers operated at 85.9 percent of capacity in 2000, somewhat above their average level of 78.6 percent during 1996-1998.[1163] Thus, there is no evidence of a substantial increase in available foreign capacity that would be poised to enter the U.S. market in the near future to threaten to cause serious injury to the domestic industry.

We also examined inventories held by foreign producers and U.S. importers' inventories. Foreign producers' inventories fluctuated over the period examined.[1164] The ratio of inventories to U.S. shipments showed no discernable trend. It was at its highest level in 1997 and lowest level in 1998 and at a mid-range level in 2000.[1165]

In view of the above information, we find that increased imports of seamless pipe are not a substantial cause of serious injury or the threat of serious injury to the domestic seamless pipe industry.

[1160] CR and PR at Table TUBULAR-C-2.

[1161] Foreign producers' capacity reached its highest level of the period examined in 1998 at 9.08 million tons, and then declined to 8.61 million tons in 1999 and 8.42 million tons in 2000. Foreign producers' capacity was 4.6 million tons in interim 2001 as compared to 4.4 million tons in the same period of 2000. CR and PR at Table TUBULAR-24.

[1162] Foreign producers's exports to the U.S. market were 425,725 tons in 1996, rose to 447,983 tons in 1997 and 575,268 tons in 1998, fell sharply to 368,725 tons in 1999, and then increased to 476,651 tons in 2000. Foreign producers' exports to the U.S. market were 261,670 tons in interim 2001 as compared to 225,435 tons in 2000. CR and PR at Table TUBULAR-24.

[1163] CR and PR at Table TUBULAR-24.

[1164] CR and PR at Table TUBULAR-24.

[1165] The ratio was 2.7 in 1996, rose to 3.7 in 1997, fell to 2.5 in 1998, rose to 3.6 in 1999, and fell to 3.3 in 2000. CR and PR at Table TUBULAR-39.

VII. CERTAIN STAINLESS STEEL AND ALLOY TOOL STEEL PRODUCTS[1166]

A. Domestic Industry Producing a Like or Directively Competitive Article

Finding. As discussed below, we find that there are ten domestic industries producing articles like and corresponding to the imported articles subject to investigation within the stainless steel and alloy tool steel products category. These are the industries producing (i) semifinished stainless steel products (i.e., stainless steel slabs, blooms, billets, and ingots); (ii) stainless steel cut-to-length plate; (iii) stainless steel bar and light shapes; (iv) stainless steel rod; (v) stainless steel wire; (vi) stainless steel woven cloth; (vii) seamless stainless tubular products; (viii) welded stainless tubular products; (ix) stainless steel fittings and flanges (including forgings); and (x) tool steel.[1167] As we previously discussed in the section of this opinion on carbon and alloy long products, we also find that there is one domestic industry producing carbon, alloy, and stainless steel wire rope.

1. Arguments of the Parties

The parties in this investigation are, to a significant degree, in agreement on the definition of the domestic industries in this proceeding. In particular, most domestic producers and respondent parties agree that the Commission should find that there are ten separate domestic industries, including the domestic producers of (i) semifinished stainless steel products, (ii) stainless plate, (iii) stainless bar, (iv) stainless rod, (v) tool steel, (vi) stainless wire, (vii) stainless woven cloth, (viii) stainless welded tubular products, (ix) stainless seamless tubular products, and (x) stainless fittings. In essence, these parties agree that these industries should be considered to be separate industries because they do not share productive facilities and processes to a significant degree.

Nonetheless, a number of parties have argued for different industry definitions than those set forth above. First, the United Steelworkers of America ("USWA") argues that the Commission should find that there is one domestic industry producing all of the stainless and tool steel products covered by the scope of this investigation.[1168] The USWA asserts that this approach is warranted because all covered stainless steel products are produced from the semifinished stainless products that are included within the scope of this investigation. In this regard, the USWA contends that stainless and tool steel products are defined by their metallurgical composition, which is set at the melt stage of the production process. They contend, therefore, that all stainless producers are affected by the loss of any sale at any stage of the production process for stainless steel. Accordingly, the USWA contends that the interrelationship of these products at the production stage indicates that these products are all part of the same like product and that there is one domestic industry producing them.[1169]

[1166] Unless otherwise stated, this section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller and Hillman. Commissioner Devaney joins sections VII.A.2.h and VII.H (stainless woven cloth), VII.A.2.i and VII.I (seamless stainless tubular products), VII.A.2.j and VII.J (welded stainless tubular products), and VII.A.2.k (stainless steel fittings and flanges).

[1167] We initially observe that there is no dispute that, within these particular groupings, there are domestically-produced articles "like" the imports subject to investigation. Additionally, since we have found that there are industries producing products like each of these articles, we did not need to reach the question of whether there are directly competitive articles.

[1168] USWA Prehearing Brief on Injury at 1.

[1169] USWA Prehearing Brief on Injury at 3-6.

In addition, two other parties contend that the Commission should define the industry more broadly than the ten separate industries described above. First, as discussed above in the carbon and alloy long products section, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers argues that carbon and stainless steel wire rope should be found to be produced by one industry.[1170] We have addressed their arguments in the section of this opinion discussing carbon and alloy long products. Second, the Committee on Pipe and Tube Imports, an association of stainless and carbon pipe and tube producers, argues that the Commission should find that stainless welded tubular products and stainless fittings are part of the same like product. The Committee asserts that welded tubular products and fittings/flanges are both generally made to specification and are used together in all applications. The Committee contends that many types of fittings/flanges are made from welded pipe and therefore have the same basic chemical properties.[1171] Accordingly, they assert that there is one domestic industry producing both products.

Finally, three parties argue that the Commission should define several domestic industries more narrowly than we have described above. Eramet, a foreign tool steel producer, argues that high speed steel, a form of tool steel, should be a separate like product from other forms of tool steel.[1172] Babcock & Wilcox, a domestic purchaser of seamless tubular products, argues that seamless boiler tubes, whether or not made of stainless or carbon steel, constitute a separate like product from seamless tubular products.[1173] Also, the domestic stainless flange producer Gerlin, argues that stainless steel flanges and stainless steel forgings should be found to be different like products in this investigation.[1174]

We discuss the arguments raised by these parties below.

2. Analysis

As we previously discussed, we have used the general analytical framework described in section II.A of this opinion when performing our analysis of the like product and domestic industry in this investigation. As noted there, we have focused our analysis in this investigation primarily on the degree to which the products in question are produced in common production facilities and using similar production processes. We have, of course, also considered the similarity of the products in terms of their physical characteristics, end uses, and channels of distribution.[1175]

We first address the USWA's argument that there is one domestic industry producing all of the covered stainless and tool steel products. We then discuss the reasons underlying our finding that there are ten domestic industries producing the stainless and tool steel products covered by this investigation.

[1170] Domestic Steel Wire Rope Manufacturers Prehearing Brief on Injury at 6 n.7.

[1171] In its posthearing brief, however, it stated that it would not object to a decision to treat the two products as separate like products. Committee Posthearing Brief on Injury at 10.

[1172] Eramet Posthearing Brief on Injury at 2-4.

[1173] Babcock Prehearing Brief on Injury at 3-6.

[1174] Gerlin Prehearing Brief on Injury at 4-9.

[1175] We have, however, given less emphasis to the factor of customs treatment in this investigation because the product groupings consist of products in a number of different HTSUS classifications.

a. The USWA's Argument for One Like or Directly Competitive Product Covering All Stainless and Tool Steel Products

We do not find that all stainless steel products constitute one like or directly competitive product or that there is one domestic industry producing these products, as urged by the USWA.[1176]

First, we note that there is only a limited degree of overlap with respect to the productive facilities used to produce the various stainless and tool steel products covered by the scope of the investigation. For example, ***.[1177] However, in 2000, ***.[1178] Similarly, ***.[1179] In this same vein, ***.[1180] In fact, of the 74 firms who are listed in the staff report as producing stainless steel products, 52 produced only one of the eleven product categories in 2000. Nine of the remaining producers produced only two of the product categories and no producer had production in more than five of the stainless product categories.[1181] In sum, although there is some degree of vertical integration in terms of the productive facilities for the covered stainless steel products, we find that the degree of overlap is not sufficient to find that there is one industry producing all stainless steel products.

Moreover, the record indicates that there is a limited degree of similarity in terms of the production processes for the covered stainless steel products. For example, stainless cut-to-length plate is the only covered stainless product that is produced by rolling slabs in flat-rolling facilities.[1182] Stainless steel bar, light shapes and rod are the only covered products produced in finished form in a stainless steel bar mill.[1183] Similarly, while welded stainless tubular products and seamless stainless tubular products are both produced in pipe and tube production facilities, welded tubular products are produced by bending flat-rolled steel products to form a hollow product with an overlapping or abutting seam, which is then welded; seamless tubular products are produced by piercing a stainless billet and drawing or extruding it to the desired pipe length.[1184] Given the distinctions between these products (which again are evident across the range of stainless and tool steel products), we believe that the production processes for the various covered stainless steel products are not similar enough to support a finding that they are produced by the same industry.

Further, we find that, although stainless steel products share the same basic chemical composition (i.e., they are all stainless steel), most -- if not all -- of the stainless steel products covered in this investigation are distinguishable from each other with respect to their physical characteristics and end uses. In this regard, stainless slabs are semifinished flat-products that are used as the basic raw input in the production of stainless steel flat products such as plate and sheet and strip. Stainless welded pipe and tube, on the other hand, is a finished tubular product that is used to transport liquids and gasses

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[1176] We have previously discussed in the flat products section of the Commission's opinion USWA's argument that all steel products within the scope of the investigation are part of one like or directly competitive product.

[1177] CR and PR at Table STAINLESS-1.

[1178] CR and PR at Table STAINLESS-1

[1179] J&L Specialty accounted for *** percent of domestic semifinished slab/ingots production in 2000 but ***. AK Steel accounted for *** percent of slabs/ingots production in 2000 but ***. CR and PR at Table STAINLESS-1.

[1180] CR and PR at Table STAINLESS-1.

[1181] CR and PR at Table STAINLESS-1.

[1182] CR and PR at STAINLESS 1-2.

[1183] CR and PR at STAINLESS 1-2.

[1184] CR and PR at STAINLESS 1-2.

in corrosive or high pressure environments.[1185] Given that stainless slabs cannot be used to transport liquids and gasses while tubular products cannot be used to make stainless plate, we find that these products do not share a significant degree of similarity with respect to their physical characteristics and end uses.[1186] Indeed, these types of significant physical and end use differences are apparent across the entire range of the stainless steel products groupings covered within the scope of this investigation.[1187]

We also note that the scope of the investigation does not cover stainless sheet and strip products, which accounts for the bulk of the stainless steel products produced in the United States. According to stainless steel producer AvestaPolarit, stainless steel sheet and strip products may constitute 80 percent of total stainless steel production in the United States.[1188] Given the exclusion of these products from the scope, we find that it would not be appropriate to define the like product to be a continuum that includes all other stainless steel products. Finally, although we recognize that the USWA has argued that all covered stainless steel products should be found to be the same domestic like product, we note that no domestic party other than USWA has argued that the Commission should adopt such a broad like product definition. In fact, a number of the domestic producers have explicitly argued against the USWA's proposed definition.[1189]

In sum, we do not find that all covered stainless products are one like product.[1190] Accordingly, we do not find that there is one domestic industry producing all stainless and tool steel products.

b. Domestic Industry Producing Semifinished Stainless Products (Slab/Ingots)

We find that domestic semifinished stainless steel products[1191] are like the imported semifinished stainless plate that is the subject of this investigation. Accordingly, we find that there is one domestic industry producing semifinished stainless steel.

First, we find that there is only a very limited overlap of productive facilities between semifinished stainless steel products and other covered stainless steel products. Of the three dominant

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[1185] CR and PR at STAINLESS-1 & STAINLESS-4.

[1186] Moreover, it must be noted that tool steel products are not "stainless steel" products at all. Instead, they are characterized by the addition of such raw materials as tungsten and molybdenum, which cause them to have very high levels of hardness and strength at elevated temperatures. Accordingly, tool steel products do not share even this basic physical characteristic with the stainless steel products covered by the investigation.

[1187] For example, stainless cloth is a finished stainless product woven from stainless wire that is often used as a mesh filter in environments requiring high corrosion-resistance filters. CR and PR at STAINLESS-3. Clearly, aside from being stainless steel, this product does not look like, or have the same physical dimensions or characteristics, as stainless CTL plate, which is used primarily to produce storage tanks, process vessels and other large equipment in a variety of industries requiring corrosion-resistance or heat resistance.

[1188] AvestaPolarit Posthearing Brief on Injury at 5, n.11.

[1189] *See, e.g.*, Domestic Plate Industry's Prehearing Brief on Injury at 6; Domestic Bar Industry's Posthearing Brief on Injury at 3; Carpenter Technology's Prehearing Injury Brief on Stainless Rod at 4-6.

[1190] In this respect, we note that the stainless and tool steel category of products covers a broader range of steel products than the other three categories. For example, the stainless and tool steel category covers flat-rolled products, long products and tubular products, which are all covered separately in the remaining three carbon and alloy product categories.

[1191] Semifinished stainless steel products are referred to as slabs/ingots in the staff report.

producers of semifinished stainless steel,[1192] only one, ***, produced more than minimal amounts of other covered stainless or tool steel products in 2000; it produced only two other covered forms of stainless or tool steel.[1193] *** the second largest producer of semifinished stainless steel in 2000, produced no other covered stainless products in 2000.[1194] *** the third largest producer of semifinished products, only produced an extremely small amount of welded stainless tubular products.[1195] In addition, the record also indicates that semifinished stainless steel products do not share similar production processes with other covered stainless steel products. Unlike all of the other covered stainless steel products, all four forms of semifinished stainless steel (slabs, billets, blooms, and ingots) are produced during the second stage of the stainless steel production process, the casting stage of the process.[1196] Slabs, billets and blooms are generally produced by a continuous casting process, while ingots are produced through a conventional casting process, where they are poured into an ingot mold and allowed to solidify.[1197] Other covered stainless products are produced in the finishing stages of the production process, where they may be rolled, drawn, extruded or otherwise finished into their final form.[1198] Given these facts, we find that semifinished stainless steel products do not share similar production facilities or processes with other covered stainless products.

We note that the categories of semifinished stainless steel included in this investigation (slabs, billets, blooms, and ingots) differ somewhat from one another in terms of their physical forms and end uses. Generally, stainless slabs are a rectangular form of semifinished steel that has a thickness from 2 to 10 inches and a width of 30 to 80 inches.[1199] Billets, on the other hand, are normally 2 to 6 inches square, while blooms are somewhat similar in shape to billets but have a cross-section of more than 6 inches.[1200] Further, slabs are generally used to produce stainless flat products, including sheet and strip and plate, while blooms and billets are used to produce long products (such as bars, shapes, and rod) or seamless tubular products. Ingots, however, are used to produce any blooms, billets and slabs that are not produced in a continuous casting process.[1201] Nonetheless, we find that semifinished stainless steel products share basic physical similarities with each other that distinguish them from other covered stainless steel products. In this regard, we note that, at the end of the production process, all four semifinished products are rough-finished stainless products that must be further worked by hot-rolling or drawing in order to produce finished stainless products, like plate, sheet and strip, bar, and rod.

Finally, we note that all four semifinished products are shipped almost exclusively to end users of the products, that is, to the producers of stainless sheet and strip, plate, bar, and rod.[1202] In fact, the

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[1192] CR and PR at Table STAINLESS-1.

[1193] *** produced significant amounts of stainless CTL Plate and tool steel, but no other stainless products in 2000. CR at Table STAINLESS-1.

[1194] *** produced significant amounts of stainless CTL Plate and tool steel, but no other stainless products in 2000. CR at Table STAINLESS-1.

[1195] CR and PR at Table STAINLESS-1.

[1196] CR and PR at OVERVIEW-8 & STAINLESS-1.

[1197] CR and PR at OVERVIEW-8

[1198] CR and PR at STAINLESS 1-2.

[1199] CR and PR at OVERVIEW-8.

[1200] CR and PR at OVERVIEW-8.

[1201] CR and PR at STAINLESS-1.

[1202] CR and PR at Table STAINLESS-16.

large bulk of these shipments are internally consumed by the producers of the semifinished products.[1203] Accordingly, these products appear to be sold in distinct channels of distribution from a number of other covered stainless steel products, many of which are sold in substantial quantities to distributors as well as end users.[1204]

On the whole, we find that there is one domestic industry producing semifinished stainless steel.

c. Domestic Industry Producing Stainless Plate

We also find that domestic stainless steel cut-to-length plate ("stainless plate") is like the imported stainless plate that is the subject of this investigation. Accordingly, we find that there is one domestic industry producing stainless plate.

First, we find that there is a limited level of overlap between producers of stainless plate and producers of other covered stainless steel products. Of the seven domestic firms who reported producing stainless plate in 2000, *** firms produced only stainless plate, *** produced two other covered stainless steel products, and *** produced three other covered stainless products.[1205] In addition, the record shows that stainless plate is produced using different production processes and employees than other stainless products. Stainless plate is the only stainless product covered by the scope of this investigation that is produced in flat-rolling facilities, being produced either on a sheared plate mill or a hot-strip mill.[1206] Accordingly, we find that stainless plate does not share similar production facilities or processes with other covered stainless products.

Second, stainless plate has distinct physical characteristics and end uses from the other stainless steel products within the scope of this investigation. Stainless plate is the only flat-rolled stainless product covered by the scope of the current investigation.[1207] As such, stainless plate has a different physical appearance and substantially different physical dimensions than the stainless long and tubular products covered by the President's request. In addition, because stainless plate is a flat-rolled product, it is suited for end uses that are different than those of stainless tubular and long products. For example, stainless plate is the only covered stainless steel product used to produce storage tanks, process vessels and similar equipment in the chemical, dairy, restaurant, pulp and paper, pharmaceutical, and other industries.[1208] Finally, we note that stainless plate is sold in different channels of distribution from a number of the other covered stainless products, with the large bulk of domestically produced stainless plate being shipped to distributors.[1209]

In sum, we find that there is one domestic industry producing stainless plate.[1210]

[1203] CR and PR at Table STAINLESS-16.

[1204] For example, CTL plate is sold primarily to distributors, while half of all stainless bar shipments are made to distributors. E.g., CR and PR at Tables STAINLESS-17 & STAINLESS-18.

[1205] CR and PR at Table STAINLESS-1.

[1206] CR and PR at STAINLESS-1-STAINLESS-2.

[1207] CR and PR at STAINLESS-1-4.

[1208] CR and PR at STAINLESS-2.

[1209] Between 73.4 and 84.9 percent of all domestic shipments of stainless plate were shipped to distributors between 1996 and 2000. CR and PR at Table STAINLESS-17.

[1210] The stainless plate respondents Usinor and SAISI argue that the service centers and processors of stainless CTL plate should be included in the industry and that this would be consistent with prior Commission practice. Usinor/SAIS brief at 6. We find that the service centers and processors are part of the domestic industry producing CTL plate. Although the Commission has occasionally examined in prior cases whether individual producers have

d. Domestic Industry Producing Stainless Bar and Light Shapes

We find that domestic stainless steel bar and light shapes ("stainless bar") is like the imported stainless steel bar that is the subject of this investigation. Accordingly, we find that there is one domestic industry producing stainless bar.

First, we find that there is a limited level of overlap between producers of stainless bar and producers of stainless steel products not produced on a bar mill.[1211] Of the sixteen domestic firms who reported production of bar and rod (both bar mill products) in 2000, only two firms reported production of stainless plate, no firms reported production of stainless cloth, one firm reported production of stainless rope, two firms reported production of welded or seamless stainless tubular products, and no firm reported production of stainless fittings.[1212] In addition, the record shows that stainless bar is produced using different production processes and employees than other stainless products not produced on a bar mill. Stainless bar is finished in a bar mill by rolling billets and blooms to the desired bar or angle form. In contrast, semifinished steel products are produced during the casting stage of the stainless production process, when molten stainless steel is formed into stainless slabs, blooms, billets, or ingots.[1213] Stainless plate is produced as a flat product on a sheared plate mill or on a hot-strip mill, and tubular products are produced in pipe and tube production facilities.[1214] Given the foregoing, we find that there is only a small degree of similarity between stainless bar and other non-bar mill stainless products in terms of production facilities and processes.

Second, stainless bar has different physical characteristics and end uses than other covered stainless products not produced on a bar mill. Unlike other covered stainless steel products, stainless bar is produced and sold as a stainless long product in straight lengths with a solid cross-section. Moreover, stainless bar is an intermediate stainless product that can be used as a finished or semi-finished product.[1215] In contrast, stainless slabs, billets, blooms and ingots are rougher semifinished products that may not be used as a finished product; stainless plate is a flat-rolled product that is used to produce containers and tanks in various industries; and seamless and welded tubular products are finished hollow products that are used in piping systems.[1216] As can be seen, stainless bar does not share similar characteristics and end uses with these other stainless products; in fact, it is not generally perceived to be substitutable for other stainless products.[1217]

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engaged in sufficient production-related activity in the United States to be considered a domestic producer, *e.g. Certain Cameras*, Inv. No. TA-201-62, USITC Pub. 2315 at 15 (September 1990), we note that there is little or no information in the record concerning these processors or the extent and nature of their production activities. Nonetheless, to the extent that these service centers and processors cut coiled plate to length, they are properly considered members of the domestic industry producing CTL plate because their processing of the product causes the product to come within the scope of this investigation. However, only a limited number of these producers have responded to the Commission's questionnaires, so including these companies in the industry data will have little effect on the Commission's analysis.

[1211] *I.e.*, semifinished stainless steel, stainless plate, stainless wire, stainless cloth, stainless welded and seamless tubular products, and stainless fittings and flanges.

[1212] CR and PR at Table STAINLESS-1.

[1213] CR and PR at STAINLESS-1.

[1214] CR and PR at STAINLESS-1.

[1215] CR and PR at STAINLESS-1-4; Domestic Bar Producers Prehearing Brief on Injury at 9-10.

[1216] CR and PR at STAINLESS-1-4.

[1217] *See, e.g., Stainless Steel Bar from France, et al.*, USITC Pub. 3395 at II-7.

Finally, the record indicates that stainless bar is not sold in the same channels of trade as many stainless products. Stainless bar is sold in relatively equal volumes to distributors and end users.[1218] Although other stainless and tool steel products (like seamless tubular products) also are sold in relatively equal volumes to both channels of distribution, most of the other stainless product groupings are sold primarily to either the end user or distributor segment of the market.[1219]

Accordingly, we find that the domestic industry producing stainless bar is a separate industry from the industries producing other covered stainless steel products not produced on a bar mill.

The issue is somewhat closer for stainless rod, however. The record of this investigation indicates that there is a much more significant degree of similarity between bar and rod, particularly with respect to their manufacturing facilities and production processes. First, there is a substantial degree of overlap between producers of bar and rod. For example, Carpenter Technology Corp., with its subsidiary Talley Metals Technology ("Carpenter"), was the dominant producer of both stainless bar and stainless rod in 2000.[1220] Similarly, Empire Specialty Steel, Inc. ("Empire"), the *** largest domestic producer of stainless rod in 2000, was also the *** largest producer of stainless bar in 2000 as well.[1221] Moreover, unlike other stainless products, stainless rod is produced on the same bar mill rolling lines as small bars[1222] and therefore shares similar production process, facilities and employees as these forms of bar. In fact, stainless rod and smaller sizes of bar are produced in similar grades, forms and shapes, with the primary distinction between the two products being the fact that stainless rod is a coiled product while stainless bar is produced in straight lengths. The similarity of physical characteristics between the two products is indicated by the fact that smaller sizes of stainless bar are often produced by cutting stainless rod to length and straightening it.

Given these levels of similarity in terms of their production facilities and processes, physical characteristics and end uses, both products could have been within the same like product in this investigation. Indeed, it was primarily because of these types of similarities in physical characteristics and production processes that the Commission found stainless bar and stainless rod to be the same like product in its 1983 safeguards investigation covering stainless and alloy tool steels.[1223]

Nonetheless, we find that the two products are not produced by the same domestic industry. Although there are similarities in the production process of the two products, there are important distinctions between the production of the two products. First, although there is some overlap in terms of the producers of both products, there are also a number of significant stainless bar producers who do not produce stainless rod. In particular, the second, third, and fourth largest domestic producers of stainless bar in 2000 (***) did not produce stainless rod in 2000.[1224] Moreover, although stainless rod and bar both may be produced on the same rolling stands in bar mills, the finishing processes for the two products differ in significant ways.[1225] For example, after rod exits the rolling stand of a bar mill, it is coiled into concentric loops and generally cooled before shipping. Stainless bar, on the other hand, is

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[1218] CR and PR at Table STAINLESS-18.

[1219] *E.g.*, CR and PR at Tables STAINLESS-16, STAINLESS-17, STAINLESS-19, STAINLESS-21, STAINLESS-22, and STAINLESS-25.

[1220] CR and PR at Table STAINLESS-1.

[1221] CR and PR at Table STAINLESS-1.

[1222] CR and PR at STAINLESS-1.

[1223] USITC Pub. 1377 at 15.

[1224] CR and PR at Table STAINLESS-1.

[1225] *See Stainless Steel Wire Rod from Germany*, USITC Pub. 3126 at I-6.

likely to undergo a series of additional finishing steps, such as annealing, heat treatment, spot conditioning, straightening, and mechanical or chemical cleaning. It also may be cold-finished or cold-drawn. All of these finishing steps result in superior dimensional tolerance and improved surface finish and mechanical properties for stainless bar.[1226]

Further, although there are some physical similarities between stainless bar and rod, there are also substantial physical differences between the products. First, bar is distinguished from rod by virtue of the fact that it is not produced in coils, but in straight lengths.[1227] In addition, while there is some overlap in the size of the products, stainless bar also is produced in substantially larger diameters (up to 25 inches) than wire rod, which is produced in sizes between 5 and 33 millimeters (3/8 to 3/4 of an inch). Moreover, these physical differences result in significant end use differences between the two products. In particular, most stainless wire rod is used as the main input into the production process for stainless steel wire, with smaller amounts of rod being used to produce small bar and industrial fasteners and springs.[1228] Stainless bar, on the other hand, is generally used in a wider range of end uses, including corrosion-resistant structural supports in equipment, shafts and other downstream products produced for industrial uses, and larger fasteners.[1229] Because bar is not in coils, bar is not used to produce stainless wire. Finally, there are significant distinctions between the channels of distribution for the two products, with stainless rod being sold almost exclusively to end users, while stainless bar is sold in approximately equal amounts to distributors and end users.[1230]

On the whole, we find that stainless bar and rod are produced by separate domestic industries. Accordingly, we find that there is one domestic industry producing stainless bar.[1231]

e. Domestic Industry Producing Stainless Wire Rod

We find that domestic stainless steel rod is like the imported stainless steel rod that is the subject of this investigation. Accordingly, we find that there is one domestic industry producing stainless steel rod.

We discussed above our analysis of the differences between stainless rod and stainless bar and need not reiterate that analysis. With respect to other stainless products (such as stainless tubes or plate), we find that there are reasonably clear production-related differences between these products and

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[1226] *See Stainless Steel Rod from Germany*, USITC Pub. 3126 at I-6.

[1227] CR and PR at STAINLESS-2.

[1228] *See Stainless Steel Wire Rod from Germany*, USITC 3126 at I-4.

[1229] *See Stainless Steel Bar from Germany*, USITC Pub. 3395 at I-8.

[1230] CR and PR at Tables STAINLESS-18 & STAINLESS-19.

[1231] CR at STAINLESS-1-3. We also find that stainless bar and light shapes are the same like product. Although there are some differences in physical characteristics, end uses and production processes between stainless bar and stainless light shapes, stainless steel bar and light shapes are more similar in terms of these criteria than are bar and rod. Although stainless light shapes differ physically from bar in that they are shaped in the form of an L or in H, I or U sections, stainless light shapes are (like stainless rod) produced in the same grades and chemistries and produced in the same facilities as stainless bar. However, unlike stainless rod, stainless light shapes and stainless bar are both used primarily as structural supports for tanks and other industrial equipment or as components in the manufacture of industrial equipment. *E.g., Stainless Steel Angle from Japan, Korea, and Spain*, USITC Pub. 3356 at 4. In addition, Slater Steels Corp., the only domestic producer of stainless light shapes, also produces stainless bar but does not produce stainless rod.

stainless wire rod.[1232] First, there is a minimal amount of actual production overlap with respect to the producers of rod and other non-bar mill products. Of the four domestic firms who reported production of stainless wire rod in 2000, none reported production of stainless plate, stainless cloth, stainless rope, welded and seamless tubular products, or fittings.[1233] Only one of the four, ***, reported production of semifinished stainless steel in 2000; it produced only *** amounts of those products, however.[1234] Finally, although there is some overlap with respect to wire products, the bulk of wire production is performed by producers who do not produce rod or bar.[1235]

Second, stainless steel rod is not produced using the same production processes as other stainless steel products. Stainless rod is produced and finished on a bar mill where billets and blooms are rolled to the desired form and length and then coiled. In contrast, semifinished steel products are produced during the casting stage of the stainless production process, during which molten stainless steel is formed into sold stainless slabs, blooms, billets, or ingots;[1236] stainless plate is produced as a flat product on a sheared plate mill or on a hot-strip mill; and tubular products are produced in pipe and tube production facilities.[1237] Given this, we find the record indicates that there is only a limited level of similarity with respect to the production facilities and production process for stainless rod and other stainless steel products.

In addition, unlike other stainless steel products not produced on a bar mill, stainless steel rod is sold in coils and has a solid cross-section.[1238] Also, unlike those non-bar-mill products, stainless steel rod is primarily used to produce stainless wire, with its secondary uses being the production of small bar and fasteners.[1239] By way of comparison, stainless slabs, billets, blooms and ingots are rougher stainless products that are used to produce bar, rod and tube but not further finished products like wire or fasteners; stainless plate is a flat-rolled product that is used to produce containers and tanks in various industries; and seamless and welded tubes and flanges and fittings are finished hollow products used in piping systems.[1240] In this regard, customers and producers report that there are no real substitutes for stainless rod, even among other stainless products.[1241]

Finally, the record indicates that stainless rod is sold almost exclusively to end users.[1242] While certain of the other stainless steel products are sold primarily to end users, most of the others are sold either in equal amounts to end users and distributors or primarily to the distributor segment of the

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[1232] I.e., semifinished stainless steel, stainless plate, stainless wire, stainless cloth, stainless welded and seamless tubular products, and flanges and fittings.

[1233] CR and PR at Table STAINLESS-1.

[1234] CR and PR at Table STAINLESS-1.

[1235] CR and PR at Table STAINLESS-1.

[1236] CR and PR at STAINLESS-1.

[1237] CR and PR at STAINLESS-1.

[1238] CR and PR at STAINLESS-1-4; Domestic Bar Producers Prehearing Brief on Injury at 9-10.

[1239] CR and PR at STAINLESS-1-4.

[1240] CR and PR at STAINLESS-1-4.

[1241] *See, e.g., Stainless Steel Round Wire from Canada, et al.*, USITC Pub. 3395 at I-3.

[1242] CR and PR at Table STAINLESS-19.

market.[1243] Accordingly, the record indicates that stainless rod does not share similar channels of distribution with many of the other covered stainless products.

Given the foregoing, we find that stainless rod is produced by a separate domestic industry from the covered stainless products not produced on a bar mill. Accordingly, we find that there is one domestic industry producing stainless steel rod.

f. Domestic Industry Producing Tool Steel

We find that domestic tool steel is like the imported tool steel that is the subject of this investigation. Accordingly, we find that there is one domestic industry producing tool steel.

First, we find there are significant production-related differences between tool steel products and stainless steel products with respect to their production processes. Although the general production scheme is similar and there is some overlap of production facilities, the production of tool steel differs materially from stainless steel products in details dictated by the chemistry and performance characteristics of tool steel. Tool steel production requires specialized equipment, expensive alloying ingredients, and unique quality control processes. Tool steel is also subject to numerous grinding, turning and straightening operations that ensure more exact specifications and performance.[1244]

Moreover, there are significant physical characteristic and end use differences between tool steel products and stainless steel products. Tool steel products are specialty alloy steels that have a different chemical composition from stainless and carbon steels, primarily in terms of their carbon, chromium, manganese, molybdenum, and tungsten content.[1245] As a result of these differences in chemical composition, tool steel has greater hardness and strength and a higher ability to resist wear than stainless and carbon steel products, and has an increased ability not to soften at elevated temperatures.[1246] Further, tool steel is distinguished from stainless and carbon steels with respect to its end uses. Unlike stainless and carbon steel products, tool steel is used primarily to produce cutting and forming tools, such as dies, molds, blades, and the stamping surfaces of machinery.[1247]

Finally, the record indicates that tool steel does not share similar channels of distribution with many of the other covered stainless products. Tool steel is sold in relatively equal volumes to end users and distributors.[1248] While certain of the other stainless steel products are sold in relatively equal volumes to both end users and distributors, most of the covered stainless steel products are sold primarily to the distributor or to the end user segment of the market.[1249]

Given the foregoing, we find that there is one domestic industry producing tool steel.

[1243] *E.g.*, CR and PR at Tables STAINLESS-16, STAINLESS-17, STAINLESS-19, STAINLESS-21, STAINLESS-22, & STAINLESS-25.

[1244] *See Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-48, USITC Pub. 1377 (May 1983), at 14, A-9; CR and PR at STAINLESS-1-2; Domestic Tool Steel Prehearing Brief on Injury at 8; *Certain Tool Steels from Brazil and the Federal Republic of Germany*, Invs. Nos. 701-TA-187 and 731-TA-100 (Final), USITC pub. 1403 (July 1983) at 6-7 & A-7-8.

[1245] HTSUS Chapter 72, Additional U.S. Note 1(e).

[1246] CR and PR at STAINLESS-3.

[1247] CR and PR at STAINLESS-3.

[1248] CR and PR at Table STAINLESS-20.

[1249] *E.g.*, CR and PR at Tables STAINLESS-16, STAINLESS-17, STAINLESS-19, STAINLESS-21, STAINLESS-22, & STAINLESS-25.

g. Domestic Industry Producing Stainless Wire

We find that domestic stainless steel wire is like the imported stainless wire that is the subject of this investigation. Accordingly, we find that there is one domestic industry producing stainless wire.

First, stainless wire is distinguished from other stainless steel products in terms of production facilities and processes. Wire is typically produced using different equipment and employees than other stainless steel products, including stainless rod or bar.[1250] Although certain firms like Carpenter and Empire produce significant volumes of both wire and rod/bar, approximately two thirds of all responding wire producers did not produce stainless rod or bar.[1251] Moreover, a majority of wire producers (accounting for 63 percent of domestic production in 2000) reported no production of any other stainless steel product.[1252] Given this, the record data indicate that there is only a limited amount of overlap, at best, between wire producers and other producers of stainless steel products.

Moreover, stainless wire is produced using distinct production processes from other stainless products, which causes it to have distinct physical characteristics and end uses. Unlike other stainless steel products, stainless wire is a cold-reduced and coiled long mill product. Stainless wire is produced by cold-finishing coiled and annealed hot-rolled wire rod, which is passed several times through a wire drawing line that reduces the rod to the smaller thicknesses that distinguish wire from rod.[1253] Through this cold-rolling process, the wire is reduced to the thickness necessary for its use in a variety of downstream products, such as springs, wire mesh, wire strand, wire rope, welding wire, and medical instruments, which are not end uses of stainless rod, bar, or other stainless products.[1254]

Finally, the record indicates that stainless wire is sold in different channels of trade than other stainless steel products. Stainless wire is sold primarily to end users, with nearly 80 percent of domestic shipments being sold in this channel of distribution.[1255] While certain of the other stainless steel products also are sold primarily to end users, most other products are sold either in equal amounts to end users or distributors or primarily to the distributor segment of the market.[1256]

Accordingly, we find that there is one domestic industry producing stainless wire.

h. Domestic Industry Producing Stainless Woven Cloth[1257]

We find that domestic stainless woven cloth is like the imported stainless cloth that is the subject of this investigation. Accordingly, we find that there is one domestic industry producing stainless woven cloth.

Stainless woven cloth is a high-value added stainless product that has different production processes, physical characteristics, and end uses than the other covered stainless steel products. In this regard, the limited available record evidence indicates that no stainless woven cloth producers produce

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[1250] CR and PR at Overview-11; Wire Respondents Prehearing Brief at 4.

[1251] CR and PR at Table STAINLESS-1. Fifteen of 22 responding wire producers did not report production of rod or bar. These fifteen producers accounted for *** percent of domestic wire production in 2000.

[1252] CR and PR at Table STAINLESS-1.

[1253] *See Stainless Steel Round Wire*, USITC Pub. 3194 at I-6.

[1254] *See Stainless Steel Round Wire*, USITC Pub. 3194 at I-6-I-7.

[1255] CR and PR at Table STAINLESS-21.

[1256] *E.g.*, CR and PR at Tables STAINLESS-16 to STAINLESS-26.

[1257] Commissioner Devaney joins this section of the opinion.

other stainless steel products.[1258] Moreover, unlike other stainless products, stainless woven cloth is essentially a metal cloth that is woven from stainless wire that can be used as belts or filters in highly acidic environments requiring great corrosion-resistance and strength.[1259] Finally, the large bulk of stainless woven cloth is sold to end users, while the majority of other covered stainless products are sold either primarily to distributors or in equal parts to distributors and end users.

On the whole, we find that there is one domestic industry producing stainless woven cloth.

i. Domestic Industry Producing Seamless Stainless Tubular Products[1260]

We find that domestic seamless stainless tubular products are like the seamless stainless tubular products that are the subject of this investigation. Accordingly, we find that there is one domestic industry producing seamless stainless tubular products.

First, seamless stainless tubular products have different production facilities and processes than other covered stainless steel products. Seamless tubular products are produced on dedicated production lines and using dedicated production employees.[1261] Seamless stainless tube is produced by a hot extrusion process or a rotary piercing process in which a stainless billet is pierced and then extruded and/or drawn until it reaches the desired size and length.[1262] No other stainless products are produced using this process or in the same facilities as seamless stainless tubular goods.[1263] Indeed, there is only a limited level of overlap, at best, between producers of seamless stainless tube and producers of other stainless steel products.[1264]

Moreover, seamless tubular products have significantly different physical characteristics and end uses than other stainless steel products. Unlike most other stainless steel products, seamless stainless tubular products are stainless hollow products that are used in the transport of liquids or gasses in high-temperature or corrosive environments.[1265] With the exception of welded stainless tubular products, no other covered stainless steel products are used for this purpose. In fact, although welded tubular products also are used to transport liquids and gasses in industrial systems, seamless tubular products are distinguished from welded stainless tubular products because they do not have a weld line running the length of the pipe. Accordingly, seamless tubular products are the only stainless tubular product suitable for use in piping systems involving higher pressures and temperatures.[1266] Further, we note that the

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[1258] CR and PR at Table STAINLESS-1.

[1259] Greening Donald/Central Wire Prehearing Brief on Injury at 18-20.

[1260] Commissioner Devaney joins this section of the opinion.

[1261] Domestic Seamless Tubular Products Industry Prehearing Brief on Injury at 6.

[1262] *See Circular Seamless Stainless Steel Hollow Products from Japan*, USITC Pub. 3344 at I-3-I-5.

[1263] By way of comparison, welded tubular products are produced in separate production facilities by bending flat-rolled steel products into a tube and then attaching the two sides of the seam, usually by welding. CR and PR at STAINLESS-4. In this regard, we note that only one of the eleven responding producers of welded stainless tubular products produced seamless stainless products during 2000. CR and PR at Table STAINLESS-1.

[1264] CR and PR at Table STAINLESS-1. Although three of the five domestic producers of seamless stainless tubular products reported production of other stainless products in 2000, they all reported production of only one other stainless steel product. *** produced a small volume of stainless bar, *** produced a small quantity of welded tubular products, and *** produced stainless wire. These companies produced these products in separate production lines and facilities, however.

[1265] CR and PR at STAINLESS-4.

[1266] *See Circular Seamless Stainless Steel Hollow Products from Japan*, USITC Pub. 3344 at I-9 and II-13.

absence of a seam makes seamless stainless tubular products considerably more costly than welded tubular products.[1267]

Finally, seamless tubular products are sold in different channels of distribution than other stainless products. Seamless tubes are sold in relatively equal amounts to both end users and distributors.[1268] The majority of other covered stainless products are sold predominantly either to distributors or end users.

In sum, we find that there is one domestic industry producing seamless stainless tubular products.[1269]

j. Domestic Industry Producing Welded Stainless Tubular Products[1270]

We also find that domestic welded stainless tubular products are like the welded stainless tubular products that are the subject of this investigation. Accordingly, we find that there is one domestic industry producing welded stainless tubular products.

First, we find that there are significant production-related differences between welded stainless tubular products and other stainless steel products. Unlike other stainless products, welded stainless tubular products are produced by bending flat-rolled steel products to form a hollow product with overlapping or abutting seams.[1271] The seam of the product is then fastened together by welding, although it may also be clipped, riveted, or forged.[1272] No other stainless products are produced using this process or produced in the same facilities as welded tubular goods. In fact, the record indicates that there is a very limited level of overlap between producers of welded stainless tubular products and other producers of other stainless steel products.[1273]

Welded stainless tubular products also differ from other stainless steel products in terms of their physical characteristics and end uses. Unlike most other stainless steel products, welded stainless tubular products are stainless hollow products that are used in the transport of liquids or gasses in high-temperature or corrosive environments. Although seamless tubular products also are used to transport liquids and gasses in piping systems, welded tubular products differ from seamless tubes because they

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[1267] CR and PR at Tables STAINLESS-C-10-11.

[1268] CR and PR at Table STAINLESS-24 & STAINLESS-25.

[1269] We also find that stainless seamless boiler tubes are not a separate like product from seamless stainless tubular products. Although Babcock & Wilcox contends that boiler tubes are produced to special ASME and ASTM specifications unique to seamless boiler tubes and have distinct uses in making or conveying steam inside boilers used in electric power generation and other applications, boiler tubes share the basic identifying characteristics of the overall category, i.e., they are seamless stainless tubular products and are used in high-pressure, high temperature piping systems. Moreover, the fact that they are produced to specific industry specification does not distinguish them from other seamless products because all seamless products are produced in accordance with such specifications. In sum, the distinctions cited by Babcock and Wilcox are the sorts of grade and quality distinctions that the Commission does not generally find are sufficient to warrant defining products as separate like products. Because boiler tubes are merely one part of a continuum of seamless tubular products, we find that they are not a separate like product. The record does not indicate that there is significant production of such a product as seamless stainless boiler tubing.

[1270] Commissioner Devaney joins this section of the opinion.

[1271] CR and PR at STAINLESS-4.

[1272] CR and PR at STAINLESS-4.

[1273] CR and PR at Table STAINLESS-1. Seven of the eight largest producers of welded tubular products produced no other stainless steel product.

have a weld line running the length of the pipe and are therefore not suitable for piping system uses involving higher pressures and temperatures.[1274] The presence of a seam makes welded stainless tubular products considerably less expensive than seamless stainless tubular products.[1275]

Finally, welded stainless tubular products are sold in different channels of distribution than other stainless steel products, with welded tubular products being sold largely to distributors, while many other stainless products are sold primarily to end users or in equal amounts to end users and distributors.[1276]

In sum, we find that there is one domestic industry producing welded stainless tubular products. In this regard, we do not find that there is one domestic industry producing both stainless fittings and flanges and welded stainless tubular products, as the domestic pipe and tube producers argue.[1277] All of the parties in this proceeding agree that fittings and flanges are produced in entirely different facilities and using different production processes than welded tubular products. As counsel for the Welded Pipe and Tube Committee admitted at the hearing for tubular products, no producers of welded tubular products also produce fittings and flanges.[1278] Moreover, stainless fittings and flanges are produced primarily from forgings or castings,[1279] while welded tubular products are produced from stainless sheet and plate.[1280] Although we recognize that the two products share some physical similarities (i.e. they are both stainless hollow products) and are used for similar purposes (in piping systems), there are nonetheless significant differences in the physical characteristics and end uses of the two products. Stainless fittings and flanges differ in shape and length from welded tubular products and are used to connect lengths of stainless tubular products in piping systems.[1281] Welded tubular products are, however, used not as connectors but as the primary structural component in piping systems. As a result, we find that stainless fittings and flanges are produced by a separate domestic industry than welded stainless tubular products.

k. Domestic Industry Producing Stainless Fittings and Flanges

Finally, we find that domestic stainless fittings and flanges are like the imported stainless fittings and flanges that are the subject of this investigation. Accordingly, we find that there is one domestic industry producing stainless fittings and flanges.

The record generally indicates that there are significant production-related differences between stainless fittings and flanges and other stainless steel products. Most importantly, the record indicates that there is no overlap of production facilities between producers of stainless fittings and flanges and other stainless products. In this regard, no responding domestic producers of stainless fittings and flanges reported producing any other covered stainless steel products, including seamless or welded

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[1274] *See Circular Seamless Stainless Steel Hollow Products from Japan*, USITC Pub. 3344 at I-9 and II-13.

[1275] CR and PR at Tables STAINLESS-C-10-11.

[1276] CR at Table STAINLESS-24 & STAINLESS-25.

[1277] In their posthearing brief on injury, the welded pipe and tube producers stated that they would not object to a decision by the Commission to treat welded stainless tubular products and stainless fittings as different like products. Welded Pipe and Tube Committee Posthearing Brief on Injury at 10.

[1278] Tr. at 2235; CR and PR at Table STAINLESS-1.

[1279] CR at STAINLESS-7; Domestic Fittings Posthearing Brief at 4. Moreover, flanges and fittings may be used to connect both seamless and welded pipes. European Fittings Producers' Prehearing Brief at 9-10.

[1280] Domestic Fittings Producers Posthearing Brief on Injury at 4; European Flange Producers' Prehearing Brief on Injury at 8-10.

[1281] Domestic Producers Prehearing Brief on Injury at V-9; Tr. at 2192.

tubular products.[1282] In fact, all of the parties in this proceeding agree that fittings and flanges are produced in entirely different facilities and using different production processes than other stainless products.[1283]

Second, stainless fittings and flanges are not similar to other stainless steel products in terms of their physical characteristics and end uses. Stainless fittings and flanges are stainless hollow products that are used to connect lengths of stainless tubular products in piping systems.[1284] Stainless fittings differ in shape and length from other stainless steel products, including seamless and welded tubular products. Finally, the record indicates that stainless steel fittings and flanges are sold in different channels of distribution than many other stainless products. Nearly all fittings and flanges are sold to distributors,[1285] while most other covered stainless products are sold predominantly to end users or in equal amounts to end users and distributors.

In sum, we find that there is one domestic industry producing stainless fittings and flanges.[1286]

B. Stainless Steel Bar and Light Shapes[1287]

We find that stainless steel bar and light shapes ("stainless bar") are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing stainless steel bar.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In terms of quantity, imports of stainless bar and light shapes increased by 53.8 percent during the five full years of the period of investigation, growing from 97.9 thousand short tons in 1996 to 150.6 thousand short tons in 2000.[1288] Although the quantity of imports fluctuated somewhat (declining slightly in 1998 and 1999 from its level in 1997), a rapid and dramatic increase in import quantity occurred during the last full year of the period of investigation, when imports of stainless bar grew by 44

[1282] CR and PR at Table STAINLESS-1.

[1283] Flowline, Gerlin, Shaw and Nash Posthearing Brief at 4.

[1284] Domestic Producers Prehearing Brief on Injury at V-9; Tr. at 2192.

[1285] CR and PR at Tables STAINLESS-28 & STAINLESS-27.

[1286] We do not find that finished flanges and flange forgings are separate like products, as the domestic producer Gerlin contends. In doing so, we recognize that the record does indicate that there are physical and end use differences between flange forgings and the finished flanges and fittings included in the product grouping. As Gerlin states, forgings are a semifinished product that must be further worked to produce finished flanges; in contrast, flanges and fittings are finished tubing products that can be, and are, used as couplings in pipe systems. Accordingly, forgings are not interchangeable with finished flanges. See Gerlin Prehearing Brief on injury at 5-7. However, the record indicates that there is some degree of overlap with respect to production facilities for stainless forgings and fittings. Moreover, the Commission has not collected data on a basis that would allow it to assess whether forgings imports are a substantial cause of serious injury to the domestic forgings industry. Accordingly, we do not find that forgings are a separate like product.

[1287] This section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller and Hillman.

[1288] CR and PR at Tables STAINLESS-6 & STAINLESS-C-4.

thousand short tons.[1289] The quantity of imports declined between interim 2000 and interim 2001, dropping from 83.4 thousand short tons to 69.2 thousand short tons.[1290]

The ratio of imports of stainless steel bar to domestic production also increased significantly during the period, growing from 51.8 percent in 1996 to 84.1 percent in 2000, with the largest single percentage increase in the ratio (19.3 percentage points) occurring in 2000.[1291] The ratio of imports to domestic production decreased from 87.9 percent in interim 2000 to 84.6 percent in interim 2001.[1292]

In sum, imports of bar and light shapes increased significantly, both in quantity terms and as a ratio to domestic production, between 1996 and 2000, with the largest single increase in imports occurring during the last full year of the period. Although there was a decline in imports in terms of quantity and as a ratio to domestic production between interim 2000 and interim 2001, we find that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic stainless bar industry is seriously injured; that is, we find that there has been a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.[1293]

There has been a significant idling of productive facilities in the domestic industry during the period of investigation. Despite an overall growth in consumption of 17.2 percent during the period between 1996 and 2000, the industry's production of stainless bar declined by 5.3 percent during that period, with production falling from 189.1 thousand short tons in 1996 to 179.1 thousand short tons in 2000.[1294] The industry's production levels declined by an additional 13.8 percent in interim 2001.[1295] As a result of these production declines,[1296] the industry's capacity utilization rates declined as well, dropping from 63 percent in 1996 to 55.8 percent in 2000 and then to 49.6 percent in interim 2001.[1297]

[1289] CR and PR at Tables STAINLESS-6 & STAINLESS-C-4.

[1290] CR and PR at Tables STAINLESS-6 & STAINLESS-C-4.

[1291] CR and PR at Table STAINLESS-6.

[1292] CR and PR at Table STAINLESS-6.

[1293] 19 U.S.C. §2252.

[1294] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1295] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1296] In this regard, we note that the industry did increase its aggregate capacity level by 5.5 percent during the period from 1996 to 2000 and by an additional 2.2 percent between interim 2000 and interim 2001. CR and PR at Tables STAINLESS-18 & STAINLESS-C-4. However, the industry's capacity utilization would still have declined by three percentage points during this period if this additional capacity had not been added. Moreover, the industry's capacity growth of 5.5 percent (16.5 thousand short tons) during this period, was outstripped by the 17.2 percent growth in consumption (or 48 thousand short tons) during the same period. *Id.*

[1297] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

Moreover, during the period of investigation, three domestic producers of stainless bar (Republic, Empire/AL Tech, and First Miss) shut down some or all of their stainless bar operations.[1298] On the whole, the foregoing indicates that the industry has experienced a significant idling of its productive facilities during the period of investigation.

A significant number of firms have been unable to carry out domestic production operations at a reasonable level of profit during the period of investigation. The industry's operating income fell consistently and significantly throughout the period, decreasing from $*** in 1996 to $*** in 1997 and then to $*** in 1998. The industry's operating income then dropped to a loss of $*** in 1999, recovered only slightly to a $*** profit in 2000 before declining to a loss of $*** in interim 2001.[1299] The industry's operating margin followed the same trend, declining from *** percent in 1996 to *** percent in 1997, *** percent in 1998 and then to a loss of *** percent in 1999 before recovering only slightly to a profit of *** percent in 2000. The industry's operating margin declined to its lowest point in the period of investigation, a loss of *** percent, in interim 2001. [1300] Moreover, during the period of investigation, the number of firms reporting operating losses grew consistently, increasing from *** firms in 1996 to *** in 1997, *** in 1998, *** in 1999 and 2000, and *** in interim 2001.[1301] In light of the consistent and significant declines in the industry's operating income and the growth in the number of firms reporting operating losses over the period, we conclude that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

The industry also experienced significant unemployment and underemployment during the period of investigation. In particular, the number of production-related workers declined by 15.5 percent during the five full years of the period of investigation, dropping from 2,297 workers in 1996 to 1,941 workers in 2000.[1302] The number of workers declined by an additional 5.7 percent to 1,793 workers in interim 2001.[1303] Similarly, wages paid and hourly wages both decreased during the period of investigation; wages paid fell by 10.1 percent between 1996 and 2000 and by an additional 16.5 percent between interim 2000 and 2001, while hours worked fell by 17.1 percent between 1996 and 2000 and by 12.6 percent between interim 2000 and 2001.[1304] Although productivity and hourly wages paid both increased during the period, these increases do not, in our view, offset the impact on the industry of the declines in the overall level of workers employed, wages paid, and hours worked during the period.

Finally, the other trade and financial data for the industry also indicate that the industry producing stainless bar was seriously injured during the period of investigation. The market share of the industry declined by 11.1 percentage points from 1996 to 2000, falling from 64.6 percent in 1996 to 53.5 percent in 2000.[1305] The industry's net commercial sales declined by *** percent between 1996 and 2000,[1306] the value of its net sales declined by *** percent between 1996 and 2000, and the unit value of its net commercial sales fell by *** percent between 1996 and 2000.[1307] The quantity of the industry's

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[1298] Domestic Bar Industry Prehearing Brief at 19-21.

[1299] CR and PR at Tables STAINLESS-30 & STAINLESS-C-4.

[1300] CR and PR at Tables STAINLESS-30 & STAINLESS-C-4.

[1301] CR and PR at Tables STAINLESS-30 & STAINLESS-C-4.

[1302] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1303] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1304] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1305] CR and PR at Tables STAINLESS-67 & STAINLESS-C-4.

[1306] CR and PR at Tables STAINLESS-67 & STAINLESS-C-4.

[1307] CR and PR at Tables STAINLESS-30 & STAINLESS-C-4.

U.S. shipments fell by 2.8 percent between 1996 and 2000 and the value of its shipments fell by 15 percent as well.

We recognize that certain indicators of the industry's condition improved or remained stable during the period. For example, the industry's inventory levels fell from 14.3 percent of total shipments in 1996 to 8.5 percent in interim 2001. In addition, the industry was generally able to make significant investments in its productive facilities during the period of investigation, spending more than $*** million in capital expenditures during the last three years of the period of investigation.[1308] However, in our view, the improvements in these indicia do not offset the significant declines exhibited by the other indicia of the industry's condition with respect to the issue of whether the industry is suffering serious injury.

In sum, despite the fact certain indicia of the industry's condition improved or remained stable, most of the financial, employment, and trade data of the stainless bar industry show an industry in serious decline. The industry lost eleven percentage points of market share during the period of investigation and experienced a continuing and serious decline in its profitability levels. The industry's production levels, capacity utilization rates, and employment levels all fell during the period, indicating that the industry suffered serious injury during the period. Accordingly, we find that, on the whole, the stainless bar industry is seriously injured.

3. Substantial Cause

Finding. We find that the increased imports of stainless bar are an important cause, and a cause not less than any other cause, of serious injury to the domestic industry. Accordingly, we find that increased imports of stainless bar are a substantial cause of serious injury to the domestic stainless bar industry.

a. Conditions of Competition

We have taken into account a number of factors that affect the competitiveness of domestic and imported stainless bar in the U.S. market, including factors related to the product itself, the degree of substitutability between the domestic and imported articles, changes in world capacity and production, and market conditions. These factors affect prices and other considerations taken into account by purchasers in determining whether to purchase domestically-produced or imported articles.

First, demand for stainless bar fluctuated somewhat but grew overall during the five full years of the period of investigation. Apparent U.S. consumption of stainless bar increased from 276.6 thousand short tons in 1996 to 294.4 thousand short tons in 1997 but then declined to 280.3 thousand short tons in 1998 and to 265.5 thousand short tons in 1999. In 2000, however, apparent consumption of bar increased by 22.2 percent, growing to 324.2 thousand short tons.[1309] This level of consumption was 17.2 percent larger than in 1996.[1310] As the overall economy declined in 2001, apparent consumption of bar declined by 13 percent between interim 2000 and interim 2001.[1311]

[1308] We note, however, that capital expenditures fell *** percent over the period of investigation. CR and PR at Tables STAINLESS-30 & STAINLESS-C-4.

[1309] CR and PR at Tables STAINLESS-67 and STAINLESS-C-4.

[1310] CR and PR at Tables STAINLESS-67 and STAINLESS-C-4.

[1311] CR and PR at Tables STAINLESS-67 and STAINLESS-C-4.

Second, stainless steel bar is used in the aerospace, automotive, chemical processing, dairy, food processing, pharmaceutical equipment, marine application, and other fluid handling industries.[1312] The large majority of market participants indicate that there are no known substitutes for stainless bar.[1313]

Third, although fourteen domestic firms reported producing stainless steel bar in 2000,[1314] four firms accounted for the large majority of domestic production of stainless bar in 2000: Carpenter/Talley, Crucible Specialty Metals, AvestaPolarit, and Slater Steels Corp.[1315] The domestic bar industry became more concentrated during the period of investigation. In 1997, Carpenter Technology, the *** domestic producer of stainless bar in 2000,[1316] purchased Talley, the *** largest producer in 2000.[1317] In addition, Empire Specialty Steel, the *** largest bar producer in 2000, shut down its stainless operations in June 2001.[1318]

The industry's aggregate capacity level increased during the period of investigation, growing by 5.5 percent from 1996 to 2000.[1319] Capacity was 2.2 percent higher in interim 2001 than in interim 2000.[1320] Capacity utilization declined from 63.0 percent in 1996 to 52.1 percent in 1999 but increased to 55.8 percent in 2000.[1321] Industry capacity utilization then declined from 59.5 percent to 49.6 percent between interim 2000 and 2001.[1322]

Fourth, price is an important factor in purchasing decisions for stainless bar. Although quality was generally ranked by the majority of responding purchasers as the most important factor in the purchasing decision for stainless bar, the large majority of purchasers reported price as being one of the three most important factors in the purchase decision.[1323]

Fifth, like many stainless steel products, the price of stainless bar is directly affected by the price of nickel.[1324] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their stainless bar products whenever the price of nickel reaches a certain level.[1325] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through interim 2001.[1326] The price of domestic stainless bar followed this trend somewhat

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[1312] CR at STAINLESS-2, PR at STAINLESS-1.

[1313] EC-Y-046 at Table STAINLESS-6.

[1314] CR and PR at Table STAINLESS-1.

[1315] In 2000, these four firms accounted for *** percent of reported domestic production of stainless bar. CR and PR at Table STAINLESS-1.

[1316] Carpenter accounted for *** percent of reported domestic production of stainless bar in 2000. CR and PR at Table STAINLESS-1.

[1317] Talley accounted for *** percent of reported domestic production of stainless bar in 2000. CR and PR at Table STAINLESS-1.

[1318] Empire Specialty Steel, Inc. Questionnaire Response at August 6, 2001 Attachment.

[1319] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4 & STAINLESS-18.

[1320] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1321] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1322] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1323] INV-Y-212 at 95.

[1324] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[1325] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[1326] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

during the period of investigation, with average unit values of domestic bar shipments and sales declining through the end 1999, recovering in 2000, and then declining in interim 2001.[1327]

Sixth, during the period of investigation, there were imports of stainless bar from over 40 countries, although not every country exported stainless bar to the United States in every year.[1328] The quantity of imports of stainless bar from sources other than Mexico increased by 54 percent from 1996 to 2000 but fell by 17 percent between interim 2000 and interim 2001.[1329] The record indicates that domestic and imported stainless bar are comparable in most respects.[1330]

The aggregate capacity of foreign producers of stainless bar in countries other than Mexico increased by 10.5 percent during the period examined. The capacity utilization of these producers increased from 74.2 percent in 1996 to 82.3 percent in 1998, declined to 77.2 percent in 1999, and then increased to 87.1 percent in 2000. Aggregate foreign capacity utilization increased from 89.2 percent to 90 percent in interim 2001.[1331]

Seventh, antidumping duty orders were imposed on imports of stainless bar from Brazil, India, Japan, and Spain in 1995.[1332] Antidumping duty orders were imposed against imports of stainless steel angle from Japan, Korea, and Spain in May 2001.[1333]

b. Analysis

We find first that the import increases between 1996 and 2000 had a serious adverse impact on the production levels, shipments, commercial sales and market share of the domestic industry. As we described above, the quantity and market share of imports both increased considerably during the period of investigation, with the quantity of imports increasing by 53.8 percent during the period from 1996 to 2000 and import market share increasing by 11 percentage points during that period as well.[1334] Despite the fact that these import increases occurred during a period of growing demand, the industry's production volumes, shipment levels and sales revenues all declined significantly as a result of increases in import volume during the period.[1335]

In particular, the industry's production levels fell by 10 thousand short tons (or 5.5 percent) during the period between 1996 and 2000,[1336] its net commercial sales fell by *** short tons (or *** percent) during that period,[1337] and the value of its net commercial sales declined by *** percent during the period.[1338] As a result of these production and sales declines, the industry's capacity utilization rates

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[1327] CR and PR at Tables STAINLESS-18, STAINLESS-30, & STAINLESS-C-4.

[1328] INV-Y-180 at Table G25 - Stainless Bar and Light Shapes.

[1329] CR and PR at Tables STAINLESS-6 & STAINLESS-C-4.

[1330] EC-Y-046 at Table STAINLESS-24; *see generally* EC-Y-046 at 14-28.

[1331] CR and PR at Table STAINLESS-45.

[1332] CR and PR at Table OVERVIEW-1.

[1333] CR and PR at Table OVERVIEW-1.

[1334] CR and PR at Tables STAINLESS-67 & STAINLESS-C-4.

[1335] CR and PR at Tables STAINLESS-18, STAINLESS-30, & STAINLESS-C-4.

[1336] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[1337] CR and PR at Tables STAINLESS-30 & STAINLESS-C-4.

[1338] CR and PR at Tables STAINLESS-30 & STAINLESS-C-4.

fell considerably as well, dropping from 63.0 percent in 1996 to 55.8 percent in 2000.[1339] Moreover, the industry's share of the market also fell considerably, dropping from 64.6 percent in 1996 to 59.8 percent in 1999 and then to 53.5 percent in 2000.[1340]

In fact, the declines in the industry's production, shipment and market share levels occurred despite the fact that the industry added significant amounts of capacity during a period of reasonably strong growth in demand for stainless bar. Even with this increased capacity, the industry was unable to take advantage of the growth in demand for stainless bar as imports obtained an increasingly larger share of the domestic market for bar over the period of investigation. In particular, while apparent consumption of stainless bar grew by 48 thousand short tons between 1996 and 2000, the quantity of imports grew at a more accelerated rate, increasing by nearly 53 thousand short tons during this same period. This growth in imports effectively foreclosed the domestic industry from participating in the growth in demand during the period of investigation. In sum, the import increases that occurred during the period clearly had a serious adverse impact on the production volumes, sales levels, sales revenues, and market share of the industry during the period.

The record also indicates that imports affected domestic prices of stainless bar negatively during the period of investigation. The record in this investigation shows that most purchasers consider domestic and imported stainless bar to be comparable in most respects,[1341] indicating that there is a high degree of substitutability between the products. Moreover, the record of this investigation also indicates that price is an important part of the purchasing decision.[1342] Finally, we note that imports undersold the domestic merchandise throughout the period of investigation in 47 of 53 possible quarterly comparisons at underselling margins of up to 51 percent.[1343]

We find that this underselling depressed and suppressed domestic prices during the period of investigation. Although the price of stainless bar is expected by market participants to track the price of nickel, the net sales revenues of the domestic stainless bar industry failed to keep pace with movements in the cost of nickel during the second half of the period of investigation, particularly during the latter half of 1999 and 2000, when the price of nickel increased substantially.[1344] While the average unit value of the industry's net commercial sales increased in 2000 and interim 2001, the industry's cost of goods sold rose from *** percent of its net sales revenues in 1998 to *** percent of its net commercial values in 1999, *** percent of net commercial sales in 2000, and *** percent in interim 2001. As a result of

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[1339] In this regard, purchasers in the market reported that there was a moderately high level of substitutability between the imported and domestic merchandise, suggesting that the volume increase on the part of imports came directly out of domestic market share.

[1340] CR and PR at Tables STAINLESS-67 & STAINLESS-C-4. Indeed, the most significant adverse impact of imports in quantity terms occurred during the last full year of the period of investigation, when apparent consumption of stainless bar grew by 22.1 percent and import quantities grew by 41.3 percent. In that year, the industry lost 6.3 percentage points of market share and experienced the most significant declines in its capacity utilization rates of the entire period of investigation. CR and PR at Tables STAINLESS-18, STAINLESS-30, STAINLESS-67, & STAINLESS-C-4.

[1341] INV-Y-212 at 95.

[1342] INV-Y-212 at 95.

[1343] CR and PR at Tables STAINLESS-87, STAINLESS-99, & Figure STAINLESS-9. These consistent underselling figures are supported by an examination of the average unit value for domestic and imported merchandise, which also show imports being priced at consistently lower levels than domestic merchandise during the period. CR and PR at Table STAINLESS-C-4.

[1344] CR and PR at 95-96, PR at STAINLESS-70-71 & Tables STAINLESS-6, STAINLESS-18, STAINLESS-30, & STAINLESS-C-4.

these decreasing margins between the industry's cost of goods sold and its net sales values, the industry's operating income levels declined from a profit of *** percent in 1998 to a loss of *** percent in 1999, recovered only slightly to a minimal profit of *** percent in 2000, and then fell to a loss of *** percent in interim 2001.[1345] Moreover, the overall declines in the industry's operating levels in the last two-and-a-half years of the period occurred when imports were at their highest market share levels during the period[1346] and when imports were consistently underselling the domestic merchandise.[1347] Therefore, we find that consistent and significant price underselling by imports during the latter half of the period of investigation suppressed and depressed domestic prices to a serious degree, despite the fact that nickel prices and the industry's average unit values also increased significantly during this period.

In sum, we find that increased quantities of imports of stainless bar during the period were a substantial cause of the declines in the industry's trade and financial condition during the period. In making this finding, we considered the argument of the respondents that the adverse changes in the industry's condition during the latter half of the period were caused primarily by a downturn in the demand for stainless steel bar in late 2000 and in interim 2001, as well as an increase in energy costs during the same period.[1348] Although we agree with Eurofer that there was a downturn in demand for stainless bar and an increase in energy costs in late 2000 and interim 2001, the record indicates that there were substantial declines in the industry's production, sales, and profitability levels during the years prior to 2000 and 2001. In particular, we note that the industry's market share, production volumes, employment levels and profitability levels all declined considerably during the period from 1996 to 1999 in the face of increasing import volumes. Given this, we find that imports were a more important cause of the declines in the industry's condition in 2000 and interim 2001 than demand declines and energy cost increases, especially given that import volumes and market share both increased significantly in 2000. In fact, we find that the industry's inability to maintain its operating profits in the face of these demand and energy cost changes is a direct result of the increasing share of the market obtained by imports and their consistent underselling of domestic merchandise during the period.

In addition, we have considered respondents' argument that the industry's condition during the period was affected significantly by the poor operations of the domestic producers AL Tech/Empire and Republic, whose stainless bar operations suffered during the period of investigation -- they assert -- for reasons having little to do with imports.[1349] We note, however, that ***.[1350] We further note that, even if these two producers were excluded from our analysis, the record indicates that the remaining domestic producers of stainless bar also experienced substantial declines in their operating income levels, net commercial sales values, unit sales values, and employment levels during the period.[1351]

[1345] CR and PR at Table STAINLESS-30 & STAINLESS-C-4.

[1346] CR and PR at Table STAINLESS-67 & STAINLESS-C-4.

[1347] CR and PR at Tables STAINLESS-86-87 & STAINLESS-Figures 9-10.

[1348] Eurofer Prehearing Brief on Injury at 3.

[1349] Eurofer Prehearing Brief on Injury at 10-17.

[1350] ***.

[1351] Finally, we also note that, although the statute directs us to assess whether a significant number of producers have been able to operate at reasonable levels of profits, it ultimately requires us to assess whether increased imports have been a substantial cause of serious injury to the industry "as a whole". 19 U.S.C. §2252(c)(6).

Finally, we note that antidumping duty orders were put in place against imports of stainless bar from Brazil, India, Japan, and Spain in 1995.[1352] While these orders are intended to offset dumping margins on sales of these imports, we note that the record of this investigation indicates that the orders did not limit the ability of producers in these countries to continue shipping substantial, and even increasing, volumes of stainless bar to the United States during the period of investigation.[1353]

In light of the foregoing, we conclude that increased imports of stainless steel bar are an important cause, and a cause not less important than any other cause, of serious injury to the domestic industry producing stainless steel bar. Accordingly, we find that the increased imports are a substantial cause of serious injury to the domestic industry.

4. Findings with Respect to NAFTA Imports

a. Canada

Finding. We find that imports of stainless bar from Canada accounted for a substantial share of total imports and contributed importantly to the serious injury suffered by the domestic industry. Canada was one of the five largest suppliers of stainless bar and light shapes to the United States during the last three full years of the period of investigation. It was the fourth largest supplier in 1998, the third largest supplier in 1999 and 2000, and the second largest supplier in interim 2001.[1354] Accordingly, we find that, under the statute, Canada accounted for a substantial share of total imports during this period.

The growth rate of imports of stainless bar from Canada was 18.7 percent during the five years from 1996 to 2000, while the growth rate for all imports during this period was 53.8 percent. Canada's growth rate in interim 2001 was 20.4 percent, however, while the growth rate for all imports was a negative 17.1 percent.[1355] Although the growth rate for imports from Canada was thirty percentage points lower than that of all imports during the period from 1996 to 2000, the rate of growth during this five year period was still substantial and there was a significant surge in the volume of Canadian imports during the last year and a half of the period of investigation, especially in interim 2001, when the growth rate of imports from Canada was substantially higher than the growth rate of other imports. Finally, we note that our price comparison data indicate that imports of Canadian stainless bar undersold domestic merchandise in seven out of ten possible price comparisons.[1356] In light of the foregoing, we find that imports from Canada contributed importantly to the serious injury suffered by the domestic industry during the period of investigation.

b. Mexico

Finding. We find that imports of stainless bar from Mexico did not account for a substantial share of total imports during the past three years and did not contribute importantly to the serious injury suffered by the domestic industry. Mexico was not one of the five largest suppliers of stainless bar to

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[1352] CR and PR at Table OVERVIEW-1. We also note that antidumping order were put in place against imports of stainless steel angle from Japan, Korea, and Spain in May 2001. We note that it is too early to assess whether these orders will significantly reduce the level of imports from these countries.

[1353] INV-Y-180 at G25 - Stainless Bar and Light Shapes.

[1354] INV-Y-180 at Table G25.

[1355] INV-Y-180 at Table G25.

[1356] CR and PR at Table STAINLESS-99.

the United States during the last full three years of the period of investigation, nor was Mexico one of the five largest suppliers on an annual basis from 1998 to 2000 or in interim 2001.[1357] In fact, Mexico was not one of the ten largest suppliers of stainless bar at any point in the period of investigation.[1358] Accordingly, we find that Mexico did not account for a substantial share of total imports during the three most recent years of the period.

We also find that imports from Mexico did not contribute importantly to the serious injury being suffered by the domestic industry during the period of investigation. Imports from Mexico declined at a rate of 45.1 percent from 1996 to 2000, while the growth rate for all imports was 53.8 percent during the same period.[1359] Moreover, imports from Mexico declined at a rate of 56.5 percent between interim 2000 and 2001, while all imports declined at a rate of 17.1 percent during the same period.[1360] Given the foregoing, we find that the growth rates of imports of stainless bar from Mexico were appreciably lower than that of other countries during the period. Accordingly, we find that imports from Mexico did not contribute importantly to the serious injury being suffered by the industry.[1361]

C. Stainless Steel Wire Rod[1362]

We find that stainless steel wire rod ("stainless rod") is being imported into the United States in such increased quantities as to be a substantial cause of increased injury to the domestic industry producing stainless rod.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In quantity terms, imports of stainless rod increased by 36.1 percent during the period of investigation, growing from 60.5 thousand short tons in 1996 to 82.3 thousand short tons in 2000.[1363] Although the quantity of imports fluctuated somewhat during the period of investigation, the largest increase in terms of quantity occurred in 2000, the last full year of the period of investigation, when import quantities increased by more than 25 percent, growing from 65.9 thousand short tons to 82.3 thousand short tons.[1364] The quantity of stainless rod imports declined by 31.3 percent between interim 2000 and 2001, falling from 45.6 thousand short tons to 31.4 thousand short tons.[1365] We note, however,

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[1357] INV-Y-180 at Table G25.

[1358] INV-Y-180 at Table G25.

[1359] INV-Y-180 at Table G25.

[1360] INV-Y-180 at Table G25.

[1361] We have also considered whether the exclusion of imports of stainless bar from Mexico from our injury analysis would affect our finding that imports were a substantial cause of serious injury to the stainless bar industry. Mexican imports accounted for an extremely small percentage of total imports during the period of investigation (representing 0.1 percent of total imports in 2000, for example). INV-Y-180 at Table G-25. Accordingly, we find that our injury analysis would not be affected in any way by their exclusion.

[1362] This section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller and Hillman.

[1363] CR and PR at Table STAINLESS-7 & STAINLESS-C-5.

[1364] CR and PR at Table STAINLESS-7 & STAINLESS-C-5.

[1365] CR and PR at Table STAINLESS-7 & STAINLESS-C-5.

that the market share of imports remained essentially stable in interim 2001, declining slightly from *** percent interim 2000 to *** percent in interim 2001.[1366]

The ratio of imports of stainless steel rod to domestic production also increased significantly during the period, increasing from *** percent in 1996 to *** percent in 2000. While the ratio fluctuated somewhat during the period of investigation, the largest single increase in the ratio (*** percentage points) occurred in 2000, the last full year of the period of investigation.[1367] The ratio of imports to domestic production decreased from *** percent of domestic production in interim 2000 to *** percent in interim 2001.[1368]

In sum, imports of stainless rod increased significantly, both in quantity terms and as a ratio of domestic production, between 1996 and 2000, with a rapid and dramatic increase in imports occurring during the last full year of the period of investigation. Accordingly, we find that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic stainless rod industry is seriously injured; that is, we find that there has been a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

There has been a significant idling of productive facilities in the domestic industry during the period of investigation. During a period of little growth in demand, the industry's production levels and capacity utilization rates declined significantly. In particular, the industry's production of stainless rod declined by *** percent during the period from 1996 to 2000, with its production falling from *** thousand short tons in 1996 to *** thousand short tons in 2000.[1369] Production declined by an additional *** percent in interim 2001.[1370] As a result of these production declines,[1371] the industry's capacity utilization rates declined as well, decreasing from *** percent in 1996 to *** percent in 2000, and then falling further to *** percent in interim 2001.[1372] Additionally, the stainless rod producer Empire shut

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[1366] CR and PR at Table STAINLESS-7 & STAINLESS-C-5.

[1367] CR and PR at Table STAINLESS-7.

[1368] CR at Table STAINLESS-7.

[1369] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[1370] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[1371] The industry's overall capacity level increased by *** percent between 1998 and 2000, and by an additional *** percent in interim 2001. CR and PR at Tables STAINLESS-19 & STAINLESS-C-5. Nonetheless, despite this increase, the industry's production volumes fell by *** percent during the period from 1998 to 2000 and by an additional *** percent in interim 2001. Id. Thus, the industry's capacity utilization rates would have declined substantially even in the absence of these capacity increases.

[1372] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

down its stainless rod facilities in June 2001.[1373] On the whole, we find that the data indicate that there has been a significant idling of the industry's productive facilities during the period of investigation.

A significant number of firms have been unable to carry out domestic production operations at a reasonable level of profit during the period of investigation. The industry's operating income fell significantly throughout the period, falling from $*** million in 1996 to $*** million in 1997 before increasing slightly to $*** million in 1998.[1374] The industry's operating income then dropped dramatically to a loss of $*** million in 1999 and a loss of $*** million in 2000. The industry had an operating loss of $*** million in interim 2001.[1375] The industry's operating margin followed the same trend, declining from *** percent in 1996 to *** percent in 1997, before increasing to *** percent in 1998, and then falling to a loss of *** percent in 1999 and a loss of *** percent in 2000. The industry's operating margin declined to its lowest point in the period of investigation, a loss of *** percent, in interim 2001.[1376] In addition, during the latter half of the period, the number of firms reporting operating losses grew consistently, increasing from no firms reporting losses in 1998 to *** in 1999, and *** in 2000 and interim 2001.[1377] Given these consistent declines in the industry's operating income and the number of firms reporting operating losses in the last half of the period, we find that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

The industry also experienced significant unemployment and underemployment during the period of investigation. The number of production-related workers employed by the industry declined by *** percent during the five full years of the period of investigation, dropping from *** workers in 1996 to *** workers in 2000.[1378] The number of workers declined by an additional *** percent in interim 2001, to *** workers.[1379] Wages paid and hourly wages also decreased during the period of investigation, with wages falling by *** percent between 1996 and 2000, and by *** percent between interim 2000 and 2001, while hours worked fell by *** percent between 1996 and 2000, and by *** percent between interim 2000 and 2001.[1380] Although hourly wages paid increased during the period, productivity remained essentially flat during 1996 to 2000 and then declined slightly in interim 2001.

Finally, most of the stainless rod industry's other trade and financial data also indicate that the industry producing stainless rod was seriously injured during the period of investigation. The market share of the industry declined by *** percent during the period from 1996 to 2000, falling from *** percent in 1996 to *** percent in 2000.[1381] The industry's U.S. shipments declined by *** percent between 1996 and 2000, its net commercial sales declined by *** percent between 1996 and 2000,[1382] the value of its net commercial sales declined by *** percent between 1996 and 2000, and the unit value of

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[1373] Empire Specialty Steel, Inc. Questionnaire Response at August 6, 2001 Attachment.

[1374] CR and PR at Tables STAINLESS-31 & STAINLESS-C-5.

[1375] CR and PR at Tables STAINLESS-31 & STAINLESS-C-5.

[1376] CR and PR at Tables STAINLESS-31 & STAINLESS-C-5.

[1377] CR and PR at Tables STAINLESS-31 & STAINLESS-C-5. In this regard, the dominant stainless rod producer, Carpenter and its subsidiary Talley, began reporting *** in 2000 and 1999, respectively, and these *** considerably during the rest of the period of investigation. Carpenter/Talley Producer Questionnaires.

[1378] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[1379] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[1380] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[1381] CR and PR at Tables STAINLESS-68 & STAINLESS-C-5.

[1382] CR and PR at Tables STAINLESS-68 & STAINLESS-C-5.

its net commercial sales fell by *** percent between 1996 and 2000.[1383] Moreover, the industry's inventory levels remained flat and its capital expenditures have declined in 2000 and 2001, after the industry made substantial investments in its productive facilities in the first four years of the period of investigation.[1384]

In sum, most of the financial and trade indicia of the industry show an industry in serious decline. The industry experienced significant declines in its production levels, capacity utilization rates, employment levels, and sales volumes, and experienced a continuing and serious decline in its profitability levels, particularly during the latter part of the period of investigation. These declines show that the industry's financial condition and production operations were significantly impaired during the period. Accordingly, we find that, on the whole, the stainless rod industry is suffering serious injury.

3. Substantial Cause

Finding. We find that the increased imports of stainless rod are an important cause, and a cause not less than any other cause, of serious injury to the domestic industry. Accordingly, we find that increased imports of stainless rod are a substantial cause of serious injury to the domestic stainless rod industry.

a. Conditions of Competition

We have taken into account a number of factors that affect the competitiveness of domestic and imported stainless rod in the U.S. market, including factors related to the product itself, the degree of substitutability between the domestic and imported articles, changes in world capacity and production, market conditions, and exchange rates. These factors affect prices and other considerations taken into account by purchasers in determining whether to purchase domestically-produced or imported articles.

First, demand for stainless rod remained essentially stable during the period of investigation. Apparent U.S. consumption of stainless rod was *** thousand short tons in 1996, *** thousand short tons in 1997, *** thousand short tons in 1998 and 1999, and *** thousand short tons in 2000.[1385] With the overall decline in the economy in interim 2001, apparent consumption of stainless rod also declined, falling by *** percent between interim 2000 and interim 2001.[1386]

Second, stainless rod is primarily used in the production of stainless steel wire but may also be fabricated into various downstream products, like industrial fasteners, springs, medical and dental instruments, automotive parts, and welding electrodes.[1387] The large majority of market participants indicate that there are no known substitutes for stainless steel rod.[1388]

Third, the domestic stainless rod industry became increasingly concentrated during the period of investigation. Only four domestic firms reported producing stainless steel rod in 2000.[1389] In 1997,

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[1383] CR and PR at Tables STAINLESS-31 & STAINLESS-C-5.

[1384] CR and PR at Tables STAINLESS-19, STAINLESS-31, & STAINLESS-C-5.

[1385] CR and PR at Tables STAINLESS-68 and STAINLESS-C-5.

[1386] CR and PR at Tables STAINLESS-68 and STAINLESS-C-5.

[1387] CR and PR at STAINLESS-3.

[1388] EC-Y-046 at Table STAINLESS-6.

[1389] CR and PR at Table STAINLESS-1.

Carpenter Technology, the dominant domestic producer of stainless rod in 2000,[1390] purchased Talley, the *** largest producer of stainless rod.[1391] In addition, Empire Specialty Steel, the *** largest rod producer in 2000, shut down its stainless rod operations in June 2001.[1392] With the acquisition of Talley by Carpenter in 1997 and the exit of Empire from the market, Carpenter/Talley remains the only large domestic producer of stainless rod in the market.

The industry's aggregate capacity level increased during the period of investigation, growing by *** percent from 1996 to 2000.[1393] Domestic capacity was *** percent higher in interim 2001 than in interim 2000.[1394] The industry's capacity utilization rate declined from *** percent in 1996 to *** percent in 1999, and then to *** percent in 2000. Capacity utilization also declined between interim periods, dropping from *** percent to *** percent.[1395] Moreover, the stainless rod industry captively consumes more than *** of its stainless rod production in the downstream production of wire and other stainless products.[1396]

Fourth, price is an important factor in purchasing decisions for stainless rod. Although quality was generally ranked by the majority of responding purchasers as the most important factor in the purchasing decision for stainless rod, the large majority of purchasers reported price as being one of the three most important factors in the purchase decision.[1397]

Fifth, like many stainless steel products, the price of stainless rod is related to the price of nickel.[1398] To account for fluctuations in the cost of nickel, stainless steel rod producers impose a surcharge on the price of their products whenever the price of nickel reaches a certain level.[1399] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through interim 2001.[1400] The price of domestic stainless rod generally followed this trend during the period of investigation, with the average unit values of domestic rod shipments and sales declining through the end of 1999, recovering in 2000, and then declining again in interim 2001.[1401]

Sixth, during the period of investigation, there were imports of stainless rod from over 30 countries, although not every country exported stainless rod in every year.[1402] The quantity of imports of stainless steel rod from sources other than Canada and Mexico increased by 36 percent from 1996 to

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[1390] Carpenter accounted for *** percent of reported domestic production of stainless rod in 2000. CR and PR at Table STAINLESS-1.

[1391] Eurofer Prehearing Brief on Injury at 2. Talley accounted for *** percent of reported domestic production of stainless rod in 2000. CR and PR at Table STAINLESS-1.

[1392] Empire Specialty Steel, Inc. Questionnaire Response at August 6, 2001 Attachment.

[1393] CR and PR at Tables STAINLESS-C-5 & STAINLESS-19.

[1394] CR and PR at Tables STAINLESS-C-5 & STAINLESS-19.

[1395] CR and PR at Tables STAINLESS-C-5 & STAINLESS-19.

[1396] CR and PR at Table STAINLESS-19.

[1397] INV-Y-212 at 95.

[1398] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[1399] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[1400] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[1401] CR and PR at Tables STAINLESS-19, STAINLESS-88, & STAINLESS-C-5.

[1402] INV-Y-180, Table G26- Stainless Steel Rod.

2000 but fell by 31 percent between interim 2000 and interim 2001.[1403] The record indicates that purchasers generally perceive domestically-produced and imported stainless rod to be comparable in most respects, which indicates that they are at least reasonably substitutable.[1404] The level of substitutability is reduced somewhat by the significant degree of captive consumption of stainless rod by the domestic industry.[1405]

The aggregate capacity of foreign producers of stainless steel rod from sources other than Mexico and Canada increased by 16.5 percent during the period of investigation. The capacity utilization rates of these producers increased from 70.8 percent in 1996 to 83.7 percent in 1997 and remained essentially stable thereafter, with capacity utilization being 84.3 percent in 2000 and 82.2 percent in interim 2001.[1406]

Seventh, antidumping and countervailing duty orders were imposed against imports of stainless rod from Brazil, France, India, Italy, Japan, Korea, Spain, Sweden, and Taiwan in 1993, 1994, and 1998.[1407]

b. Analysis

We find that the increased quantities of stainless rod imports during the period of investigation had a direct and serious adverse impact on the production levels, shipments, commercial sales, and market share of the domestic industry. With demand remaining essentially flat during the period of investigation,[1408] the increases in import volumes during the period (particularly the surge that occurred in the last year of the period) resulted in a dramatic increase in the market share of stainless rod imports.[1409] With the growth in the quantity and market share of imports during the period of investigation, especially during the last year of the period, the industry's production levels, shipment volumes, net commercial sales, and net commercial sales revenues all fell considerably, especially in the last full year of the period. In particular, the industry's production levels declined by *** percent during the period from 1996 to 2000, its U.S. shipment volumes fell by *** percent during the period, its net commercial sales fell by *** percent during the period, and its net commercial sales revenues fell by *** percent.[1410] Moreover, the industry's capacity utilization rates were impacted as well, falling from *** percent in 1996 to *** percent in 2000, and then to *** percent in interim 2001.[1411] Further, as import

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[1403] CR and PR at Tables STAINLESS-6 & STAINLESS-C-4.

[1404] EC-Y-046 at Table STAINLESS-25; *see generally* EC-Y-046 at STAINLESS-14-28..

[1405] EC-Y-046 at STAINLESS-31.

[1406] CR and PR at Table STAINLESS-47.

[1407] CR and PR at Table OVERVIEW-1.

[1408] We note that apparent consumption fell by *** percent between interim periods.

[1409] CR and PR at Tables STAINLESS-68 & STAINLESS-C-5. The market share of imports increased from *** percent in 1996 to *** percent in 1997, declined in 1998 to *** percent, but then increased to *** percent in 1999 and *** percent in 2000. Id. It then declined slightly to *** percent in interim 2001. Id.

[1410] CR and PR at Tables STAINLESS-19, STAINLESS-31 & STAINLESS-C-5. Declines in these indicators continued in interim 2001, as well, when demand for stainless rod fell considerably from its prior levels. Id.

[1411] CR and PR at Tables STAINLESS-19 and STAINLESS-C-5. As noted earlier, we are cognizant of the fact that the industry increased its capacity during the period. Nonetheless, despite this increase, the industry's production volumes fell by *** percent during the period from 1998 to 2000 and by an additional *** percent in interim 2001. *Id.* Thus, the industry's capacity utilization rates would have declined substantially even in the

quantity and market share increased during the period of investigation, the share of the market held by the domestic industry declined dramatically as well, falling from *** percent in 1996 to *** percent in 1999 and to *** percent in 2000.[1412]

Indeed, the most serious adverse impact of imports in quantity terms occurred during the last full year of the period of investigation, when import quantities reached their highest level during the period, growing by 25.0 percent from the previous year.[1413] With growth in imports in that year, the market share of the industry fell by *** percentage points, its production volumes fell by *** percent, its U.S. shipment levels fell by *** percent, and its net commercial sales quantities fell by *** percent from the prior year's levels.[1414] Moreover, partly as a direct result of these volume declines,[1415] the industry's profitability levels declined by *** percentage points in that year from the previous year's level.[1416] In our view, the increases in import quantities during the period of investigation, particularly its last full year, have had a serious and adverse impact on the sales revenue and production volumes of the industry.

The record also indicates that imports had a negative effect on domestic prices of stainless rod during the period of investigation. Purchasers generally consider domestic and imported stainless rod to be comparable in most respects, [1417] which indicates that there is a high degree of substitutability between the products. Moreover, the record shows that price is an important part of the purchasing decision[1418] and that imports consistently and significantly undersold the domestic merchandise throughout the period of investigation.[1419] In addition to causing purchasers to shift a significant volume of their purchases from domestic to imported product, we find that this underselling also depressed and suppressed domestic prices during the period of investigation.

In this regard, although trends in the price of stainless rod are expected to follow trends in the price of nickel, prices of domestic stainless rod failed to keep pace with movements in the cost of nickel during the second half of the period of investigation, particularly during the latter half 1999 and 2000, when the price of nickel (and the nickel surcharge) increased substantially.[1420] For example, in 1999, the average unit values of the industry's net commercial sales fell by *** percent although its unit cost of goods sold fell by only *** percent.[1421] Similarly, in 2000, the average unit values of the industry's net commercial sales increased by *** percent despite the fact that its unit cost of goods sold increased by

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absence of these capacity increases.

[1412] CR and PR at Tables STAINLESS-68 & STAINLESS-C-5.

[1413] CR and PR at Tables STAINLESS-7, STAINLESS-68, & STAINLESS-C-5.

[1414] CR and PR at Tables STAINLESS-19, STAINLESS-68, & STAINLESS-C-5.

[1415] As we describe below, the decline in the industry's profitability was also the result of price-suppression and depression by imports during the period of investigation.

[1416] CR and PR at Tables STAINLESS-31 & STAINLESS-C-5.

[1417] INV-Y-212 at 96.

[1418] INV-Y-212 at 96.

[1419] CR and PR at Tables STAINLESS-88, STAINLESS-100, & Figure STAINLESS-11. The price comparison data indicate that imports undersold the domestic merchandise in every possible price comparison, at margins ranging from 6.5 percent to 23 percent. Id. These consistent underselling figures are supported by an examination of the average unit value for domestic and imported merchandise, which also show imports being priced at consistently lower levels than domestic merchandise during the period. CR and PR at Table STAINLESS-C-5.

[1420] CR at STAINLESS-95-96, PR at STAINLESS-70-71 & Tables STAINLESS-7, STAINLESS-19, STAINLESS-31, & STAINLESS-C-5.

[1421] CR and PR at Table STAINLESS-C-5, STAINLESS-19, & STAINLESS-31.

*** percent.[1422] Finally, in interim 2001, the unit value of the industry's net commercial sales fell by *** percent, despite the fact that its unit cost of goods sold increased by *** percent.[1423] In sum, during the latter half of the period, the record indicates that consistent and significant price underselling by imports managed to suppress and depress domestic prices. This resulted in the inability of the industry to effectuate changes in the price of its stainless rod sales that would cover increases (or keep pace with declines) in the price of its raw materials. Accordingly, the price-suppression and depression caused by imports resulted in the continuing depression and suppression of the industry's operating income levels.[1424]

Finally, the record shows a clear and direct correlation between changes in the volume of imports and the overall condition of the industry. In particular, the operating income margins of the industry declined in 1997, 1999, and 2000, all of which were years in which import quantities increased from their level in the prior year.[1425] The only full year in which the industry's operating income margin actually increased from the prior year's level was 1998, when import quantities decreased by 21.5 percent.[1426]

In sum, we find that the increased quantities of imports of stainless rod during the period of investigation were an important cause of the declines in the industry's trade and financial condition during the period. In making this finding, we note that we have considered respondents' argument that adverse changes in the industry's condition during the latter half of the period were caused primarily by a downturn in the demand for stainless steel rod in late 2000 and in interim 2001, as well as an increase in energy costs during the same period.[1427] Although the record does show a downturn in demand for stainless bar and an increase in energy costs in late 2000 and interim 2001, there were substantial declines in the industry's production, sales, and profitability levels during the years prior to 2000 and interim 2001. In particular, the industry's market share, production volumes, employment levels and profitability levels all declined considerably during the period from 1996 to 1999 in the face of increased import volumes, despite the fact that there were only small changes overall in the amount of stainless rod consumed in the U.S. market and despite the fact that there is little evidence that energy costs were increasing substantially in these periods. Considering this, it is clear that imports had a greater impact on the declines in the industry's condition in 2000 and interim 2001 than demand declines and energy cost increases, especially given the substantial increase in import quantities and market share during the last year-and-a half of the period.

In addition, we also have considered respondents' argument that the industry's condition during the period was affected significantly by the poor operations of the domestic producer AL Tech/Empire.[1428] However, ***.[1429] Moreover, even if this producer were excluded from our analysis, the remaining domestic producers of stainless rod still experienced substantial declines in their operating

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[1422] CR and PR at Table STAINLESS-C-5, STAINLESS-19, & STAINLESS-31.

[1423] CR and PR at Table STAINLESS-C-5, STAINLESS-19, & STAINLESS-31.

[1424] CR and PR at Table STAINLESS-31.

[1425] CR and PR at Tables STAINLESS-7, STAINLESS-31, STAINLESS-68, & STAINLESS-C-5.

[1426] CR and PR at Tables STAINLESS-7, STAINLESS-31, STAINLESS-68, & STAINLESS-C-5.

[1427] Eurofer Prehearing Brief on Injury at 2.

[1428] Eurofer Prehearing Brief on Injury at 2.

[1429] Empire Specialty Steel, Inc. Questionnaire Response at August 6, 2001 Attachment; Republic Technologies International Questionnaire Response at p. 54.

income margins, production levels, shipments, capacity utilization, and employment levels during the period of investigation.[1430]

Finally, although antidumping and countervailing duty orders were imposed against imports of stainless rod from Brazil, France, India, Italy, Japan, Korea, Spain, Sweden, and Taiwan in 1993, 1994, and 1998,[1431] the imposition of these orders appears not to have limited the ability of foreign producers in most of these countries to increase their stainless rod exports to the United States in 1999 and 2000.[1432]

In light of the foregoing, we conclude that increased imports of stainless rod are an important cause, and a cause no less important than any other cause, of serious injury to the domestic industry producing stainless rod. Accordingly, we find that imports of stainless rod are a substantial cause of serious injury to the domestic industry producing stainless rod.

4. Findings with Respect to NAFTA Imports

a. Canada

Finding. We find that imports of stainless rod from Canada did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. Canada was not one of the five largest suppliers of stainless rod to the United States on an aggregate level during the last full three years of the period of investigation, nor was it one of the five largest suppliers on an annual basis from 1998 to 2000, or in interim 2001.[1433] In fact, Canada was not even one of the ten largest suppliers of stainless rod at any point in the period and imported only minimal amounts of stainless rod into the United States.[1434] Accordingly, we find that Canada did not account for a substantial share of total imports during this period.

Moreover, imports of Canadian stainless rod declined at a rate of 4.7 percent during the five years from 1996 to 2000, while the growth rate for all imports during this period was 36.1 percent. Between interim 2000 and interim 2001, Canadian imports further declined by 100 percent, while all imports declined by 31.3 percent.[1435] Because Canada's growth rates are appreciably lower than those of all imports during the period, we find that Canada did not contribute importantly to the serious injury suffered by the domestic industry.

b. Mexico

Finding. We also find that imports of stainless rod from Mexico did not account for a substantial share of total imports during the past three years and did not contribute importantly to the serious injury suffered by the domestic industry during the period of investigation. The record shows that Mexico exported an extremely small volume of stainless rod to the United States in 1999 and did not

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[1430] We also note that, although the statute directs us to assess whether a significant number of producers have been able to operate at reasonable levels of profits, it ultimately requires us to assess whether increased imports have been a substantial cause of serious injury to the industry "as a whole". 19 U.S.C. §2252(c)(6).

[1431] CR and PR at Table OVERVIEW-1.

[1432] INV-Y-180 at G26 - Stainless Steel Rod.

[1433] INV-Y-180 at Table G26.

[1434] INV-Y-180 at Table G26.

[1435] INV-Y-180 at Table G26.

import any stainless rod to the United States in 1998, 2000, and interim 2001.[1436] Accordingly, Mexico did not account for a substantial share of imports during the period. Similarly, because there was a negative growth rate for imports of stainless rod from Mexico during the period, we also find that imports from Mexico did not contribute importantly to the serious injury suffered by the industry during the period of investigation.[1437]

D. Semifinished Stainless Steel[1438]

We find that semifinished stainless steel is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic semifinished stainless steel industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In quantity terms, imports of semifinished stainless steel more than tripled during the period of investigation, increasing from 112 thousand short tons in 1996 to 344 thousand short tons in 2000. The largest single increase occurred during 1999, when imports increased from 179 thousand short tons in 1998 to 345 thousand short tons in 1999. The quantity of imports then remained essentially stable at 344 thousand short tons in 2000.[1439] Although the quantity of semifinished stainless steel imports declined between interim 2000 and interim 2001, dropping from 184 thousand short tons to 151 thousand short tons,[1440] the market share of imports increased in interim 2001 over the prior year's level.[1441]

In addition, the ratio of semifinished stainless steel imports to domestic production increased consistently and substantially during the period of investigation, growing from 9.2 percent in 1996 to 23.5 percent in 2000. After declining by 2.1 percentage points between 1996 and 1997, the ratio increased by 8.6 percentage points between 1997 and 1998 and then by an additional 8 percentage points (to 22.7 percent) in 1999. The ratio increased slightly to 23.5 percent in 2000 and grew from 21.8 percent in interim 2000 to 26.1 percent in interim 2001.[1442]

In sum, the record indicates that imports of semifinished stainless steel grew substantially during the period of investigation, particularly during the last two and a half years of the period. Accordingly, we find that the first statutory criterion is satisfied.

[1436] INV-Y-180 at Table G26.

[1437] We also have considered whether the exclusion of imports of stainless rod from Mexico or Canada from our injury analysis would have affected our finding that imports were a substantial cause of serious injury to the stainless rod industry. Because imports of stainless rod from Mexico and Canada each accounted for an extremely small percentage of total imports during the period of investigation, INV-Y-180 at Table G-25, we find the exclusion of these volumes does not change our volumes or pricing analysis in a significant manner. Accordingly, our injury analysis would not be changed in any way by their exclusion.

[1438] This section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller and Hillman.

[1439] CR and PR at Tables STAINLESS-28 & STAINLESS-C-2.

[1440] CR and PR at Tables STAINLESS-4 & STAINLESS-C-2.

[1441] CR and PR at Tables STAINLESS-65 & STAINLESS-C-2.

[1442] CR and PR at Table STAINLESS-4 & STAINLESS-C-2.

2. Serious Injury

Finding. We find that the domestic semifinished stainless steel products industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is not a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

As an initial matter, we note that the semifinished stainless steel industry has not actively sought import relief in this proceeding. No domestic producer of semifinished stainless steel filed a brief in support of a remedy or entered an appearance at the Commission's hearing to argue for a remedy. Moreover, as the respondent AvestaPolarit points out in its brief, more than *** of the industry (in terms of production levels) either failed to express support for a remedy against semifinished stainless steel imports or stated that they were not suffering serious injury because of imports.[1443] On the whole, we believe that the lack of clear industry support for import relief in this proceeding suggests that the domestic industry is not suffering serious injury.

In addition, the record indicates that there has not been significant idling of productive facilities in the domestic semifinished stainless steel industry during the period of investigation. In this regard, the record indicates that the industry increased its production of semifinished stainless steel during the period, with domestic production levels increasing from 1.2 million short tons and 1.36 million short tons in 1996 and 1997, respectively, to 1.5 million and 1.46 million short tons, respectively in 1999 and 2000.[1444] Moreover, although the industry also increased its capacity levels significantly during the period (with capacity growing from 1.54 million short tons in 1996 to 1.76 million short tons in 2000), the industry's capacity utilization rate increased over the five full years of the period, increasing from 77.6 percent in 1996 to 81.4 percent in 2000.[1445] Given this, the record indicates that the industry has not only been able to maintain, but has actually increased, its use of its productive facilities during period of investigation. Although the industry's production and capacity utilization levels both declined substantially between interim 2000 and 2001, we note that, on a percentage basis, the decline in production in interim 2001 was equal to the decline in consumption for semifinished stainless products overall.[1446] Moreover, we find that this decline was not significant or sustained enough to support a finding that the industry suffered a significant idling of its productive facilities during the period of investigation.

A significant number of domestic producers have been able to carry out their production operations at a reasonable level of profit. As a whole, the industry operated profitably throughout each of the five full years of the period of investigation.[1447] Although the industry's operating income as a percentage of sales declined from 1996 to 1998 (dropping from 5.4 percent in 1996 to 1.7 percent in

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[1443] AvestaPolarit Prehearing Brief on Injury (Product 23) at 4-6.

[1444] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1445] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1446] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1447] CR and PR at Tables STAINLESS-28 & STAINLESS-C-2.

1998), its operating income levels then recovered significantly in 1999 and 2000, reaching a level in the latter year (6.3 percent) that was higher than at any prior point in the period of investigation.[1448] Again, although the industry did experience a substantial decline in its profitability levels in interim 2001, we find that the decline was not significant or sustained enough to support a finding that the industry was unable to carry out their production operations at a reasonable level of profit throughout the period of investigation.

In addition, the industry has not experienced significant unemployment or underemployment during the period of investigation. On the contrary, the number of production-related workers employed by the industry grew by 21 percent during the period, increasing from 310 workers in 1996 to 374 workers in 2000.[1449] Although the number of workers fell to 339 in interim 2001, the number of workers employed by the industry in that interim period was higher than it was in 1996.[1450] The industry's other employment related indicia all generally increased during the period of investigation as well, with hours worked increasing by 24.2 percent, wages paid increasing by 45.7 percent, and hourly wages increasing by 17.4 percent between 1996 and 2000.[1451] The industry's productivity level increased somewhat during the period as well, growing from 1,117.2 short tons per thousand hours in 1996 to 1,147 short tons per thousand hours in 2000.[1452] Given this, the industry's employment levels do not indicate that it is in a state of serious injury.

Moreover, almost all of the other trade and financial indicia for the industry indicate that the industry was not experiencing serious injury during the period of investigation. Although the industry did lose ten percentage points of market share during the period from 1996 to 2000,[1453] the industry's U.S. shipments grew by 21.6 during the period of investigation, increasing from 1.2 million short tons in 1996 to 1.49 million short tons in 2000. Similarly, the value of the industry's net commercial sales grew by 26.9 percent between 1996 and 2000 at the same time that its aggregate cost of goods sold increased by only 23.6 percent, resulting in a 60 percent increase in the industry's gross profit during the period.[1454] The industry's inventory levels declined from 2.9 percent of total shipments in 1996 to 0.9 percent in 2000.[1455] Further, the industry's capital and research and development expenditures both grew during the period, with capital expenses increasing from $3.5 million in 1996 to $5.3 million in 2000, while research and development expenses increased from $710 thousand in 1996 to $1.23 million in 2000.[1456]

In sum, almost all of the sales, output and employment-related factors we examined for the semifinished stainless steel industry improved between 1996 and 2000, notwithstanding the losses in market share that occurred between 1996 and 2000. The industry displayed reasonably good operating margins during this period as well as strong employment and production levels. Although most indicators declined during the interim period comparison, including operating performance, these declines occurred during a significant downturn in demand and were not significant enough to change

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[1448] CR and PR at Tables STAINLESS-28 & STAINLESS-C-2.

[1449] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1450] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1451] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1452] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1453] The industry's market share declined from 91.6 percent in 1996 to 81.2 percent in 2000 and 79.2 percent in interim 2001. CR and PR at Tables STAINLESS-65 & STAINLESS-C-2.

[1454] CR and PR at Tables STAINLESS-28 & STAINLESS-C-2.

[1455] CR and PR at Tables STAINLESS-16 & STAINLESS-C-2.

[1456] CR and PR at Tables STAINLESS-28 & STAINLESS-C-2.

our conclusion that the industry has not experienced serious injury during the period. Consequently, we find that the record does not show the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury. We therefore do not reach the question of substantial cause in this proceeding for this product.

3. Threat of Serious Injury

Finding. We find that increased imports of semifinished stainless steel are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic semifinished stainless steel industry. As that discussion indicated, the industry generally enjoyed significant increases in its production, sales, shipments, profitability, employment, wages, and productivity levels during the five full years of the period of investigation. Moreover, the record indicates that the firms in the domestic industry were able to increase their capital and research spending by 50 percent during the period from 1996 to 2000, thus indicating that the industry is able to generate adequate capital to continue financing their domestic plants and equipment. Given these increases in the industry's financial and trade data and that the record does not indicate that conditions of competition in the market will change significantly in the imminent future, we find that the industry is not threatened with a substantial impairment of its overall position.

We also find that imports are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. We recognize that imports were able to increase their market share by 10.4 percentage points from 1996 to 2000, which resulted in a corresponding loss of market share by the industry during that period. Imports further gained an additional 2 percentage points of market share in interim 2001.[1457] Nonetheless, as we discussed above, these market share declines occurred, for the most part, during a period of a substantial increase in apparent consumption and did not have a serious effect on the industry's production, shipment, sales or operating income levels during the period of investigation. Further, we note that the rate of market share growth for imports of semifinished stainless steel has slowed considerably since 1999.[1458] Finally, while there was a downturn in the financial and trade data for the industry in interim 2001 when import market share increased,[1459] the record indicates that these declines were due primarily to the 31.4 percent decline in consumption that occurred in interim 2001.

Moreover, although the aggregate capacity levels of foreign producers of semifinished stainless steel increased during the period from 1996 to 2000, they are projected to decline substantially during 2001 and 2002.[1460] In addition, the capacity utilization rates of the foreign producers of semifinished stainless steel were reasonably high throughout the period of investigation and remained relatively stable during the period, at levels ranging between 76.7 percent and 84.9 percent.[1461] Further, the foreign producers' capacity utilization rates are projected to remain at or around the 80 percent level in both

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[1457] CR and PR at Tables STAINLESS-65 & STAINLESS-C-2.

[1458] CR and PR at Tables STAINLESS-65 & STAINLESS-C-2.

[1459] In this respect, we recognize that the domestic industry's output, shipments, capacity utilization, employment, and profitability all were lower in interim 2001 than interim 2000. Nevertheless, we find that this was primarily due to the downturn in the overall economy in interim 2001.

[1460] CR and PR at Tables STAINLESS-42 & STAINLESS-43.

[1461] CR and PR at Tables STAINLESS-42 & STAINLESS-43.

2001 and 2002.[1462] Finally, these producers have shipped only a small percentage of their total shipments to the United States during the period of investigation, indicating that the United States is not a focal point of their efforts.[1463] Given the foregoing, we find that it is not likely that foreign producers of semifinished stainless steel will increase their shipments to the United States in a manner that will cause serious injury to the domestic industry in the imminent future.

Accordingly, we find that increased imports of semifinished stainless steel are not a substantial cause of the threat of serious injury to the domestic industry.

E. Stainless Cut-To-Length Plate[1464]

We find that stainless cut-to-length plate ("stainless plate") is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless plate industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In quantity terms, imports of stainless plate more than doubled during the period of investigation, increasing from 19.3 thousand short tons in 1996 to 43.8 thousand short tons in 2000. The quantity of imports increased relatively consistently through the period, with the largest single increase (13.3 thousand short tons) occurring in 1999.[1465] After surging in 1999, the quantity of imports then increased by an additional nine percent in 2000.[1466] The quantity of stainless plate imports declined between interim 2000 and interim 2001, dropping from 28.9 thousand short tons to 17.7 thousand short tons. However, the market share held by stainless plate imports was higher in interim 2001 than at any point before the surge of import volumes in 1999.[1467]

The ratio of stainless plate imports to domestic production also increased consistently and substantially during the five full years of the period of investigation, growing from 15.7 percent in 1996 to 35.6 percent in 2000, with the largest single percentage increase in this ratio (11.7 percentage points) occurring between 1998 and 1999.[1468] The ratio of imports to domestic production decreased from 42.8 percent of domestic production in interim 2000 to 25.9 percent in interim 2001.[1469] This ratio was, nonetheless, higher than the ratio in any of the first three years of the period of investigation.[1470]

In sum, the record indicates that imports of stainless plate grew substantially during the period of investigation, particularly during the last two full years of the period. Accordingly, we find that the first statutory criterion is met.

[1462] CR and PR at Tables STAINLESS-42 & STAINLESS-43.

[1463] CR and PR at Tables STAINLESS-42 & STAINLESS-43.

[1464] This section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller and Hillman.

[1465] CR and PR at Tables STAINLESS-5 & STAINLESS-C-3.

[1466] CR and PR at Tables STAINLESS-5 & STAINLESS-C-3.

[1467] CR and PR at Tables STAINLESS-66 & STAINLESS-C-3.

[1468] CR and PR at STAINLESS-5.

[1469] CR and PR at Table STAINLESS-5.

[1470] CR and PR at Table STAINLESS-5.

2. *Serious Injury*

Finding. We find that the domestic stainless plate industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is not a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

There has not been a significant idling of productive facilities in the domestic stainless plate industry during the period of investigation. In this regard, the record indicates that the industry's capacity, production, and capacity utilization levels all remained essentially stable during the period of investigation. The industry's capacity levels increased slightly from 220 thousand short tons in 1996 to 222 thousand short tons in 2000, while its production volumes also increased slightly, growing from 122 thousand short tons in 1996 to 123 thousand short tons in 2000.[1471] The industry's capacity utilization rates declined slightly from 1996 to 2000, dropping from 55.3 percent in 1996 to 54.4 percent in 2000.[1472] Given this, we find that the record indicates that the industry did not experience a significant idling of its productive facilities during this period. Moreover, the industry's capacity, production and capacity utilization levels all remained stable between interim 2000 and interim 2001, thus indicating that the industry did not experience a significant idling of its productive facilities during the interim period, even with the decline in demand during that period.[1473]

The stainless plate industry and its members have been able to carry out their production operations at a reasonable level of profit. As a whole, the industry operated profitably throughout the entire period of investigation.[1474] Although the industry's operating income as a percentage of sales declined from 1996 to 1998, decreasing from 8.9 percent in 1996 to 1.2 percent in 1998, its operating income levels then recovered considerably in 1999 and 2000, increasing to 2.7 percent in 1999[1475] and 5.0 percent in 2000.[1476] Moreover, while the industry's operating income level declined to a level of 0.7 percent in interim 2001, we note the industry remained profitable even during a period of significant decline in demand. In addition, we do not find the decline to be serious enough or sustained enough to support a finding that the industry was not able to carry out their operations at a reasonable level of profit during the period of investigation.

Other trade and financial indicia for the industry suggest that the industry was not experiencing serious injury during the period of investigation. Although the industry lost nearly nine percentage points of market share during the period from 1996 to 2000,[1477] the industry's domestic shipments level

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[1471] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1472] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1473] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1474] CR and PR at Tables STAINLESS-29 & STAINLESS-C-3.

[1475] The increase in profitability between 1998 and 1999 occurred despite the fact that imports increased by 29.2 percent, the largest increase during the period.

[1476] CR and PR at Tables STAINLESS-29 & STAINLESS-C-3.

[1477] The industry's market share declined from 85.7 percent in 1996 to 76.9 percent in interim 2001. CR and PR at Tables STAINLESS-66 & STAINLESS-C-3.

remained stable during the period, declining only slightly from 115.5 thousand short tons 1996 to 113 thousand short tons in 2000.[1478] In addition, the industry's net commercial sales grew by 2.0 percent over the period from 1996 to 2000, increasing from 117.6 thousand short tons in 1996 to 119.9 thousand short tons in 2000.[1479] Further, despite the fact that the value of the industry's net commercial sales value declined by 11.2 percent between 1996 and 2000, the industry's aggregate cost of goods sold also declined by 8.1 percent between 1996 and 2000.[1480] As a result, the industry was able to remain profitable throughout the period, and even enjoyed reasonable increases in its operating income levels in 1999 and 2000.[1481] Finally, although the industry's inventory levels increased somewhat during the period, they still remained fairly stable during the period, growing slightly during the period of investigation, from 17.4 percent of total shipments in 1996 to 19.3 percent in 1998 and 20.6 percent in 2000.[1482]

In finding that the industry is not seriously injured, we note that the industry has nonetheless experienced declines in its employment levels during the period of investigation. The number of production-related workers employed by the industry declined consistently during the period of investigation, falling from 840 workers in 1996 to 743 workers in 2000, for an aggregate decline of 11.5 percent.[1483] The number of workers fell again (to 709 workers) in interim 2001.[1484] With the exception of productivity,[1485] the industry's other employment-related indicia also fell during the period of investigation as well, with hours worked decreasing by 13.8 percent, wages paid decreasing by 18.7 percent, and hourly wages decreasing by 13.1 percent between 1996 and 2000.[1486] These indicia all declined fell even further in interim 2001.[1487] Moreover, the industry was able to invest an increasingly smaller amount of capital in its facilities during the period of investigation as well. However, these declines are not serious enough to indicate that the industry is seriously injured as a whole, given the stability of the industry's production and shipment levels and the reasonably good profits earned by the industry in 1999 and 2000.

In sum, notwithstanding some declines in its financial condition, the record does not show that the stainless plate industry is suffering such an impairment of its overall condition that it should be considered seriously injured. Despite its losses in market share and declines in net commercial sales value between 1996 and 2000 as well as declines in employment levels, the industry was consistently profitable throughout the period, displayed reasonably good and improving operating margins during the latter portion of the period and exhibited strong and stable production and capacity utilization levels. The declines in certain of the industry's operating indicia (such as employment levels and capital expenditures) do not, in our view, offset the other factors we have discussed above. Moreover, although most of the industry's economic indicators declined during interim 2001, these declines occurred during

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[1478] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1479] CR and PR at Tables STAINLESS-29 & STAINLESS-C-3.

[1480] CR and PR at Tables STAINLESS-29 & STAINLESS-C-3.

[1481] CR and PR at Tables STAINLESS-29 & STAINLESS-C-3.

[1482] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1483] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1484] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1485] Productivity grew during the period, from 66.9 short tons per hour in 1996 to 77.1 short tons per hour in 2000 and 108.6 short tons per hour in interim 2001. CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1486] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

[1487] CR and PR at Tables STAINLESS-17 & STAINLESS-C-3.

a significant downturn in demand and were not significant enough to change our conclusion that the industry has not experienced serious injury during the period. Consequently, we find that the record does not show the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury. We therefore do not reach the question of substantial cause in this proceeding for this product.

3. Threat of Serious Injury

Finding. We also find that the increased imports of stainless plate are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic stainless plate industry. As that discussion indicated, the stainless plate industry was able to maintain its production, shipment and capacity utilization at stable levels throughout the period of investigation and operated at reasonably good levels of profit throughout most of the period, including the last two years of the period of investigation. Given that the record does not indicate that conditions of competition in the market will change significantly in the imminent future, we find that the industry is not threatened with a substantial impairment of its overall position.

We also find that imports are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. We recognize that imports were able to increase their market share by 13.6 percentage points during the period from 1996 to 2000, which resulted in a corresponding loss of market share by the domestic industry during that period. [1488] Nonetheless, as we discussed above, these market share declines occurred, for the most part, during a period of growth in apparent consumption, and did not have a serious effect on the industry's production, sales, and operating income levels. Although there was a downturn in the financial and trade data for the industry in interim 2001,[1489] the record indicates that these declines were due primarily to the 14.1 percent decline in consumption that occurred in interim 2001. In fact, these declines were accompanied by a 6.6 percent decline in the market share of imports in interim 2001, which indicates that import increases were not a substantial cause of the declines in the industry's overall condition in that interim period.[1490]

Moreover, we note that the aggregate capacity levels of foreign producers of stainless plate declined substantially during the period from 1996 to 2000, dropping from 5.0 million short tons in 1996 to 2.3 million short tons in 2000. [1491] In addition, the capacity utilization rates of the foreign producers of stainless plate increased considerably during the period of investigation, growing from 35.8 percent in 1996 to 80.8 percent in 2000.[1492] The capacity utilization rates of these producers are projected to remain at this level in 2001 and 2002.[1493] Finally, foreign producers of stainless plate have generally shipped only a small percentage of their total shipments to the United States during the period of

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[1488] CR and PR at Tables STAINLESS-66 & STAINLESS-C-3.

[1489] In this respect, we recognize that the domestic industry's output, shipments, capacity utilization, employment, and profitability all were lower in interim 2001 than interim 2000. Nevertheless, we find that this was primarily due to the downturn in the overall economy in interim 2001.

[1490] CR and PR at Tables STAINLESS-66 & STAINLESS-C-3.

[1491] CR and PR at Table STAINLESS-44.

[1492] CR and PR at Table STAINLESS-44.

[1493] CR and PR at Table STAINLESS-44.

investigation, indicating that the United States is not a focal point of their efforts.[1494] Given the foregoing, we find that it is not likely that foreign producers of stainless plate will increase their shipments to the United States in a manner that will cause serious injury to the domestic industry in the imminent future.

Accordingly, we find that increased imports of stainless plate are not a substantial cause of the threat of serious injury to the domestic industry.

F. Tool Steel[1495]

We find that tool steel is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic tool steel industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In quantity terms, imports of tool steel increased from 63.8 thousand short tons in 1996 to 86.6 thousand short tons in 2000, a percentage increase of 35.7 percent.[1496] The quantity of tool steel imports increased in each year of the period of investigation and, although apparent consumption declined in interim 2001, the quantity of tool steel imports continued to climb between interim 2000 and 2001, as the quantity of imports grew from 41.1 thousand short tons to 43.4 thousand short tons.[1497]

The ratio of tool steel imports to domestic production also increased during the period of investigation. The ratio rose from 122.6 percent in 1996 to 162.6 percent in 2000.[1498] The ratio of tool steel imports grew in interim 2001 as well, increasing to 206.3 percent.[1499]

In sum, the record indicates that imports of tool steel increased in quantity terms and as a ratio of domestic production throughout the entire period of investigation. Accordingly, we find that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic tool steel industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. On balance, these factors reflect that there is not a significant

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[1494] CR and PR at Table STAINLESS-44.

[1495] This section of the opinion is joined by Vice Chairman Okun and Commissioners Miller and Hillman. Chairman Koplan finds that tool steel is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry. He joins subsections F.1 of these section. *See* his Separate Views on Injury.

[1496] CR and PR at Tables STAINLESS-8 & STAINLESS-C-6.

[1497] CR and PR at Tables STAINLESS-8 & STAINLESS-C-6.

[1498] CR and PR at Tables STAINLESS-8 & STAINLESS-C-6.

[1499] CR and PR at Tables STAINLESS-8 & STAINLESS-C-6.

overall impairment in the condition of the industry that would constitute "serious injury" within the meaning of section 202 of the Trade Act.

There has not been a significant idling of productive facilities in the domestic tool steel industry during the period of investigation. In this regard, the tool steel industry increased its production of tool steel by 2.3 percent during the period 1996 to 2000, as its production levels grew from 52.0 thousand short tons in 1996 to 53.2 thousand short tons in 2000.[1500] Although the industry's capacity utilization rate decreased 9.3 percent over the five full years of the period, this decline was coupled with an industry capacity increase of 21.4 percent during the same period.[1501] While the increase in the industry's production levels did not keep pace with the growth in its capacity levels or the growth in apparent consumption, we find that the industry's ability to maintain, and even increase slightly, its production levels over the period indicates that the industry did not experience the type of significant idling of productive facilities contemplated by the statute, especially given the fact that the industry's employment levels increased and the industry remained profitable during the five full years of the period of investigation.[1502]

The record also does not indicate that a significant number of domestic firms were unable to carry out their production operations at a reasonable level of profit. As a whole, the industry operated reasonably profitably throughout each of the five full years of the period of investigation.[1503] Moreover, although the industry's operating income as a percentage of sales declined from *** percent in 1996 to *** percent in 1999,[1504] the industry's operating income level recovered to a level of *** percent in 2000.[1505] Although the industry was not profitable in interim 2001 for the first time during the period of investigation,[1506] we do not find that the profitability decline during the interim period was sustained enough to lead us to conclude that the industry has not been able to carry out its production operations at a reasonable level of profit for the period of investigation.

In addition, the tool steel industry has not experienced significant unemployment or underemployment during the period of investigation. The number of production-related workers employed by the industry increased by 7.6 percent during the period 1996 to 2000, growing from 671 workers in 1996 to 722 workers in 2000.[1507] Total hours and wages also increased during this period, with hours worked increasing by 16.1 percent and wages paid increasing by 8.1 percent during the five full years of the period of investigation.[1508] We recognize that hourly wages declined by 6.9 percent and productivity fell by 10.8 percent during the period of investigation and that the industry's employment indicators did fall substantially in interim 2001.[1509] However, we do not find that the declines in the

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[1500] CR and PR at Tables STAINLESS-20 & STAINLESS-C-6.

[1501] CR and PR at Tables STAINLESS-20 & STAINLESS-C-6.

[1502] The data for January-June 2000 and 2001, we note, show substantial declines in production and capacity utilization. The interim figures also reveal declines in apparent consumption and in inventory and do not alter our conclusion. CR and PR at Tables STAINLESS-20 & STAINLESS-C-6.

[1503] CR and PR at Tables STAINLESS-32 & STAINLESS-C-6.

[1504] CR and PR at Tables STAINLESS-32 & STAINLESS-C-6.

[1505] CR and PR at Tables STAINLESS-32 & STAINLESS-C-6.

[1506] CR and PR at Tables STAINLESS-32 & STAINLESS-C-6. The industry's operating loss was *** percent in interim 2001.

[1507] CR and PR at Tables STAINLESS-20 & STAINLESS-C-6.

[1508] CR and PR at Tables STAINLESS-20 & STAINLESS-C-6.

[1509] CR and PR at Tables STAINLESS-20 & STAINLESS-C-6.

industry's hourly wages and productivity were significant enough, or its declines in interim 2001 were sustained enough to indicate that the industry as a whole suffered significant unemployment or underemployment during the period of investigation.

Moreover, we do not find that the industry's other trade and financial indicia indicate that the industry suffered serious injury during the period of investigation. Although the industry lost 6.5 percentage points of market share during the five full years of the period of investigation, the industry's aggregate U.S. shipments grew by 3.8 percent during the same period, from 51.68 thousand short tons in 1996 to 53.65 thousand short tons in 2000.[1510] Declines in the industry's net commercial sales by aggregate and unit value (*** percent and *** percent, respectively) were accompanied by declines in the industry's aggregate and unit costs of goods sold during the same period (*** percent and *** percent, respectively).[1511] Further, although the industry's capital expenditures declined by *** percent during the period, the industry was able to make substantial investments throughout the period, ranging between $***.[1512] Moreover, we note that profits were up at the end of the period of investigation as capital expenditures reached their 1996 level.[1513]

In sum, an examination of the industry's trade and financial indicia during the period of investigation indicates that the industry's condition remained reasonably sound. The industry remained reasonably profitable, increased its production, shipments and capacity levels, and saw its employment levels grow during the five full years of the period of investigation. Although a number of indicators, including operating performance, declined in the interim period, the declines occurred during a significant downturn in demand and were not so sustained that they lead us to conclude that the industry has begun suffering serious injury. On the whole, the record does not show the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury within the meaning of section 202 of the Trade Act. Accordingly, we do not reach the question of substantial cause.

3. Threat of Serious Injury

Finding. We also find that the increased imports of tool steel are not a substantial cause of the threat of serious injury to the domestic tool steel industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic tool steel industry. Despite the increases in the quantity and market share of imports, the industry experienced increases in its production, shipments, and employment levels during the five full years of the period of investigation and remained profitable throughout this five year period. Although the tool steel industry's operating income levels declined from 1996 to 1999, they recovered in 2000 to a reasonable level of *** percent in 2000, despite the fact that imports were at their highest quantity levels in that year. Moreover, the industry was able to make the same level of capital investments in its facilities in 2000 that it did in 1996. Given these trends in the industry's financial and trade data and given that the record does not indicate that conditions of competition in the market will change significantly in the imminent future, we find that the industry is not threatened with a substantial impairment of its overall position.

[1510] CR and PR at Tables STAINLESS-69 & STAINLESS-C-6.

[1511] CR and PR at Table STAINLESS-32 & STAINLESS-C-6.

[1512] CR and PR at Table STAINLESS-32 & STAINLESS-C-6.

[1513] CR and PR at Table STAINLESS-32 & STAINLESS-C-6.

We also find that imports are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. We recognize that imports were able to increase their market share by 6.5 percentage points from 1996 to 2000, which resulted in a corresponding loss of market share by the domestic industry during that period. Imports further gained an additional 5.5 percentage points of market share in interim 2001.[1514] Nonetheless, as we discussed above, these market share declines occurred, for the most part, during a period of substantial growth in apparent consumption and did not have a serious effect on the industry's production, shipment, sales or operating income levels during the period of investigation. Finally, while there was a downturn in the financial and trade data for the industry in interim 2001 when import market share increased,[1515] the record suggests that these declines were due primarily to the 8.4 percent decline in demand that occurred in interim 2001. Given this, we do not find that it is likely that imports will have a serious impact on the industry's condition in the immediate future.

Moreover, the record does not indicate that imports of tool steel had serious negative effects on domestic prices during the period. The price comparison data obtained by the Commission indicate that, while there was consistent underselling by Canadian imports of the comparison product during the period, imports from other countries oversold the domestic merchandise in the majority of possible price comparisons.[1516] Moreover, the price comparison data also indicate that prices for the domestic comparison product declined when non-NAFTA imports consistently oversold the domestic merchandise during the first half of the period of investigation but that domestic prices generally remained stable or increased when non-NAFTA imports began underselling the domestic product during the second half of the period of investigation.[1517] Given this price comparison data, we cannot conclude that there is a clear causal nexus between domestic price movements and underselling by imports or that imports of tool steel are likely to have serious adverse effects on domestic prices in the imminent future.

Accordingly, we find that increased imports of tool steel are not a substantial cause of the threat of serious injury to the domestic industry.

G. Stainless Steel Wire[1518]

We find that stainless steel wire is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless steel wire industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

[1514] CR and PR at Tables STAINLESS-69 & STAINLESS-C-6.

[1515] In this respect, we recognize that the domestic industry's output, shipments, capacity utilization, employment, and profitability all were lower in interim 2001 than interim 2000. Nevertheless, we find that this was primarily due to the downturn in the overall economy in interim 2001.

[1516] CR and PR at Tables STAINLESS-89, STAINLESS-101, & Figure STAINLESS-12.

[1517] CR and PR at Tables STAINLESS-89, STAINLESS-101, & Figure STAINLESS-12.

[1518] This section of the opinion is joined by Vice Chairman Okun and Commissioners Miller and Hillman. Chairman Koplan finds that stainless steel wire is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry. He joins subsection G.1 of this section. *See* his Separate Views on Injury.

In quantity terms, imports of stainless wire increased from 27.3 thousand short tons in 1996 to 31.3 thousand short tons in 2000.[1519] The quantity of stainless wire imports fluctuated somewhat during the period, increasing from 27.3 thousand short tons in 1996 to 29.9 thousand short tons in 1997 and then to 30.7 thousand short tons in 1998.[1520] The quantity of imports then declined by 19.4 percent, to 24.7 thousand short tons, in 1999. However, the single largest increase in import quantity occurred between 1999 and 2000, when imports increased by 26.5 percent, from 24.8 thousand short tons to 31.3 thousand short tons. [1521] The quantity of stainless wire imports increased between interim 2000 and 2001, as import volumes grew from 16.0 thousand short tons to 16.5 thousand short tons.[1522]

The ratio of stainless steel wire imports to domestic production exhibited a similar trend during the period of investigation. The ratio remained relatively stable (between 31 and 32 percent) during the first three years of the period but then declined to 23.9 percent in 1999.[1523] The ratio of stainless wire imports to domestic production then increased by 5.5 percentage points, to 29.4 percent, in 2000.[1524] The ratio of imports to domestic production increased to its highest level during the period, 38 percent, in interim 2001.[1525]

In sum, the record indicates that imports of stainless wire increased in quantity terms and as a ratio to domestic production during the period of investigation. Accordingly, we find that the first statutory criterion is satisfied.[1526]

2. Serious Injury

Finding. We find that the domestic stainless steel wire industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic stainless steel wire industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is not a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

There has not been a significant idling of productive facilities in the domestic stainless steel wire industry during the period of investigation. In this regard, the record indicates that the industry increased its production of stainless wire by 24.4 percent during the period from 1996 to 2000, with domestic production levels increasing consistently from 85 thousand short tons in 1996 to 96.4 thousand short tons in 1998 and then to 106 thousand short tons in 2000.[1527] Moreover, while the industry increased its capacity levels by 12.7 percent from 1996 to 2000 (from 139.5 thousand short tons in 1996

[1519] CR and PR at Table STAINLESS-9 & STAINLESS-C-7.

[1520] CR and PR at Table STAINLESS-9 & STAINLESS-C-7.

[1521] CR and PR at Table STAINLESS-9 & STAINLESS-C-7.

[1522] CR and PR at Table STAINLESS-9 & STAINLESS-C-7.

[1523] CR and PR at Table STAINLESS-9 & STAINLESS-C-7

[1524] CR and PR at Table STAINLESS-9 & STAINLESS-C-7.

[1525] CR and PR at Table STAINLESS-9 & STAINLESS-C-7.

[1526] Chairman Koplan does not join the remainder of this section of the opinion.

[1527] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

to 157.2 thousand short tons in 2000), the industry's capacity utilization rate also increased over the five full years of the period, increasing from 61.3 percent in 1996 to 67.2 percent in the year 2000.[1528] Given the foregoing, the record indicates that the stainless wire industry has been able not only to maintain, but has actually increased, its use of its productive facilities during the period of investigation. Although the industry's production and capacity utilization levels both declined between interim 2000 and 2001, we note that these declines have not been so sustained that they would lead us to conclude that the industry was experiencing a significant idling of its productive facilities during the period of investigation, particularly given the declines in apparent consumption in interim 2001.[1529]

The record does not indicate that a significant number of domestic firms have been unable to carry out their production operations at a reasonable level of profit. As a whole, the industry operated profitably throughout each of the five full years of the period of investigation.[1530] In fact, during the five full years of the period of investigation, the industry's profitability levels remained essentially stable, with the industry's operating income as a percentage of sales ranging between *** percent and *** percent during this period.[1531] Moreover, the majority of stainless wire producers consistently reported operating profits throughout the period, with *** producers reporting operating profits in 1996, *** producers reporting operating profits in 1997, *** reporting operating profits in 1998, and *** reporting operating profits in 1999 and 2000.[1532] Again, although the industry's profitability levels declined in interim 2001, the decline was not significant enough or sustained enough for us to conclude that the stainless wire industry was unable to carry out its production operations at a reasonable profit during the period of investigation.

Although there have been declines in the stainless wire industry's employment levels, the industry has not experienced the sort of significant unemployment or underemployment during the period of investigation that would warrant a finding that the industry is seriously injured. While the number of production-related workers employed by the industry decreased by 9.1 percent during the period from 1996 to 2000, declining from 1,119 workers in 1996 to 1,017 workers in 2000, the bulk of the decline (5.6 percent) occurred during the first three years of the period, when the industry's production levels, capacity utilization levels, and operating income margins all increased.[1533] During the period from 1999 to interim 2001, the number of production-related workers remained essentially stable, ranging between 1,022 and 1,017 workers on a yearly basis.[1534] Moreover, the industry experienced increases in its productivity levels during the period.[1535] Although the industry's other employment related indicia also declined somewhat during the period of investigation (with hours worked decreasing by 8.9 percent, wages paid decreasing by 12.9 percent, and hourly wages decreasing by 4.4 percent between 1996 and 2000), these declines are not so significant that they warrant a finding of serious injury, especially given the improvement in a number of the other trade and financial data of the industry during the same period.[1536] Finally, we note that the industry's productivity level increased during the

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[1528] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

[1529] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

[1530] CR and PR at Tables STAINLESS-33 & STAINLESS-C-7.

[1531] CR and PR at Table STAINLESS-33 & STAINLESS-C-7.

[1532] CR and PR at Table STAINLESS-33 & STAINLESS-C-7

[1533] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

[1534] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

[1535] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

[1536] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

period as well, growing from 36.7 short tons per thousand hours in 1996 to 49.7 short tons per thousand hours in 2000 and 46.2 thousand short tons per hour in interim 2001.[1537]

The stainless wire industry's other trade and financial indicia indicate that it was not experiencing serious injury during the period of investigation. First, despite the increase in the quantity of imports, the industry actually gained market share during the five full years of the period of investigation, with the industry's market share growing from 75.4 percent in 1996 to 77.0 percent in 2000.[1538] This market increase occurred during a period of growth in demand for wire and reflected a growth in the industry's production levels of 24.4 percent and a growth of 25 percent in its domestic shipments.[1539] Moreover, although the net aggregate and unit value of the industry's commercial sales declined somewhat during the period from 1996 to 2000 (by *** percent and *** percent, respectively), these declines were offset by corresponding declines in the industry's aggregate and unit costs of goods sold (of *** percent and *** percent, respectively) during the same period.[1540] Further, although the industry's capital and research and development expenditures declined during the period, the industry was nonetheless able to make substantial capital and research and development expenditures throughout the period, with its capital expenses ranging between $*** million and $*** million during the first four years of the period and with its research and development expenses ranging between $*** thousand and $*** million from 1996 to 2000.[1541] Even when its capital expenses declined by *** percent in 2000, the industry was still able to make $*** million in capital investments in its facilities.[1542]

In sum, an examination of the stainless wire industry's trade and financial indicia during the period of investigation indicates that the industry's condition generally remained stable or improved during the period. The industry remained profitable throughout the five full years of the period of investigation, with its operating income levels remaining stable throughout the period. The industry increased its production, capacity utilization levels and its market share during the five full years of the period of investigation. Although most indicators declined between interim periods, including operating performance, these declines occurred during a significant downturn in demand and were not significant enough to change our conclusion that the industry has not experienced serious injury during the period. Consequently, we find that the record does not show the type of overall impairment of the stainless wire industry that is substantial enough in duration or magnitude to constitute serious injury. We therefore do not reach the question of substantial cause.

3. Threat of Serious Injury

Finding. We find that increased imports of stainless wire are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic stainless wire industry. As that discussion indicated, the stainless wire industry gained market share and its profitability levels remained stable during the five full years of the period of investigation. It also enjoyed significant increases in its production, shipment, capacity utilization, and productivity

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[1537] CR and PR at Tables STAINLESS-21 & STAINLESS-C-7.

[1538] CR and PR at Tables STAINLESS-70 & STAINLESS-C-7.

[1539] CR and PR at Table STAINLESS-21 & STAINLESS-C-7.

[1540] CR and PR at Table STAINLESS-33 & STAINLESS-C-7.

[1541] CR and PR at Table STAINLESS-33 & STAINLESS-C-7.

[1542] CR and PR at Table STAINLESS-33 & STAINLESS-C-7.

levels during the five full years of the period of investigation. Although the industry experienced some declines in certain of its employment levels and made declining levels of capital expenditures during the period, these declines were not so serious that they offset the other improvements in the industry's overall condition. Moreover, while there has been a downturn in a number of the industry's trade and financial data in interim 2001, the record contains no evidence indicating that conditions of competition in the market will change so significantly in the imminent future that the industry is threatened with a substantial impairment of its overall position.

Moreover, we also find that imports of stainless wire are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. In this regard, we note that market share of imports declined during the first five full years of the period, which suggests that there is not a likelihood that these imports will increase seriously in the imminent future. Moreover, we find that stainless wire imports have not had a clear adverse impact on the price of domestic stainless wire during the period of investigation. Although the record indicates that imports consistently undersold domestic wire products,[1543] the record also indicates that price movements for domestic stainless wire did not clearly correlate with the existence or significance of underselling by imported stainless wire.[1544] For example, during the period between the third quarter of 1996 through the fourth quarter of 1997, domestic prices remained stable, despite the existence of significant and consistent underselling by imports.[1545] Similarly, domestic prices for stainless wire rose considerably in 2000 from their 1999 levels, despite the existence of continued and significant underselling by imports in 2000.[1546] Given these trends, we cannot conclude that imports had a serious suppressing or depressing effect on domestic prices during the period of investigation or are likely to do so in the imminent future.

Finally, although reported foreign capacity levels have increased during the period and are projected to increase by 9 percent in 2001 and an additional 4 percent in 2002, the capacity utilization rates of the foreign stainless wire producers have remained high throughout the period (93.8 percent in 2000) and are projected to remain at high levels in 2001 and 2002.[1547] In addition, despite these capacity increases, shipments to the United States have declined somewhat over the period as a percentage of total foreign shipments and are projected to increase only slightly in 2001 and 2002. [1548] Accordingly, we find that there is not a likelihood that the foreign producers of stainless wire will increase their shipments of wire to the United States in a manner that will cause serious injury to the domestic industry in the imminent future.

Accordingly, we find that imports of stainless wire are not likely to be a substantial cause of the threat of serious injury to the domestic industry producing stainless steel wire.

[1543] CR and PR at Table STAINLESS-90 and Figure STAINLESS-13.

[1544] CR and PR at Table STAINLESS-90 and Figure STAINLESS-13.

[1545] CR and PR at Table STAINLESS-90 and Figure STAINLESS-13.

[1546] CR and PR at Table STAINLESS-90 and Figure STAINLESS-13.

[1547] CR and PR at Table STAINLESS-50.

[1548] CR and PR at Table STAINLESS-50.

H. Stainless Woven Cloth[1549]

We find that stainless woven cloth is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless woven cloth industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In quantity terms, imports of stainless woven cloth fluctuated considerably during the period of investigation, increasing from 5.7 thousand short tons in 1996 to 10.5 thousand short tons in 1997 and to 13.6 thousand short tons in 1998 but then declining to 5.5 thousand short tons in 1999 and 7.1 thousand short tons in 2000.[1550] The quantity of imports increased slightly between interim periods, increasing from 3.4 thousand short tons in interim 2000 to 3.9 thousand short tons in interim 2001.[1551]

The ratio of stainless woven cloth imports to domestic production fluctuated in a similar manner during the period of investigation. The ratio of cloth imports to domestic production increased from *** percent in 1996 to *** percent in 1998, declined to *** percent in 1999, then increased to *** percent in 2000. The ratio of imports to domestic production increased from *** percent in interim 2000 to *** percent in interim 2001.[1552]

In sum, we find that there were increased quantities of woven cloth imports during the period of investigation. Although there were fluctuations in the quantity of imports and their ratio to domestic production during the period of investigation, the record indicates that imports of stainless woven cloth increased in quantity terms and in terms of their ratio to domestic production overall during the period of investigation. Accordingly, we find that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic stainless woven cloth industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is not a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

As an initial matter, we note that the stainless woven cloth industry has not actively sought import relief in this proceeding. No domestic producer of stainless woven cloth filed a brief in support of such a remedy or entered an appearance at the Commission's hearing to argue in favor of a remedy.

[1549] This section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller, Hillman, and Devaney.

[1550] CR and PR at Tables STAINLESS-10 and STAINLESS-C-8.

[1551] CR and PR at Table STAINLESS-10 & STAINLESS-C-8.

[1552] CR at Table STAINLESS-10.

On the whole, we find that the lack of clear industry support for import relief in this proceeding suggests that the domestic stainless woven cloth industry is not suffering serious injury.

Moreover, the record indicates that there has not been a significant idling of productive facilities in the domestic stainless cloth industry during the period of investigation. In this regard, the limited available data for the industry indicate that the industry experienced some declines in its production levels and capacity utilization rates during the period of investigation.[1553] The industry reported that its production volumes fell from *** short tons in 1996 to *** short tons in 2000 and fell from *** short tons in interim 2000 to *** short tons in interim 2001.[1554] Similarly, the industry's reported capacity utilization rates declined as well during the period of investigation, dropping somewhat from *** percent in 1996 to *** percent in 2000, and then to *** percent in interim 2001.[1555] Despite these declines in the industry's production and capacity utilization levels, the declines are not so significant that they indicate that the industry is suffering serious injury, especially given the healthy operating income levels of the industry throughout the period.

The stainless woven cloth industry has been able to carry out its production operations at a reasonable level of profit. The sole reporting domestic producer reported that it earned strong operating income levels throughout the period of investigation.[1556] In fact, the producer did not have an operating income level of less than *** percent at any point in the period and was able to increase its operating income level to *** percent in interim 2001.[1557] Clearly, these are not the operating results of an industry that has been experiencing serious injury.

Moreover, although there have been some declines in the industry's employment levels during the period of investigation, they have not been significant enough to warrant a finding that the industry was seriously injured during the period of investigation. The number of production-related workers employed by the industry declined only somewhat between 1996 and 2000, dropping from *** workers in 1996 to *** workers in 2000. [1558] The number of workers increased to *** in interim 2001.[1559] Although the number of production-related workers employed by the industry declined during the period, the industry's other employment related indicia increased, as hours worked grew by *** percent, wages paid grew by *** percent, and hourly wages grew by *** percent between 1996 and 2000. [1560]

In sum, an examination of the stainless woven cloth industry's trade and financial indicia during the period of investigation indicates that the industry's condition either remained stable or improved during that period. The industry remained very profitable throughout the five full years of the period of investigation. The industry's employment and production levels remained essentially stable during the period of investigation and the industry appears to remain a small but significant player in the woven cloth market. Finally, the industry has not entered an appearance in this proceeding to seek relief from imports. Consequently, we find that the record does not show the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury. We therefore do not reach the question of substantial cause in this proceeding for this product.

[1553] CR and PR at Tables STAINLESS-22 & STAINLESS-C-8.

[1554] CR and PR at Tables STAINLESS-22 & STAINLESS-C-8.

[1555] CR and PR at Tables STAINLESS-22 & STAINLESS-C-8.

[1556] CR and PR at Tables STAINLESS-34 & STAINLESS-C-8.

[1557] CR and PR at Table STAINLESS-34 & STAINLESS-C-8.

[1558] CR and PR at Tables STAINLESS-22 & STAINLESS-C-8.

[1559] CR and PR at Tables STAINLESS-22 & STAINLESS-C-8.

[1560] CR and PR at Tables STAINLESS-22 & STAINLESS-C-8.

3. Threat of Serious Injury

Finding. We find that increased imports of stainless woven cloth are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic stainless woven cloth industry. As that discussion indicated, the record shows that the domestic industry has retained a small but significant percentage of the market and that its two most recent full year market shares were higher than the industry's market share lows in 1997 and 1998.[1561] Moreover, as discussed above, the industry enjoyed healthy profitability levels throughout the period and has maintained relatively stable production and employment levels during the period of investigation, despite some declines in these indicators.[1562] In our view, the record contains no evidence indicating that conditions of competition in the market will change so significantly in the imminent future that the industry is threatened with a substantial impairment of its overall position.

We also find that imports are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. As we noted above, the industry essentially maintained a small but stable market share throughout a period of fluctuating demand. Accordingly, although the market share of imports consistently ranged between *** percent and *** percent during the period of investigation, imports did not take substantial market share from the industry during the period.[1563] Moreover, the substantial market share enjoyed by imports did not have a serious negative impact on the strong operating income levels of the industry, even in interim 2001, when the industry's operating income increased. We find that there is nothing in the record that indicates that the structure of the market will change significantly in the imminent future.

Accordingly, we find that it is not likely that imports of stainless woven cloth will be a substantial cause of the threat of serious injury in the imminent future.

I. Seamless Stainless Tubular Products[1564]

We find that seamless stainless tubular products are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless seamless tubular products industry.

1. *Increased Imports*

Finding. We find that the statutory criterion of increased imports is met.

In absolute quantity terms, imports of seamless stainless tubular products increased by 26.5 percent during the period of investigation, growing from 32.7 thousand short tons in 1996 to 41.3 thousand short tons in 2000.[1565] The most significant increase (36.1 percent) occurred between 1997 and

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[1561] CR and PR at Tables STAINLESS-71 & STAINLESS-C-8.

[1562] We note that the industry made no capital expenditures during the period of investigation. CR and PR at Tables STAINLESS-34 & STAINLESS-C-8.

[1563] CR and PR at Tables STAINLESS-71 & STAINLESS-C-8.

[1564] This section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller, Hillman, and Devaney.

[1565] CR and PR at Tables STAINLESS-12 & STAINLESS-C-10.

1998, which was concurrent with the largest increase in apparent consumption during the period of investigation. There was, however, an additional increase of 7.4 percent in import quantities in 2000.[1566] The quantity of seamless stainless tubular products declined by 1.1 percent between interim 2000 and interim 2001.[1567] However, the market share of imports increased by 6.7 percentage points between interim 2000 and interim 2001.[1568]

In addition, the ratio of U.S. imports to domestic production increased during the period of investigation, growing from 271.6 percent in 1996 to 275 percent in 2000. The ratio of imports to domestic production increased between interim periods, growing from 233.5 percent in interim 2000 to 272.9 percent in interim 2001.[1569]

In sum, the record indicates that imports of seamless stainless tubular products grew substantially during the period of investigation on an absolute basis and increased in terms of their ratio to domestic production. Accordingly, we find that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is not a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

As an initial matter, we note that the domestic seamless stainless tubular product industry has not actively sought import relief in this proceeding. In fact, the seamless stainless tubular products producers who appeared at the Commission's hearing stated that they oppose relief against imports of seamless stainless tubular products.[1570] The industry's opposition to a remedy in this proceeding indicates that the domestic seamless stainless tubular products industry is not suffering serious injury within the meaning of section 201 of the Trade Act.[1571]

There has not been a significant idling of productive facilities in the domestic seamless stainless tubular products industry during the period of investigation. In this regard, the record indicates that the industry significantly increased its production of seamless stainless tubular products during the period of investigation, with domestic production levels growing 25 percent from 12 thousand short tons in 1996

[1566] CR and PR at Tables STAINLESS-12 & STAINLESS-C-10.

[1567] CR and PR at Tables STAINLESS-73 & STAINLESS-C-10.

[1568] CR and PR at Tables STAINLESS-73 & STAINLESS-C-10.

[1569] CR and PR at Table STAINLESS-12.

[1570] CR and PR at Table STAINLESS-2. See Prehearing and Posthearing Injury Briefs of Altx, Inc., DMV Stainless USA Tube, Inc., Pennsylvania Extruded Tube Co., Salem Tube, Inc., and Sandvik Steel Company. In addition, counsel for these domestic producers testified that, after this investigation was instituted, his clients attempted unsuccessfully to amend the scope of the investigation to remove seamless stainless tubular products. Tr. at pp. 2382-83.

[1571] The domestic industry does not contend that it has not suffered any injury by reason of all imports; rather, it takes the position that it is suffering material injury by reason of dumped imports from Japan. *See id.*

to 15 thousand short tons in 2000.[1572] [1573] The largest one year increase occurred between 1999 and 2000, when production rose 43.6 percent and capacity utilization rose nearly 8 percentage points. Although the industry's overall capacity utilization declined 14.6 percentage points during the full period of investigation, from 68.4 percent in 1996 to 53.8 percent in 2000, this is a reflection of the industry's increase (58.8 percent) in capacity quantity during the same period, from 17.6 thousand short tons in 1996 to 27.9 thousand short tons in 2000.[1574] On the whole, given the substantial increase in the industry's production levels and its continued profitability throughout the five full years of the period of investigation, we do not find that decline in the industry's capacity utilization indicates that there has been a significant decline in the industry's utilization of its productive facilities.

The industry and its producers have been able to carry out production operations at a reasonable level of profit. The industry operated profitably (at operating income margins of between 3.4 percent and 8.6 percent) throughout each of the five full years of the period of investigation, notwithstanding an overall decline of 2.6 percent in operating income as a percentage of sales.[1575] In fact, the last full year, 2000, saw an increase in the industry's operating income levels of 1.3 percentage points to 4.7 percent.[1576] Although the industry's operating income level declined to a loss of 1.5 percent in interim 2001, we do not find this decline in the interim period to be so significant or sustained that it indicates that the industry has not been able to earn a reasonable profit on its production operations during the period of investigation.

In addition, we find that the industry has not experienced significant unemployment or underemployment during the period of investigation. On the contrary, the number of production-related workers employed by the industry grew by 6.7 percent during the period, increasing from 255 workers in 1996 to 272 in 2000.[1577] Although the number of workers fell to 260 in interim 2001, the number of workers employed by the industry in that interim period was higher than in 1996.[1578] The industry's other employment-related indicia all generally increased during the period of investigation as well, with hours worked increasing by 15.4 percent, wages paid increasing by 27.4 percent, and hourly wages increasing by 10.4 percent between 1996 and 2000.[1579] The industry's productivity level increased somewhat during the period as well, growing from 23.7 short tons per thousand hours in 1996 to 25.6 short tons per thousand hours in 2000.[1580]

Moreover, the industry's other trade and financial indicia indicate that the industry was not experiencing serious injury during the period of investigation. Although market share for the domestic industry declined by 2.1 percentage points from 1996 to 2000[1581] and its inventory levels increased from

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[1572] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10.

[1573] Commissioner Devaney notes that, despite increased production during the 1997 to 1999 period, there was a decrease in shipments from 1997-1999. U.S. shipments showed significant improvement in 2000.

[1574] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10. The decline in production in interim 2001, we further note, generally followed consumption trends for seamless stainless tubular products.

[1575] CR and PR at Tables STAINLESS-36 & STAINLESS-C-10.

[1576] CR and PR at Tables STAINLESS-36 & STAINLESS-C-10.

[1577] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10.

[1578] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10.

[1579] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10.

[1580] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10.

[1581] The industry's market share declined from 23.3 percent in 1996 to 21.1 percent in 2000. CR and PR at Tables STAINLESS-73 & STAINLESS-C-10.

3.9 percent of total shipments in 1996 to 12.4 percent in 2000,[1582] the industry's U.S. shipments grew by 11.8 percent[1583] and its net commercial sales grew by 18.3 percent between 1996 and 2000.[1584] Moreover, while the average unit values of net commercial sales declined by 13.9 percent between 1996 and 2000, its unit cost of goods sold declined by 11.9 percent.[1585] Further, the industry was able to increase its capital expenditures by 337.7 percent during the five full years of the period of investigation, with capital expenditures growing from $1.86 million in 1996 to $8.14 million in 2000.[1586]

In sum, almost all of the sales, output and employment-related factors we examined for the seamless stainless tubular products industry improved between 1996 and 2000, notwithstanding a 2.1 percentage point loss of market share during the same period. The industry displayed reasonably good operating margins during this period as well as strong employment and production levels. Although most indicators declined during the interim period comparison, including operating performance, these declines were not significant enough or sustained enough to change our conclusion that the industry has not experienced serious injury during the period. Consequently, we find that the record does not show the type of overall impairment of the industry that constitutes serious injury. We therefore do not reach the question of substantial cause in this proceeding for this product.

3. Threat of Serious Injury

Finding. We find that increased imports of seamless stainless tubular products are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic seamless stainless tubular products industry. As that discussion indicated, the industry experienced increases in its production, sales, shipments, employment, wage, and productivity levels during the five full years of the period of investigation. Although the industry's operating income margins declined by 2.6 percent during the five full years of the period of investigation, the industry remained profitable throughout that period and saw its operating income level increase during the last full year of the period. Moreover, the record indicates that the firms in the domestic industry were able to increase substantially their capital and research spending during the period from 1996 to 2000, thus indicating that the industry is able to generate adequate capital to continue financing their domestic plants and equipment. Although there has been a downturn in these indicators in interim 2001, the record contains no evidence indicating that the market will change so significantly in the imminent future that the industry is threatened with a substantial impairment of its overall position.[1587]

We also find that imports are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. In this regard, imports increased their market share during the five full years of the period of investigation by only 2.1 percentage points.[1588] As we discussed

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[1582] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10.

[1583] CR and PR at Tables STAINLESS-24 & STAINLESS-C-10.

[1584] CR and PR at Tables STAINLESS-36 & STAINLESS-C-10.

[1585] CR and PR at Tables STAINLESS-36 & STAINLESS-C-10.

[1586] CR and PR at Tables STAINLESS-36 & STAINLESS-C-10. R&D expenses grew from nothing in 1996 to $50 thousand in 2000. CR and PR at Tables STAINLESS-36.

[1587] In reaching this conclusion we have also taken into consideration the data collected from foreign producers concerning foreign production and foreign inventories, CR and PR at Tables 56 and 78.

[1588] CR and PR at Tables STAINLESS-73 & STAINLESS-C-10.

above, these small market share increases did not have a serious adverse effect on the industry's production, shipment, sales or operating income levels during the period of investigation. Although there were declines in the industry condition in interim 2001, we note that these declines were not sufficiently serious and sustained enough for us to conclude that they indicate that imports are likely to increase in such a fashion in the imminent future that they will cause serious injury.

In this regard, aggregate capacity levels of foreign producers of seamless stainless tubular products remained stable during the period from 1996 to 2000, and are projected to increase only minimally during 2001 and 2002.[1589] In addition, the capacity utilization rates of these foreign producers declined minimally during the period and are projected to be at reasonably strong levels in 2001 and 2002.[1590] Moreover, although they project that their capacity utilization rates will increase in 2001 and 2002, foreign producers project that their U.S. shipments will account for essentially the same percentage of their total global shipments in 2001 and 2002 as in 2000.[1591] Given the foregoing, we find that it is not likely that foreign producers of seamless stainless tubular products will increase their shipments to the United States in a manner that will cause serious injury to the domestic industry in the imminent future.

Accordingly, we find that increased imports of seamless stainless tubular products are not a substantial cause of the threat of serious injury to the domestic industry.

J. Welded Stainless Tubular Products[1592]

We find that welded stainless tubular products are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic welded stainless tubular products industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In quantity terms, imports of welded stainless tubular products more than doubled during the five full years of the period of investigation, increasing from 26.6 thousand short tons in 1996 to 55.4 thousand short tons in 2000.[1593] The largest increases occurred during the final two years of the period, when imports increased from 33.4 thousand short tons in 1997 to 44.8 thousand short tons in 1999 and then increased to 55.4 thousand short tons in 2000.[1594] The quantity of imported stainless welded tubular products declined by 24.4 percent between interim 2000 and interim 2001.[1595]

In addition, the ratio of welded stainless tubular imports to domestic production also increased during the period of investigation, growing from 30.7 percent in 1996 to 48.8 percent in 2000.[1596] After

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[1589] CR and PR at Tables STAINLESS-56 & STAINLESS-57.

[1590] CR and PR at Tables STAINLESS-56 & STAINLESS-57.

[1591] CR and PR at Tables STAINLESS-56 & STAINLESS-57.

[1592] This section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller, Hillman, and Devaney.

[1593] CR and PR at Tables STAINLESS-13 & STAINLESS-C-11.

[1594] CR and PR at Tables STAINLESS-13 & STAINLESS-C-11.

[1595] CR and PR at Tables STAINLESS-13 & STAINLESS-C-11.

[1596] CR and PR at Table STAINLESS-13.

declining to 22.8 percent in 1997, the ratio increased to 29.9 percent in 1998, 34.8 percent in 1999, and 48.8 percent in 2000. The ratio of imports to domestic production declined to 42.1 percent in interim 2001.[1597]

In sum, the record indicates that imports of welded stainless tubular products grew substantially during the period of investigation, both in absolute quantity terms and as a ratio of domestic production. Accordingly, we find that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is not a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

There has not been a significant idling of productive facilities in the stainless welded tubular products industry during the period of investigation. The industry was able to increase its production of stainless welded tubular products by 30.9 percent during five full years of the period of investigation, as its production levels grew from 86.6 thousand short tons in 1996 to 113.4 thousand short tons in 2000.[1598] Despite this growth in production, the industry's capacity utilization rates declined somewhat during the five full years of the period of investigation, decreasing by 8.2 percentage points from 63.1 percent in 1996 to 54.9 percent in 2000.[1599] This decline in capacity utilization rates appears to be directly linked to a substantial growth in the capacity of the industry during the period, as the industry's overall capacity level increased by more than 50 percent, growing from 137.3 thousand short tons in 1996 to 206.4 thousand short tons in 2000.[1600] Given that several of the domestic producers testified at the Commission's injury hearing in this investigation that they had reported as existing capacity production facilities that had essentially been "moth-balled" and given the substantial increases in the production levels of the industry during the period,[1601] we find that the record evidence does not warrant a finding that the industry has experienced a significant idling of its productive facilities during the period of investigation.[1602] Moreover, although the industry's production and capacity utilization levels both declined between interim 2000 and 2001, we note that these declines occurred during a period of

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[1597] CR and PR at Table STAINLESS-13 & STAINLESS-C-11.

[1598] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1599] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1600] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11. In fact, the growth in capacity was matched to a great extent by a growth in demand in the market, as apparent consumption of stainless welded tubular products grew by 44.4 percent during the period from 1996 to 2000. CR and PR at Tables STAINLESS-74 and STAINLESS-C-11.

[1601] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1602] We are also aware of no plant closings or bankruptcies of domestic producers of welded stainless tubular products during the period of investigation.

substantial demand declines. In fact, on a percentage basis, the decline in production in interim 2001 was essentially similar to the decline in demand for welded stainless tubular products overall.[1603]

A significant number of domestic producers were able to carry out their production operations at a reasonable level of profit throughout the bulk of the period of investigation. Although the industry's operating income as a percentage of sales declined from a positive 6.8 percent in 1996 and 6.4 percent in 1997 to an operating loss of 2.2 percent in 1998, its operating income levels recovered significantly in both 1999 and 2000, with its operating profit reaching 2.2 percent of sales revenues in 1999 and then 4.4 percent in 2000.[1604] Although we note that the industry's operating income levels declined to a loss of 2.3 percent in interim 2001, we do not find this decline to be significant enough or sustained enough to warrant a finding that the industry was not able to earn a reasonable level of profit on its operations during the period of investigation.[1605]

The welded stainless tubular products industry has not experienced significant unemployment or underemployment during the period of investigation. In fact, during the period of investigation, all of the industry's employment-related indicia increased, including the number of production-related workers. The number of production-related workers employed by the industry grew by 11.7 percent during the five full years of the period of investigation, increasing from 1,095 workers in 1996 to 1,223 workers in 2000.[1606] Although the number of workers fell to 1,156 in interim 2001, that number was still higher the number of workers employed in 1996.[1607] The industry's other employment related indicia all generally increased during the period of investigation as well, with hours worked increasing by 15.9 percent, wages paid increasing by 17.1 percent, and hourly wages increasing by one percent between 1996 and 2000.[1608] The industry's productivity level increased during the period as well, growing from 38.8 short tons per thousand hours in 1996 to 43.8 short tons per thousand hours in 2000.[1609]

Moreover, the other trade and financial indicia for the industry indicate that the industry was not experiencing serious injury during the period of investigation. Although the industry did lose ten percentage points of market share during the period from 1996 to 2000,[1610] the industry's U.S. shipments grew by 24.7 percent during the period of investigation, increasing from 86.1 thousand short tons in 1996 to 107.3 thousand short tons in 2000.[1611] Similarly, despite a decline in the industry's average unit values over the period, the value of the industry's U.S. shipments grew by 7.7 percent between 1996 and 2000.[1612] The industry's inventory levels as a percentage of shipments remained reasonably stable during the period of investigation, increasing slightly from 35.1 percent of total shipments in 1996 to

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[1603] CR and PR at Tables STAINLESS-74 & STAINLESS-C-11.

[1604] CR and PR at Tables STAINLESS-37 & STAINLESS-C-11.

[1605] In this regard, we note that the industry had an operating loss of 2.2 percent in 1998 but that it was able to increase its operating income levels to 2.2 percent and 4.4 percent in the next two years. CR and PR at Tables STAINLESS-37 & STAINLESS-C-11.

[1606] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1607] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1608] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1609] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1610] The industry's market share declined from 76.4 percent in 1996 to 66.0 percent in 2000 but then increased to 70.5 percent in interim 2001. CR and PR at Tables STAINLESS-74 & STAINLESS-C-11.

[1611] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1612] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

42.5 percent in 2000.[1613] Further, the industry was able to make significant capital investments in its operations in the latter half of the period of investigation, with capital expenditures being $14.4 million in 1996, $5.9 million in 1997, $25.0 million in 1998, $25.6 million in 1999, and $12.2 million in 2000.[1614]

In sum, most of the sales, output and employment-related factors we examined for the stainless welded tubular product industry either remained somewhat stable or improved between 1996 and 2000, notwithstanding the losses in market share that occurred between 1996 and 2000. The industry displayed reasonably good operating margins during this period as well as strong employment and production levels. Although most indicators declined during the interim period comparison, including operating performance, these declines occurred during a significant downturn in demand and were not significant enough for us to conclude that the industry has experienced serious injury during the period. Consequently, we find that the record does not show the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury.[1615] We therefore do not reach the question of substantial cause in this proceeding for this product.

3. Threat of Serious Injury

Finding. We find that increased imports of welded stainless tubular products are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic welded stainless tubular products industry. As that discussion indicated, the industry experienced significant increases in its production, shipment, employment, wage, and productivity levels during the five full years of the period of investigation. Most importantly, the industry's operating income levels improved significantly in the last two full years of the period of investigation and were at reasonable levels during those years. In addition, the record indicates that the firms in the domestic industry were able to make substantial capital investments in their operations during the last three full years of the period of investigation, thus indicating that the industry has been able to generate adequate capital to continue financing their domestic plants and equipment. Although there has been a downturn in a number of these indicators in interim 2001,[1616] the record contains no evidence indicating that conditions of competition in the market will change so significantly in the imminent future that the industry is threatened with a substantial impairment of its overall position.

Moreover, we find that imports are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. We recognize that imports were able to increase their market share by 10.4 percentage points from 1996 to 2000, which resulted in a corresponding loss of market share by the domestic industry during that period.[1617] Nonetheless, these market share declines occurred, for the most part, during a period of a substantial increase in apparent consumption. Moreover, the import market share increases appear not to have had a serious adverse effect on the industry's

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[1613] CR and PR at Tables STAINLESS-25 & STAINLESS-C-11.

[1614] CR and PR at Tables STAINLESS-37 & STAINLESS-C-11.

[1615] We therefore do not reach the question of substantial cause in this proceeding for this product.

[1616] In this respect, we recognize that the domestic industry's output, shipments, capacity utilization, employment, and profitability all were lower in interim 2001 than interim 2000. Nevertheless, we find that this was primarily due to the downturn in the overall economy in interim 2001.

[1617] CR and PR at Tables STAINLESS 74 & STAINLESS-C-11.

production, shipment, sales or operating income levels during the period of investigation. Finally, during the most recent period covered by our investigation (interim 2001), the market share of imports declined, and that of the industry increased, by 2.4 percentage points. In our view, these trends do not suggest that imports of welded stainless tubular products are likely to increase in the imminent future in such a manner that they will have a serious impact on the condition of the industry.

Finally, the capacity and capacity utilization levels of the foreign producers of welded stainless products do not suggest that there is likely to be a significant increase in imports of welded stainless tubular products in the imminent future. Overall, the capacity levels of foreign producers remained stable during the period from 1996 to 2000 [1618] and their capacity utilization rates generally stayed at or around the reasonably strong level of 80 percent throughout the period.[1619] Moreover, these producers project that they will continue to operate at a similar capacity utilization level in 2001 and 2002.[1620] Finally, these producers have shipped only a small percentage of their total shipments to the United States during the period of investigation, indicating that the United States is not a focal point of their efforts.[1621] Given the foregoing, we find that it is not likely that foreign producers of welded stainless tubular products will increase their shipments to the United States in a manner that will cause serious injury to the domestic industry in the imminent future.

Accordingly, we find that increased imports of welded stainless tubular products are not a substantial cause of the threat of serious injury to the domestic industry.

K. Stainless Steel Fittings[1622]

We find that stainless steel fittings are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless steel fittings industry.

1. Increased Imports

Finding. We find that the statutory criterion of increased imports is met.

In quantity terms, imports of stainless steel fittings increased from 18.3 thousand short tons in 1996 to 31.8 thousand short tons in 2000.[1623] The single largest increase in import quantity occurred between 1999 and 2000, when imports increased by 33.9 percent, growing from 23.7 thousand short tons to 31.8 thousand short tons.[1624] As the overall economy declined in 2001, however, the quantity of stainless steel fitting imports declined from 18.1 thousand short tons in interim 2000 to 13.25 thousand short tons in interim 2001.[1625]

[1618] CR and PR at Tables STAINLESS-58, STAINLESS-59, & STAINLESS-60.

[1619] CR and PR at Tables STAINLESS-58, STAINLESS-59, & STAINLESS-60.

[1620] CR and PR at Tables STAINLESS-58, STAINLESS-59, & STAINLESS-60.

[1621] CR and PR at Tables STAINLESS-58, STAINLESS-59, & STAINLESS-60.

[1622] This section of the opinion is joined by Vice Chairman Okun, and Commissioners Miller and Hillman. Chairman Koplan finds that increased imports of stainless fittings are a substantial cause of serious injury to the domestic stainless fitting industry. He joins section K.1 of this section. See his Separate Views on Injury.

[1623] CR and PR at Table STAINLESS-14 & STAINLESS-C-12.

[1624] CR and PR at Table STAINLESS-14 & STAINLESS-C-12.

[1625] CR and PR at Table STAINLESS-14 & STAINLESS-C-12.

The ratio of stainless steel fittings imports to domestic production also increased during the period, growing from *** percent in 1996 to *** percent in 2000.[1626] The single largest percentage increase occurred between 1999 and 2000, when the ratio increased by *** percentage points.[1627] Although the ratio of imports to domestic production declined to *** percent in interim 2001, that ratio was higher than any annual ratio during the first four years of the period of investigation.[1628]

In sum, the record indicates that imports of stainless steel fittings increased in quantity terms during the period of investigation, especially during the last full year of the period of investigation. Accordingly, we find that imports are in increased quantities and that the first statutory criterion is satisfied.

2. Serious Injury

Finding. We find that the domestic stainless steel fittings industry is not seriously injured; that is, we do not find a "significant overall impairment in the position" of the domestic industry.

In finding that the domestic industry is not seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is not a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

The record does not indicate that there has been a significant idling of productive facilities in the domestic stainless steel fittings industry during the period of investigation. In this regard, we note that the record indicates that there have been some declines in the overall capacity levels of the industry as well as its production and capacity utilization rates. The industry's aggregate capacity level declined by *** percent during the five full years of the period of investigation, falling from *** thousand short tons in 1996 to *** thousand short tons in 2000.[1629] The industry's production volumes also fell during the period, decreasing from *** thousand short tons in 1996 to *** thousand short tons in 2000.[1630] As a result of this decrease in its production levels, the industry's capacity utilization rates also fell slightly during the period, declining from *** percent in 1996 to *** percent in 2000.[1631] Although we recognize that there have been some declines in the production and capacity utilization levels of the industry during the period of investigation, we do not find that these declines are so significant that they indicate that the industry has suffered a significant idling of its productive facilities as contemplated under the statute, especially given the industry's consistent operating profitability throughout the period.

The record does not indicate that a significant number of domestic firms have been unable to carry out their production operations at a reasonable level of profit. As a whole, the industry operated profitably throughout the period of investigation.[1632] In fact, although the industry's profitability declined by *** percentage points between 1996 to 1999, falling from a high of *** percent in 1996 to

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[1626] CR and PR at Table STAINLESS-14.

[1627] CR and PR at Table STAINLESS-14.

[1628] CR and PR at Table STAINLESS-14.

[1629] Cr and PR at Tables STAINLESS-26 & STAINLESS-C-12.

[1630] CR and PR at Tables STAINLESS-26 & STAINLESS-C-12.

[1631] CR and PR at Tables STAINLESS-26 & STAINLESS-C-12.

[1632] CR and PR at Tables STAINLESS-38 & STAINLESS-C-12.

*** percent in 1999, its operating income never fell into a loss at any point during the period and, in fact, recovered to reasonable levels of *** percent and *** percent in 2000 and interim 2001, respectively.[1633] Moreover, the large majority of stainless fittings producers reported operating profits on an annual basis throughout the period of investigation, with *** producers reporting operating profits in 1996 and 1997, *** of twelve producers reporting operating profits in 1998, *** of thirteen producers reporting operating profits in 1999, *** of thirteen producers reporting operating profits in 2000, and *** of twelve producers reporting operating profits in interim 2001.[1634] Given these levels of operating profit, we conclude that the industry did not experience serious injury during the period, especially given the lack of a clear correlation between import volume trends and changes in the industry's condition, which we discuss below.

Moreover, although the industry experienced declines in its employment levels during the period of investigation, it has not experienced the sort of significant unemployment or underemployment that would indicate that it was seriously injured during the period of investigation. In this regard, the number of production-related workers employed by the industry decreased by *** percent during the period from 1996 to 2000, declining from *** workers in 1996 to *** workers in 2000.[1635] Moreover, the industry's other employment-related indicia declined during the period from 1996 to 2000, with hours worked decreasing by *** percent, wages paid decreasing by *** percent, and productivity decreasing by *** percent between 1996 and 2000.[1636] However, we find that these declines are not so significant that they warrant a finding of serious injury, given the industry's ability to operate profitability throughout the period of investigation and its improved operating returns during 2000 and interim 2001.[1637]

In general, the other trade and financial indicia of the industry were somewhat mixed during the period of investigation. The industry lost more than *** percentage points of market share during the period, as its market share fell from *** percent in 1996 to *** percent in interim 2001.[1638] In addition, its U.S. shipments decreased by *** percent between 1996 and 2000, the net value of its commercial U.S. sales declined by *** percent during the same period, its average unit values declined by *** percent overall during the period, its inventory levels as a percentage of sales increased from *** percent in 1996 to *** percent in 2000, and its capital expenditures declined by *** percent between 1996 and 2000. [1639] Nonetheless, despite these declines, the industry also saw a *** percent improvement in its market share in interim 2001. It also enjoyed a *** percent reduction in its cost of goods sold during the period from 1996 to 2000, which offset the large bulk of its declines in its aggregate and unit net sales values during this period.[1640] Finally, despite the decline in capital expenditures, the industry was able to

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[1633] CR and PR at Table STAINLESS-38 & STAINLESS-C-12.

[1634] CR and PR at Table STAINLESS-38 & STAINLESS-C-12

[1635] CR and PR at Tables STAINLESS-26 & STAINLESS-C-12.

[1636] CR and PR at Tables STAINLESS-26 & STAINLESS-C-12. Hourly wages was the only employment-related factor that increased during the five full years of the period, increasing by *** percent between 1996 and 2000. *Id.*

[1637] CR and PR at Tables STAINLESS-26 & STAINLESS-C-12.

[1638] CR and PR at Tables STAINLESS-75 & STAINLESS-C-12.

[1639] CR and PR at Tables STAINLESS-26, STAINLESS-38 & STAINLESS-C-12.

[1640] CR and PR at Tables STAINLESS-26, STAINLESS-38 & STAINLESS-C-12.

continue making substantial investments in its operating facilities in the last three years of the period of investigation.[1641]

In sum, a number of the industry's trade and financial indicia declined during the period of investigation. However, the industry remained profitable throughout the five full years of the period of investigation, and saw its operating income levels improve considerably during the last year and a half of the period of investigation. Although most of the industry's other indicators declined during the period, these declines were not so significant that they would lead us to conclude that the industry was experiencing serious injury. Consequently, we find that the record does not show the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury. We therefore do not reach the question of substantial cause in this proceeding for this product.

3. Threat of Serious Injury

Finding. We find that increased imports of stainless steel fittings are not a substantial cause of the threat of serious injury to the domestic industry.

In our discussion of injury above, we presented and discussed the pertinent data concerning the sales, market share, inventories, production, profits, wages, productivity, and employment of the domestic stainless fittings industry. As that discussion indicated, the record indicates that the stainless fittings industry remained profitable throughout the period of investigation and was able to improve its operating income levels during the last eighteen months of the period, despite the fact that imports were at their highest quantity levels during this period. Moreover, although the industry did experience decreases in its production, shipment, sales, capacity utilization, employment, and productivity levels during the five full years of the period of investigation, the industry has seen its market share, shipments and net commercial sales levels increase and its operating income remain stable in interim 2001. While there has been a downturn in some of the industry's trade and financial data in interim 2001,[1642] the record contains no evidence indicating that conditions of competition in the market will change so significantly in the imminent future that the industry is threatened with a substantial impairment of its overall position.

In this regard, we find that imports are not likely to become a substantial cause of serious injury to the domestic industry in the imminent future. During the period of investigation, the increases in import quantities had little apparent impact on the financial condition or production operations of the industry. For example, the largest percentage increases in import volumes occurred in 1997 and 2000, when import quantities increased by 22.3 percent and 33.9 percent respectively.[1643] Despite import increases in 1997, the industry's production and capacity utilization rates both increased, its commercial shipments remained essentially at a stable level, and its operating income remained at a very strong *** percent of net sales. [1644] Further, despite the fact that the largest single increase in import quantity occurred in 2000, the industry's operating income increased by nearly *** percentage points to ***

[1641] The industry's capital expenditures were $*** million in 1996, $*** million in 1997, $*** million in 1998, $*** million in 1999, $*** million in 2000, and $*** thousand in interim 2001. CR and PR at Tables STAINLESS-38 & STAINLESS-C-12.

[1642] In this respect, we recognize that the domestic industry's output, capacity utilization, employment, and profitability all were lower in interim 2001 than interim 2000. Nevertheless, we find that this was primarily due to the downturn in the overall economy in interim 2001.

[1643] CR and PR at Tables STAINLESS-14 & STAINLESS-C-12.

[1644] CR and PR at Tables STAINLESS-26, STAINLESS-38, & STAINLESS-C-12.

percent.[1645] In other words, a close examination of the record data fails to indicate that there is a clear correlation between trends in import quantities and the industry's financial condition or operating results.

Moreover, stainless steel fitting imports appear not to have had a serious adverse impact on the price of domestic stainless fittings during the period of investigation. In this regard, the record indicates that price movements for domestic stainless fittings did not always correlate with the existence or significance of underselling by imported stainless fittings.[1646] For example, during the period between the first of 1999 and the first quarter of 2001, the price of the domestic comparison product increased substantially, despite the existence of significant and consistent underselling by imports.[1647] Moreover, the record data indicate that there were substantial differentials between the average unit values of the domestic and imported fittings products throughout the period of investigation, which indicates that there was little, if any, direct price competition between the majority of the domestic and imported merchandise during the period.[1648] Given the lack of correlation between import trends and domestic volume and price movements, we find that it is unlikely that imports will increase in such a manner in the imminent future that they will be a substantial cause of serious injury to the domestic industry.

Finally, the capacity and capacity utilization levels of the foreign producers of stainless fittings do not suggest that there is likely to be a significant increase in imports of stainless fittings in the imminent future. Although foreign capacity levels increased by *** percent during the period of investigation, foreign capacity is projected to declined slightly in 2001 and 2002.[1649] Moreover, the foreign producers have been operating at high capacity rates in 1999 and 2000 (*** percent in both years) and are projected to operate at reasonably high rates in 2001 and 2002 (*** percent in both years).[1650] Further, the market share of imports declined by *** percentage points in interim 2001[1651] and exports to the United States have remained a small percentage of foreign producers total shipments.[1652] Given the high capacity utilization rates of foreign producers, the decline in import market share in 2001, and the small percentage that United States exports represent of total foreign shipments, we find that there is not a likelihood that the foreign producers of stainless fittings will increase their shipments of fittings to the United States in a manner that will cause serious injury in the imminent future.

Accordingly, we find that increased imports of stainless fittings are not a substantial cause of the threat of serious injury to the domestic industry.[1651]

[1645] CR and PR at Tables STAINLESS-26, STAINLESS-38, & STAINLESS-C-12.

[1646] CR and PR at Table STAINLESS-95 and Figure STAINLESS-18.

[1647] CR and PR at Table STAINLESS-95 and Figure STAINLESS-18.

[1648] CR and PR at Tables STAINLESS-14, STAINLESS-26 and STAINLESS-C-12. For example, the average unit value of domestic commercial shipments in 2000 was $*** per ton in 2000 while the average unit value of imported fitting merchandise was $7,851 in 2000. Id.

[1649] CR and PR at Table STAINLESS-61.

[1650] CR and PR at Table STAINLESS-61.

[1651] The market share of imports declined from *** percent in interim 2000 to *** percent in interim 2001. CR and PR at Tables STAINLESS-75 & STAINLESS-C-12.

[1652] CR and PR at Table STAINLESS-61. Exports to the United States represented *** percent of total foreign producer shipments in 1998, *** percent in 1999 and *** percent in 2000. They are projected to account for *** percent and *** percent of foreign shipments in 2001 and 2002, respectively. *Id.*

SEPARATE VIEWS OF CHAIRMAN STEPHEN KOPLAN ON INJURY

On the basis of the information gathered in this investigation, I find that stainless steel wire is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article. I also find that tool steel is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article. Finally, I find that stainless steel fittings and flanges are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article. I join with Vice Chairman Okun and Commissioners Miller and Hillman in the analysis of the domestic industry, as well as in the discussion of increased imports for stainless steel wire, tool steel, and stainless steel fittings and flanges.

A. Statutory Factors

The second of the three statutory criteria concerns whether the domestic industry is seriously injured or threatened with serious injury. The term "serious injury" is defined in the statute to mean "a significant overall impairment in the position of a domestic industry,"[1] and the term "threat of serious injury" is defined to mean "serious injury that is clearly imminent."[2] The statute sets out certain economic factors that must be taken into account. With respect to the threat of serious injury, these factors are: (1) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry; (2) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and, (3) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.[3]
These factors are not exclusive; the statute instead directs consideration of all economic factors that are found to be relevant, including the listed factors. Also, the statute directs that the presence or absence of any of these factors shall not be considered "necessarily dispositive".[4]

The third statutory criterion concerns whether the subject article is being imported in such increased quantities as to be a "substantial cause" of serious injury or threat thereof. The term "substantial cause" is defined in section 202(b)(1)(B) to mean "a cause which is important and not less than any other cause."[5] Thus, increased imports must be both an important cause of the serious injury or threat thereof *and* a cause that is equal to or greater than any other cause.

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[1] Section 202(c)(6)(B).

[2] Section 202(c)(6)(D). This definition is also consistent with the 1974 legislative history, which defines a "threat" of serious injury to exist "when serious injury, although not yet existing, is clearly imminent if imports [sic] trends continued unabated." *Trade Reform Act of 1974, Report of the Committee on Finance. . . on H.R.10710,* S. Rep. No. 1298, 93rd Cong., 2d Sess. (1974), at 121.

[3] Section 202(c)(1).

[4] Section 202(c)(3).

[5] Section 202(b)(1)(B).

In determining whether increased imports are a substantial cause of serious injury or threat thereof, the statute instructs that all relevant economic factors be taken into account, including but not limited to "an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers."[6] In addition, the statute directs that the condition of the domestic industry be considered over the course of the relevant business cycle.[7] The statute further directs the Commission to "examine factors other than imports" that may be a cause of serious injury or threat to the domestic industry, and to include such findings in the Commission's report.[8]

B. Stainless Steel Wire[9]

1. Threat of Serious Injury

Over the five full years of the period of investigation, domestic apparent consumption was strong, increasing by 22.4 percent. During this period, the domestic industry participated in the growing market; between 1996 and 2000, domestic production increased by 24.4 percent, domestic shipments increased by 25.0 percent, and U.S. producers' share of domestic consumption increased by 1.6 percentage points.[10] Although the domestic industry participated in the growing market during most of the period of investigation, imports have rapidly captured market share from the domestic industry in the first six months of 2001. Between interim 2000 and interim 2001, domestic consumption decreased by 16.1 percent. Even though domestic apparent consumption fell rapidly over this period, imports continued to rise, increasing by 2.7 percent. U.S. producers' shipments, however, fell by 21.5 percent, and the domestic industry's share of domestic apparent consumption fell by 5.0 percentage points.[11]

Coincident with the declining market share between the interim periods, the domestic industry's production, productivity, employment, wages, and profits all decreased. Over the full five years of the investigation, domestic production increased by 24.4 percent. However, between interim 2000 and interim 2001, domestic production fell by 23.5 percent. Similarly, over the five full years, the industry's capacity utilization rate increased from 61.3 percent in 1996 to 67.2 percent in 2000; between the interim periods, domestic producers' capacity utilization fell from 71.4 percent to 55.4 percent. Domestic productivity also reversed its upward trend. Between 1996 and 2000, productivity steadily increased from 36.7 short tons per thousand hours in 1996 to 49.7 short tons per thousand hours in 2000; between the interim periods, productivity fell from 51.4 to 46.2 short tons per thousand hours.[12]

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[6] Section 202(c)(1)(C).

[7] Section 202(c)(2)(A).

[8] Section 202(c)(2)(B).

[9] Respondents Greening Donald and Central Wire Industries note that U.S. Customs statistics are based on NAFTA rules of origin which treat stainless steel wire as having the country of origin of the wire rod from which it is drawn. They argue that since there are no producers of stainless steel wire rod in Canada, most of the stainless wire exported to the U.S. from Canada has a country of origin other than Canada. Further, they argue that the Commission should classify all wire drawn in Canada as Canadian wire. Greening Donald and Central Wire Prehearing Brief on Injury at 4-10. My findings and recommendations are based on the data contained in the Staff Report which is based on U.S. Customs statistics.

[10] CR at Table STAINLESS-C-7.

[11] CR at Table STAINLESS-C-7.

[12] CR at Table STAINLESS-C-7.

The employment indicia declined over the five full years of the investigation, and the rate of decline increased between the interim periods. Over five years, from 1996 to 2000, the number of production workers decreased by 102 workers. Between interim 2000 and interim 2001, the number of production workers fell by 86. Similarly, hours worked fell by 8.9 percent from 1996 to 2000, and by 15.0 percent between the interim periods; wages paid decreased by 12.9 percent from 1996 to 2000, and by 13.9 percent between the interim periods.[13]

The domestic industry's profits fell rapidly between the interim periods. Between 1996 and 2000, operating income as a percent of sales was low, but positive and stable. Operating income as a percent of sales was *** percent in 1996, *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in 2000. However, operating income as a percent of sales fell by *** percentage points between the interim periods, falling from *** percent in interim 2000 to a *** percent in interim 2001.[14]

Finally, domestic producers' end of period inventories decreased modestly between the interim periods. However, domestic inventories increased dramatically, by 128.4 percent, between 1996 and 2000. As a percent of shipments, inventories increased by 30.4 percentage points between 1996 and 2000; they increased by 7.2 percentage points between the interim periods.[15]

With regard to the industry's ability to generate adequate capital to finance the modernization of their domestic plants and equipment, I note that capital expenditures have declined dramatically since 1998, falling from $*** in 1998 to $*** dollars in 2000. Between the interim periods, capital expenditures decreased modestly, from $*** to $*** dollars. Expenditures on research and development have declined from a period of investigation ("POI") high of $*** in 1997 to a POI low of $*** in 2000; between the interim periods research and development expenditures fell from $*** to $***.[16] Domestic producer Carpenter Technology Corporation argues that "continued erosion in the industry's financial condition will result in further cuts in capital expenditures and research and development, leaving the domestic SSW industry further behind in its ability to produce SSW efficiently."[17]

Finally, the European Union issued antidumping and countervailing duty orders on imports of stainless steel wire imports from India in July 1999. Carpenter argues that imports from India have increased since the issuance of those orders, and that stainless steel imports from India are likely to continue to be diverted to the United States.[18]

In sum, the data gathered by the Commission evidences a decline in sales or market share, a higher and growing inventory, and a downward trend in production, profits, wages, productivity, and employment in the domestic industry; it evidences that the domestic industry is unable to generate adequate capital to finance the modernization of its domestic plants and equipment, and is unable to maintain existing levels of expenditures for research and development; and it provides some evidence that the United States market will be the focal point for the diversion of exports because of restraints on imports of stainless steel wire into third countries. I find that these indicia establish that the domestic stainless steel wire industry is threatened with imminent serious injury.

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[13] CR at Table STAINLESS-C-7.

[14] CR at Table STAINLESS-C-7.

[15] CR at Table STAINLESS-C-7.

[16] CR at Table STAINLESS-33.

[17] Carpenter Posthearing Wire Brief at 20.

[18] Carpenter Posthearing Wire Brief at 21-22.

2. Imports are a Substantial Cause

a. Conditions of Competition

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported stainless steel wire in the U.S. market.

First, apparent consumption of stainless steel wire grew by 22.4 percent during the period of investigation.[19] Apparent consumption of stainless steel wire increased by 11.7 percent between 1996 and 1997, growing from 111,152 short tons in 1996 to 124,167 short tons in 1997, remaining stable at 125,177 short tons in 1998 and 126,977 short tons in 1999, and then increasing by 7.2 percent to 136,092 short tons in 2000.[20] As the overall economy declined in 2001, however, consumption of stainless steel wire declined by 16.1 percent between the interim periods, dropping from 72,012 short tons in interim 2000 to 60,419 short tons in interim 2001.[21]

Second, the industry is comprised of both integrated and non-integrated producers of wire. Integrated producers of wire, like Carpenter Technology and Empire, produce internally the wire rod used to draw wire. There are a large number of non-integrated, independent wire redrawers who do not themselves produce wire rod and are forced to purchase stainless rod from domestic or import sources. Although the integrated wire producers produce significant amounts of wire, the non-integrated producers produce the large majority of the stainless wire sold in the market.[22]

Third, like many stainless steel products, the price of stainless steel wire is directly affected by the price of nickel.[23] To account for fluctuations in the cost of nickel, stainless wire producers impose a surcharge on the price of their stainless wire products whenever the price of nickel reaches a certain level.[24] Generally, nickel prices fell during the first three years of the period of investigation but then increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through the end of 2001.[25] The price of domestic stainless wire followed this trend, with the average unit values of domestic wire sales declining through 1999 but then recovering somewhat in 2000, before declining in interim 2001.[26]

b. Analysis

Over the five full years of the period of investigation, the domestic industry maintained low, but positive and stable, profits in a market of growing consumption, declining prices and costs, and increasing imports. Unit cost of goods sold and the average unit value fell between 1996 and 1999 in approximately equal proportions; they both rose modestly between 1999 and 2000, but remained at levels

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[19] CR and PR at Tables ST-70 and ST-C-7.

[20] CR and PR at Tables ST-70 and ST-C-7.

[21] CR and PR at Tables STAINLESS-70 and STAINLESS-C-7.

[22] CR and PR at Table ST-1.

[23] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[24] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[25] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[26] CR and PR at Tables ST-21, ST-90, & ST-C-7.

below those in 1998.[27] The price data collected for this product category exhibits similar trends. The price data also shows the imports undersold the domestic product in virtually every quarter during 1996 to 2000.[28] Thus, the record suggests that between 1996 and 2000, even though domestic consumption increased, the domestic industry kept prices of the domestic product in line with costs and earned only low profits because of the presence of substitutable stainless steel wire imports.

However, in 2001, three important factors contributed to the dramatic decline in the domestic industry's financial performance. First, consumption of stainless steel wire declined rapidly, falling by 16.1 percent between the interim periods. Second, imports continued to increase and quickly captured significant market share; between the interim periods, imports increased by 2.7 percent and their share of domestic apparent consumption increased by 5.0 percentage points. And third, unit costs of goods sold increased by *** percent.[29] The combination of falling demand and increasing imports caused the price of the domestic stainless wire to fall.[30] The falling prices and rising costs led to a *** percentage point loss in the operating income to sales ratio between interim 2000 and interim 2001. The increase in imports and the decline in the proportion of the domestic market supplied by domestic producers, at a time of *falling* domestic consumption indicates that imports are an important cause of the threat of serious injury to the domestic industry that is clearly imminent.

Respondents argue that the declines in domestic performance in interim 2001 resulted from declining demand for stainless steel wire.[31] Certainly some portion of the observed declines in the domestic industry's performance between the interim periods is attributable to an apparent decline in demand for stainless steel wire. However, that decline alone does not explain the rapid deterioration in the domestic industry's financial performance. In fact, between the interim periods, the decline in U.S. production and shipments exceeded the total decline in apparent domestic consumption.[32] The significant increase in imports and the rapid increase in the proportion of the domestic market supplied by imports, at a time of falling domestic demand, evidences that imports are an important cause of the threat of serious injury, and a cause no less important than any other cause. Further, I find that serious injury, although not yet existing, is clearly imminent if these import trends continue unabated.

3. Findings with Respect to NAFTA Imports

a. Canada

I find that imports of stainless steel wire from Canada did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. Canada was not one of the five largest suppliers of stainless steel wire to the United States on an aggregate level during the last full three years of the period of investigation, nor was it one of the five

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[27] CR at Table STAINLESS-C-7.

[28] CR at Table STAINLESS-90.

[29] CR at Table STAINLESS-C-7.

[30] The average unit value of net commercial sales fell by *** percent. CR at Table STAINLESS-C-7. The weighted average price of the domestic stainless wire product fell from $2.31 per pound in the fourth quarter of 2000 to $2.22 per pound in the first quarter of 2001, to $2.03 per pound in the second quarter of 2001. CR and PR at Table STAINLESS-90.

[31] Joint Respondents' Posthearing Brief Regarding Stainless Steel Wire at 7-8.

[32] Calculated from CR at Table STAINLESS-C-7.

largest suppliers on an annual basis from 1998 to 2000, or in interim 2001.[33] Accordingly, I find that Canada did not account for a substantial share of total imports during this period.

b. Mexico

I find that imports of stainless steel wire from Mexico did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. Mexico was not one of the five largest suppliers of stainless steel wire to the United States on an aggregate level during the last full three years of the period of investigation, nor was it one of the five largest suppliers on an annual basis from 1998 to 2000, or in interim 2001.[34] In fact, Mexico was not even one of the ten largest suppliers of stainless wire at any point in the period and exported only minimal amounts of stainless steel wire into the United States.[35] Accordingly, I find that Mexico did not account for a substantial share of total imports during this period.[36]

C. Tool Steel

1. Threat of Serious Injury

Over the five full years of the period of investigation, domestic apparent consumption was strong, increasing by 21.4 percent. However, the domestic industry did not benefit from this growing market. Between 1996 and 2000, domestic production increased by only 2.3 percent, domestic shipments increased by only 3.8 percent, and U.S. producers' share of domestic consumption decreased by 6.5 percentage points.[37] Imports captured additional market share from the domestic industry in the first six months of 2001. Between interim 2000 and interim 2001, domestic consumption decreased by 8.4 percent. Even though domestic apparent consumption fell rapidly over this period, imports continued to rise, increasing by 5.6 percent. U.S. producers' shipments, however, fell by 27.6 percent, and the domestic industry's share of domestic apparent consumption fell by 8.8 percentage points.[38]

Coincident with the declining market share between the interim periods, the domestic industry's

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[33] INV-Y-180 at Table G-28.

[34] INV-Y-180 at Table G-28.

[35] INV-Y-180 at Table G-28.

[36] Additionally, I conclude that increased imports from all sources other than Canada and Mexico are a substantial cause of the threat of serious injury to the domestic industry. Imports of stainless steel wire from Canada and Mexico accounted for a small and decreasing share of domestic apparent consumption over the period of investigation. Imports from Canada and Mexico accounted for 3.8 percent of apparent consumption in 1996, 3.6 percent in 1997, 1.5 percent in 1998, 0.4 percent in 1999, and 0.3 percent in 2000. Imports from Canada and Mexico accounted for 0.3 percent of apparent consumption in interim 2000 and in interim 2001. Imports from all sources other than Canada and Mexico accounted for an increasing share of apparent consumption over the period of investigation, increasing from 20.1 percent in 1996 to 22.8 percent in 2000. Between the interim periods, imports from all other sources other than Canada and Mexico increased from 20.7 percent in interim 2000 to 27.8 percent in interim 2001. CR and PR at Table STAINLESS-C-7. Consequently, the conclusions I have made concerning the effects of increased imports are equally applicable whether or not imports from Canada and Mexico are included among the imports evaluated.

[37] CR at Table STAINLESS-C-6.

[38] CR at Table STAINLESS-C-6.

production, productivity, employment, wages, and profits all decreased. Over the full five years of the investigation, domestic production increased, by 2.3 percent. However, between interim 2000 and interim 2001, domestic production fell by 32.7 percent. Over the five full years, the industry's capacity utilization rate decreased from 63.8 percent in 1996 to 54.5 percent in 2000; between the interim periods, domestic producers' capacity utilization fell from 63.9 percent to 42.5 percent. Domestic productivity fell over the five full years and between the interim periods. Between 1996 and 2000, productivity fluctuated but decreased overall from 34.1 short tons per one thousand hours in 1996 to 30.4 short tons per thousand hours in 2000; between the interim periods, productivity fell from 31.3 to 27.0 short tons per thousand hours.[39]

The employment indicia increased over the five full years, and then declined dramatically between the interim periods. Over five years, from 1996 to 2000, the number of production workers increased by 7.6 percent. Between interim 2000 and interim 2001, the number of production workers fell by 20.2 percent. Similarly, hours worked increased by 16.1 percent from 1996 to 2000, but fell by 21.4 percent between the interim periods; wages paid increased by 8.1 percent from 1996 to 2000, but decreased by 31.3 percent between the interim periods.[40]

Between 1996 and 2000, operating income as a percent of sales was positive, but fluctuated and declined overall. Operating income as a percent of sales was *** percent in 1996, *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in 2000. However, operating income as a percent of sales fell by *** percentage points between the interim periods, falling from *** percent in interim 2000 to *** percent in interim 2001.[41]

Finally, domestic producers' end of period inventories decreased by 19.4 percent between the interim periods, while they increased by 11.7 percent between 1996 and 2000. As a percent of shipments, inventories increased by 1.6 percentage points between 1996 and 2000; they increased by 3.4 percentage points between the interim periods.[42]

With regard to the industry's ability to generate adequate capital to finance the modernization of their domestic plants and equipment, I note that capital expenditures have declined dramatically since 1998, falling from $*** in 1998 to $*** in 2000. Between the interim periods, capital expenditures decreased from $*** to $***. Expenditures on research and development have declined steadily over the period of investigation, from $*** in 1996 to $*** in 2000; between the interim periods research and development expenditures fell from $*** to $***.[43]

In sum, the data gathered by the Commission evidences a decline in sales or market share, a higher and growing inventory, and a downward trend in production, profits, wages, productivity, and employment in the domestic industry; and it evidences that the domestic industry is unable to generate adequate capital to finance the modernization of its domestic plants and equipment, and is unable to maintain existing levels of expenditures for research and development. I find that these indicia establish that the domestic tool steel industry is threatened with imminent serious injury from covered imports.

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[39] CR at Table STAINLESS-C-6.

[40] CR at Table STAINLESS-C-6.

[41] CR at Table STAINLESS-C-6.

[42] CR at Table STAINLESS-C-6.

[43] CR at Table STAINLESS-32.

2. Imports are a Substantial Cause

a. Conditions of Competition

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported tool steel in the U.S. market.

First, consumption of tool steel grew by 21.4 percent during the period of investigation, from 115,463 short tons in 1996 to 140,197 short tons in 2000.[44] Apparent consumption of tool steel increased in each year of the period of investigation. The largest gains were seen between 1996 and 1997 (9.6 percent) and 1998 and 1999 (7.4 percent).[45] Apparent consumption remained stable in 2000. With the decline in the overall economy in 2001, consumption of tool steel declined by 8.4 percent between the interim periods, dropping from 71,187 short tons in interim 2000 to 65,198 short tons in interim 2001.[46]

Second, tool steel is a complex alloy steel product that is different from stainless steel and constitutes its own category of specialty product. Precise production practices and rigid quality controls contribute to its high cost and low volume, as do the expensive alloying elements it contains. Frequently, chemical or metallurgical standards exceeding American Society for Testing and Materials (ASTM) or other specifications are invoked by individual producers or consumers to achieve certain goals. In addition, tool steels are purchased in a number of instances by trade name because the user finds that a particular tool steel from a certain producer delivers better performance in a specific application than does a tool steel of the same AISI-type classification purchased from another source.[47]

b. Analysis

Over the five full years of the period of investigation, the domestic industry earned positive but declining profits in a market of growing consumption, declining prices and costs, and increasing imports. Between 1996 and 2000, domestic apparent consumption increased by 21.4 percent. Interestingly, domestic capacity increased by the same amount over this period. However, although there was strong growth in consumption, and the domestic industry had ample capacity, it was able to increase production by only 2.3 percent and U.S. shipments by only 3.8 percent. The remainder of the increase in domestic consumption was captured by imports, which increased by 35.7 percent between 1996 and 2000. Coincident with the domestic industry's declining market share and decreasing capacity utilization, the industry's profitability declined. Between 1996 and 2000, the domestic industry's operating income to sales ratio fell by *** percentage points.[48]

In 2001, three important factors contributed to the dramatic decline in the domestic industry's financial performance. First, consumption of tool steel declined rapidly, falling by 8.4 percent between the interim periods. Second, imports continued to increase and quickly captured significant market share; between the interim periods, imports increased by 5.6 percent and their share of domestic apparent consumption increased by 8.8 percentage points. And third, unit costs of goods sold increased by ***

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[44] CR and PR at Tables ST-69 and ST-C-6.

[45] CR and PR at Tables ST-69 and ST-C-6.

[46] CR and PR at Tables ST-69 and ST-C-6.

[47] ASM (eds.), *Metals Handbook*, 10th ed., 1990, at 757, 759.

[48] CR at Table STAINLESS-C-6.

percent.[49] Although the average unit value of domestic shipments increased, it increased by less than unit costs. The increasing imports and rising costs led to a *** percentage point loss in the operating income to sales ratio between interim 2000 and interim 2001. The increase in imports and the decline in the proportion of the domestic market supplied by domestic producers, at a time of *falling* domestic consumption indicates that imports are an important cause of the threat of serious injury to the domestic industry.

Respondents argued that imports are not a cause of injury because the domestic product and imports do not compete with each other. They argued that there are significant product mix differences between the domestic products and imports.[50] They contend that the significantly higher average unit value of the domestic product as compared with the average unit value of imports evidences this product mix difference. While the average unit value data suggests that there are some differences in product mix, there is a significant overlap of competition between the domestic product and imports. The price data collected by the Commission evidences competitive pricing between the domestic product and imports; in *** price comparisons, the imported product undersold the domestic product.[51]

Certainly some portion of the observed declines in the domestic industry's performance between the interim periods is attributable to an apparent decline in demand for tool steel. However, that decline alone does not explain the rapid deterioration in the domestic industry's financial performance. In fact, between the interim periods, the decline in U.S. production and shipments greatly exceeded the total decline in apparent domestic consumption.[52] The increase in imports and the rapid increase in the proportion of the domestic market supplied by imports, at a time of falling domestic demand, evidences that imports are an important cause of the threat of serious injury, and a cause no less important than any other cause. Further, I find that serious injury, although not yet existing, is clearly imminent if these import trends continue unabated.

3. Findings with Respect to NAFTA Imports

a. Canada

I find that imports of tool steel from Canada account for a substantial share of total imports but do not contribute importantly to the threat of serious injury suffered by the domestic industry. Canada was the largest supplier of tool steel to the United States on an aggregate level during the last full three years of the period of investigation, and it was the largest supplier on an annual basis in 1999 and 2000. Canada was the second largest supplier in 1998.[53]

However, imports of Canadian tool steel declined by 12.9 percent during the five years from 1996 to 2000, while the growth rate for all imports during this period was 35.7 percent. Between interim 2000 and interim 2001, Canadian imports declined by 48.3 percent, while all imports increased

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[49] CR at Table STAINLESS-C-6.

[50] Joint Respondents' Posthearing Brief on Injury at 11-14.

[51] CR at Table STAINLESS-101.

[52] Calculated from CR at Table STAINLESS-C-6. Between the interim periods, domestic apparent consumption decreased by 5,989 short tons, while domestic production decreased by 10,227 short tons and U.S. producers' U.S. shipments decreased by 8,296 short tons.

[53] INV-Y-180 at Table G-27. Canada was the largest supplier in interim 2000, and the fourth largest supplier in interim 2001.

by 5.6 percent.[54] Because Canada's growth rates are appreciably lower than those of all imports during the period examined, I find that Canada did not contribute importantly to the serious injury suffered by the domestic industry.

b. Mexico

I find that imports of tool steel from Mexico did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. Mexico was not one of the five largest suppliers of tool steel to the United States on an aggregate level during the last full three years of the period of investigation, nor was it one of the five largest suppliers on an annual basis from 1998 to 2000, or in interim 2001.[55] Accordingly, I find that Mexico did not account for a substantial share of total imports during this period.[56]

C. Stainless Steel Fittings and Flanges

1. Serious Injury

Domestic apparent consumption increased significantly during the period of investigation, increasing by *** percent from 1996 to 2000. The domestic industry, however, has not participated in this growing market since imports have captured substantial market share from the domestic industry. At its peak decline during the course of the investigation period, domestic market share was down *** percent as its market share fell from *** percent in 1996 to *** percent in 2000.[57]

Concurrent with its decreasing market share, the domestic industry experienced declines in shipments, production, profitability and employment. Even though the industry as a whole operated profitably throughout the period of investigation, the industry's operating income fell from $*** in 1996 to $*** in 2000 (a decrease of *** percent) during the period.[58] In conjunction with declining operating income, the industry's operating margins declined by *** percent between 1996 to 2000.[59] As recently as 1999 the industry's operating margin was down by *** percent, falling from a high of *** percent in

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[54] INV-Y-180 at Table G-27.

[55] INV-Y-180 at Table G-27.

[56] Additionally, I conclude that increased imports from all sources other than Canada and Mexico are a substantial cause of the threat of serious injury to the domestic industry. Imports of tool steel from Canada and Mexico accounted for a decreasing share of domestic apparent consumption over the period of investigation. Imports from Canada and Mexico decreased from 10.1 percent of apparent consumption in 1996 to 7.3 percent in 2000. Imports from Canada and Mexico also decreased between the interim periods, declining from 8.9 percent in interim 2000 to 5.0 percent in interim 2001. Imports from all sources other than Canada and Mexico accounted for an increasing share of apparent consumption over the period of investigation, increasing from 45.2 percent in 1996 to 54.4 percent in 2000. Between the interim periods, imports from all other sources other than Canada and Mexico increased from 48.8 percent in interim 2000 to 61.1 percent in interim 2001. CR and PR at Table STAINLESS-C-6. Consequently, the conclusions I have made concerning the effects of increased imports are equally applicable whether or not imports from Canada and Mexico are included among the imports evaluated.

[57] CR at Stainless-C-12.

[58] CR at Tables Stainless-38 & Stainless-C-12.

[59] Operating income as a percentage of sales was *** percent in 1996, *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in 2000. CR at Tables Stainless-38 & Stainless-C-12.

1996 to *** percent in 1999.[60] Moreover, while its operating margins rose to reasonable levels of *** percent and *** percent in 2000 and interim 2001, respectively, these margins were significantly below the industry's operating margins in 1996, 1997, and 1998.[61] In addition, the number of producers reporting losses has been increasing during the period.[62] Given the significant decline in the industry's operating margins and the increasing number of producers reporting losses, I find that a significant number of firms have been increasingly unable to carry out their production operations at a reasonable level of profit.

I also find that there has been a significant idling of productive facilities in the domestic stainless steel fittings industry during the period of investigation. The industry's aggregate capacity level declined by *** percent during the five full years of the period of investigation, falling from *** short tons in 1996 to *** short tons in 2000.[63] The industry's production volumes also fell during the period, decreasing from *** short tons in 1996 to *** short tons in 2000.[64] As a result of these declines in its production levels, the industry's capacity utilization rates also fell during the period, declining from *** percent in 1996 to *** percent in 2000, despite the fact that there was a *** percent increase in apparent consumption during this period.[65] The industry's production levels and capacity utilization fell further in interim 2001, with production dropping by *** percent and capacity utilization dropping by *** percentage points, respectively, between interim periods.[66] In light of the other declines in the industry's performance during the period, I find that these declines indicate that the industry has suffered a significant idling of its productive facilities.

I further find that the industry has experienced significant declines in its employment levels during the period of investigation. The number of production-related workers employed by the industry decreased by *** percent during the period from 1996 to 2000, declining from *** workers in 1996 to *** workers in 2000.[67] The number of production-related workers fell even further in interim 2001 to *** workers, a *** percent decline from interim 2000.[68] Moreover, the industry's other employment-related indicia declined during the period of investigation, with hours worked decreasing by *** percent, wages paid decreasing by *** percent, and productivity decreasing by *** percent between 1996 and 2000.[69]

In addition, a number of the industry's other trade and financial indicia declined significantly during the period of investigation. For instance, the domestic industry's U.S. shipments decreased by *** percent between 1996 and 2000, the value of its net commercial sales declined by *** percent

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[60] CR at Table Stainless-38 & Stainless-C-12.

[61] CR at Table Stainless-38 & Stainless-C-12.

[62] In 1996 and 1997 *** producers reported operating losses, *** reported operating losses in 1998, *** reported operating losses in 1999, *** reported operating losses in 2000, and *** reported operating losses in interim 2001. CR at Table Stainless-38.

[63] CR at Tables Stainless-26 & Stainless-C-12.

[64] CR at Tables Stainless-26 & Stainless-C-12.

[65] CR at Tables Stainless-26 & Stainless-C-12.

[66] CR at Tables Stainless-26 & Stainless-C-12.

[67] CR at Tables Stainless-26 & Stainless-C-12.

[68] CR at Tables Stainless-26 & Stainless-C-12.

[69] CR at Tables Stainless-26 & Stainless-C-12. Hourly wages was the only employment-related factor that increased during the five full years of the period, increasing by *** percent between 1996 and 2000. Id.

during the same period, and its average unit values declined by *** percent overall during the period. Its inventory levels as a percentage of sales increased from *** percent in 1996 to *** percent in 2000, and its capital expenditures declined by *** percent between 1996 and 2000.[70]

On the whole, the financial and trade indicia of the industry show an industry in serious decline. While the industry was profitable in each year of the period of investigation, the industry experienced a continuing and serious decline in its profitability levels over the period, particularly during the latter part of the period. The industry also has experienced significant declines in its production levels, market share, capacity utilization rates, employment levels, and sales volumes. These declines show that the industry's financial condition and production operations were significantly impaired during the period. Accordingly, I find that the stainless steel fittings industry is suffering serious injury.

2. Imports are a Substantial Cause

a. Conditions of Competition

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported stainless steel fittings in the U.S. market.

Demand for stainless steel fittings generally grew during the period of investigation.[71] Apparent U.S. consumption of stainless steel fittings increased by *** percent between 1996 and 2000, growing from *** short tons in 1996 to *** short tons in 2000.[72] However, as the overall economy declined in 2001, apparent consumption of stainless steel fittings declined by *** percent between interim periods, falling from *** short tons in interim 2000 to *** short tons in interim 2001.[73]

b. Analysis

I find that the increased imports of stainless fittings are a substantial cause of serious injury to the domestic stainless fittings industry.

I find that the increased quantities of stainless fittings imports during the period of investigation had a direct and serious adverse impact on the production levels, shipments, commercial sales, market share and profitability of the domestic industry. As discussed above, the increases in import volumes during the period resulted in a dramatic increase in the market share of stainless fittings imports.[74] With the growth in the quantity and market share of imports during the period of investigation, the industry's production levels, shipment volumes, net commercial sales, and net commercial sales revenues all fell considerably over the five year investigation period. In particular, the industry's production levels declined by *** percent during the period from 1996 to 2000, its U.S. shipment volumes fell by *** percent during the period, its net commercial sales volumes fell by *** percent during the period, and its

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[70] CR at Tables Stainless-26, Stainless-38 & Stainless-C-12.

[71] CR and PR at Tables Stainless-75 and Stainless-C-12.

[72] CR and PR at Tables Stainless-75 and Stainless-C-12.

[73] CR and PR at Tables Stainless-75 and Stainless-C-12.

[74] CR at Tables Stainless-75 & Stainless-C-12. The market share of imports increased from *** percent in 1996 to *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in 2000. Id. It then declined to *** percent in interim 2001, a level of import market share higher than any year other than 2000. Id.

net commercial sales revenues fell by *** percent.[75] Moreover, the industry's capacity utilization rates were impacted as well, falling from *** percent in 1996 to *** percent in 2000, and then to *** percent in interim 2001.[76] Further, as import quantity and market share increased during the period of investigation, the share of the market held by the domestic industry declined dramatically as well, falling from *** percent in 1996 to *** percent in 1999 and to *** percent in 2000.[77]

The record also indicates that imports seriously depressed and suppressed domestic prices of stainless fittings during the period of investigation. Purchasers generally consider domestic and imported stainless fittings to be comparable in most respects,[78] which indicates that there is a high degree of substitutability between the products. The record also shows that price is an important part of the purchasing decision,[79] and that the unit values of the industry's net commercial sales dropped by *** percent between 1996 and 2000, and by an additional *** percent between interim 2000 and 2001.[80] Moreover, the record shows that with respect to the prices for the stainless fittings product for which the Commission collected data, imports consistently and significantly undersold the domestic merchandise throughout the period of investigation.[81] In addition to causing purchasers to shift a significant volume of their purchases from domestic to imported product, I find that this underselling also depressed and suppressed domestic prices during the period of investigation.

In this regard, during a period of increasing import volumes and consistent underselling by imports, the prices of domestic stainless fittings and flanges failed to keep pace with movements in the industry's cost of goods sold during the period of investigation, as import volumes grew increasingly through the period of investigation.[82] For example, the ratio of the industry's cost of goods sold to its net sales value increased from *** percent in 1997 to *** percent in 1998, as import market share increased from *** percent to *** percent and imports consistently undersold the domestic merchandise. [83] Similarly, as import market share continued to grow (to *** percent in 2000) and imports continued to undersell the domestic merchandise, the industry's cost of goods sold increased to *** percent and *** percent of the industry's net sales in 1999 and 2000, respectively.[84] These increases led directly to declines in the industry's overall operating income levels, as profits dropped significantly and consistently from 1996 to 1999, falling from *** percent to *** percent.[85] Although operating income levels recovered somewhat in 2000 and interim 2001 over the 1999 levels, the industry's operating

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[75] CR at Tables Stainless-26, Stainless-38 & Stainless-C-12.

[76] CR at Tables Stainless-26 and Stainless-C-12.

[77] CR at Tables Stainless-75 & Stainless-C-12.

[78] INV-Y-212 at 103.

[79] INV-Y-212 at 103

[80] CR at Stainless-38 and Stainless-C-12.

[81] CR at Tables Stainless-95, Stainless-107, & Figure Stainless-18. The price comparison data indicate that imports undersold the domestic merchandise in every possible price comparison, at margins ranging from 23.7 percent to 51.8 percent. Id. These consistent underselling figures are supported by an examination of the average unit value for domestic and imported merchandise, which also show imports from non-NAFTA sources being priced at consistently lower levels than domestic merchandise during the period. CR at Table Stainless-107.

[82] CR at Stainless-38, & Stainless-C-12.

[83] CR at Tables Stainless-38, Stainless-75, and Stainless-C-12.

[84] CR at Tables Stainless-38, Stainless-75, and Stainless-C-12.

[85] CR at Tables Stainless-38 and Stainless-C-12.

income levels in these periods remained well below those in 1996, 1997 and 1998. Given this, I find that the record establishes that consistent and significant price underselling coupled with increased import volumes managed to suppress and depress domestic prices, thus resulting in the inability of the industry to effectuate changes in the price of its stainless rod sales that would keep pace with changes in its cost of goods sold.

Thus, I find that the increased quantities of imports of stainless fittings during the period of investigation were an important cause of the declines in the industry's trade and financial condition. In making this finding, I note that I have considered the arguments made by the European flange producers that other factors have contributed to the industry's declining performance, including their lack of forgings capacity, the expansion of domestic capacity, the consolidation of major purchasers, and their old production facilities. They also argue that the price of nickel inputs, and the nickel surcharge, has operated to affect domestic profitability most closely.[86] Some portion of the observed declines in the domestic industry's performance over the period of investigation is attributable to the facts put forth by Respondents. However, those facts do not explain the deterioration in the domestic industry's financial performance. The decrease in the domestic industry's net sales coincident with the increase of import market share during a period when apparent domestic consumption grew significantly establishes that imports have displaced domestic producer shipments.

In sum, I find that increased imports of stainless steel fittings are an important cause, and a cause no less important than any other cause, of serious injury to the domestic industry producing stainless steel fittings. Accordingly, I find that imports of stainless steel fittings are a substantial cause of serious injury to the domestic industry producing stainless fittings.

3. Findings with Respect to NAFTA Imports

a. Canada

I find that imports of stainless fittings and flanges from Canada did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. Even though Canada was one of the five largest suppliers to the United States on an annual basis from 1998 to 2000, Canada was the sixth largest supplier of fittings and flanges to the United States on an aggregate level during the last full three years of the period of investigation.[87] Accordingly, I find that Canada did not account for a substantial share of total imports during this period.

b. Mexico

I also find that imports from Mexico did not account for a substantial share of total imports during the past three years and did not contribute importantly to the serious injury suffered by the domestic industry during the period of investigation. Mexico was not one of the five largest suppliers of fittings and flanges to the United States on an aggregate level during the last full three years of the period of investigation, nor was it one of the five largest suppliers to the United States on an annual basis from 1998 to 2000, or in interim 2001.[88] Accordingly, I find that Mexico did not account for a substantial share of imports during the period of investigation.

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[86] European Flanges Prehearing Brief at 36-38; European Flanges Posthearing Brief at 15-16.

[87] INV-Y-180 at Table G-33.

[88] INV-Y-180 at Table G-33.

SEPARATE VIEWS ON INJURY OF COMMISSIONER LYNN M. BRAGG

STEEL
Inv. No. TA-201-73

I. INTRODUCTION

Pursuant to section 202(b) of the Trade Act of 1974 ("Trade Act") (19 U.S.C. § 2252(b)), I determine that certain steel products are being imported in such increased quantities as to be a substantial cause of serious injury or a threat of serious injury to the domestic industries producing: (1) carbon and alloy flat products (including slab, hot-rolled sheet and strip, cut-to-length plate, cold-rolled sheet and strip, corrosion resistant, grain oriented electrical steel, and tin mill products); (2) carbon and alloy long products (including ingots, hot bar, cold bar, rebar, rails, and shapes); (3) carbon and alloy wire products (including carbon wire, carbon rope, and carbon nails) (threat of serious injury); (4) carbon and alloy welded tubular products (including welded tubular other than OCTG and welded OCTG); (5) carbon and alloy seamless tubular products (including seamless tubular other than OCTG and seamless OCTG); (6) carbon and alloy fittings, flanges, and tool joints; (7) stainless and tool steel flat and long products (including stainless semifinished, ingots, cut-to-length plate, bar, and rod and tool steel); (8) stainless wire products (including stainless wire and wire rope) (threat of serious injury); and (9) stainless fittings and flanges. I further determine that certain other steel products are not being imported in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industries producing: (1) carbon and alloy fabricated structural products; (2) stainless cloth products; (3) stainless welded tubular products, and (4) stainless seamless tubular products.

In addition, pursuant to section 311(a) of the North American Free Trade Agreement ("NAFTA") Implementation Act (19 U.S.C. § 3371(a)), I make negative findings with respect to imports from Canada of carbon and alloy flat products, carbon and alloy long products, carbon and alloy welded tubular products, stainless and tool steel flat and long products, and stainless steel wire products, as well as imports from Mexico of carbon and alloy long products, carbon and alloy welded tubular products, carbon and alloy seamless tubular products, stainless and tool steel flat and long products, and stainless steel wire products.

It is evident that nearly all domestic steel industries (as I have defined them under U.S. law), incorporating nearly all aspects of domestic carbon and alloy and stainless and tool steel production, are experiencing serious injury or are threatened with serious injury. It is also clear that under U.S. law, imports increased for each of the domestic industries over the period of investigation. Accordingly, the essential issues in this investigation relate to the required causation findings.

While domestic producers contend that imports are the overwhelming cause of serious injury or a threat of serious injury, respondents point largely to structural inefficiencies within the various domestic industries as the primary cause of declining industry performance. Respondents also contend that because most imports declined at the end of the period of investigation, there is no causal nexus between increased imports and any serious injury or threat of serious injury to domestic producers. At first glance, respondents' arguments would appear to have some persuasive value, given that there are structural inefficiencies within many of the domestic industries and most imports did in fact decline towards the end of the period. However, upon a thorough review of the record in these proceedings within the context of U.S. law, a critical omission by respondents is apparent–respondents have overlooked the fundamental role imports played in depriving domestic producers of the ability to at least

preserve if not strengthen resources during a period of growing demand, and thereby improve efficiencies to prepare for the inevitable downturn in the business cycle.[1]

Although respondents recognize the cyclical nature of the U.S. steel market,[2] as well as the potential hammering effect on the domestic industries of a cyclical downturn,[3] respondents focus only on the recent downturn in the cycle and thereby offer only a very selective, self-serving interpretation of the relevance of the cycle to these proceedings. I therefore find respondents' key arguments on causation to be of limited usefulness. Only by viewing increased imports in the context of the entire business cycle, including both the upturn and downturn in the cycle, together with the unprecedented level of injury, can one adequately discern the full and relevant impact of imports on the domestic industries over the entire period of investigation. Thus, even acknowledging respondents' arguments that many of the domestic industries I have identified are faced with inefficiencies and impediments to restructuring, I nonetheless conclude, as discussed below, that imports are a substantial cause of serious injury or threat of serious injury to several domestic industries.[4]

II. LIKE PRODUCTS AND DOMESTIC INDUSTRIES

Framework. The statute requires that I determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat of serious injury, to the "domestic industry producing an article that is like or directly competitive with the imported article."[5]

In determining what constitutes the like product, the Commission traditionally has taken into account such factors as the physical properties of the product, its customs treatment, its manufacturing process (e.g., where and how the product is made), uses, and the marketing channels through which the product is sold.[6] Each of the factors is relevant, but the weight given to each factor will depend upon the particular case. In determining what is the like product, the Commission traditionally has looked for clear dividing lines among possible products, and has disregarded minor variations.

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[1] In this context, I strongly disagree with the implication of respondents' argument that domestic producers are solely to blame for their current condition because these producers "were overleveraged at the beginning of the period and increased their leverage throughout the period, making bankruptcy a near certainty as soon as demand turned down in these cyclical markets" or that "unwise investments" by domestic producers contributed to their injury. Joint Prehearing Framework Injury Br., at 4.

[2] Joint Prehearing Framework Injury Br., at 4.

[3] Joint Prehearing Framework Injury Br., at 4.

[4] Although the WTO Appellate Body has said that an express unforeseen developments finding is required by Article XIX of the GATT 1994, Lamb Meat, U.S. law does not specifically mandate an express unforeseen developments finding by the Commission in section 201 investigations.

[5] 19 U.S.C. § 2252(b)(1)(A).

[6] See Views of Chairman Watson and Commissioners Crawford and Bragg in *Fresh Winter Tomatoes*, Inv. No. TA-201-64 (Provisional Relief Phase), USITC Pub. 2881 (April 1995) at II-7. See also Views of Vice Chairman Nuzum and Commissioners Rohr, Newquist, and Bragg in *Broom Corn Brooms*, Inv. No. NAFTA-302-1 (Provisional Relief Phase), USITC Pub. 2963 (May 1996) at II-14.

The legislative history of the Trade Act defines the term "like" to mean those articles that are substantially identical in inherent or intrinsic characteristics.[7] The decision regarding the like or directly competitive product is a factual determination.

The term "domestic industry" is defined in section 202(c)(6)(A)(i) of the Trade Act to mean "the domestic producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article."[8] Importantly, in this part of its analysis, the Commission's focus is on which firms and workers produce the given like product; in a subsequent step of the analysis, the Commission will then weigh the impact of the pertinent imports on the facilities and workers producing the pertinent like product.

The various imported products subject to this investigation were grouped into four classes of products in the request by the President and the resolution by the Senate Finance Committee, i.e., certain carbon and alloy flat products, certain carbon and alloy long products, certain carbon and alloy pipe and tube products, and certain stainless and tool steel products. I find, based upon my reliance on the "class of products" approach discussed below, that each of these four classes represents an individual "imported article."[9]

In my view, the like product analysis in this particular investigation must be faithful to the overarching purpose of a section 201 investigation–that "the concern of the Tariff Commission [[i.e., the Commission is]] with the question of serious injury to the productive resources (e.g., employees, physical facilities, and capital) employed in the divisions or plants in which the article in question is produced."[10] In this context, the traditional factors of where, how, and by whom the article is made, commonly relied upon by the Commission in reaching its like product determinations in prior section 201 investigations, are important. Attention to productive resources as the concern identified by Congress will ensure that the like product analysis reflects the need, in the short-term, to protect and preserve all aspects of the domestic industries' productive resources, e.g., from melt shops to finishing operations, while also taking into account that there are meaningful differences among the productive facilities and processes for many of these products.[11] My analysis therefore seeks to capture the day-to-day, bottom-line market realities of the various like products and domestic industries by assessing each relevant domestic industry as a whole and not just isolated facilities at one stage of production.[12] For these reasons, I find that a "class of products" approach is particularly appropriate in this investigation. In my view, an approach that fails to highlight the interrelatedness of these products and production operations within the class does not

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[7] *Trade Reform Act of 1973, Report of the Committee on Ways and Means . . . on H.R. 10710*, H.R. Rep. No. 571, 93rd Cong., 1st Sess., at 45 (1973); and *Trade Reform Act of 1974, Report of the Committee on Finance . . .* on H.R. 10710, S. Rep., No. 1298, 93rd Cong., 2nd Sess, at 121-22 (1974).

[8] 19 U.S.C. § 2252(c)(6)(A)(i).

[9] This is similar to the approach relied upon by the Commission majority in its 1984 section 201 investigation of carbon and alloy steel products. See *Carbon and Certain Alloy Steel Products*, Inv. No. 201-TA-51, USITC Pub. 1553 (July 1984) at 12-23. I note that the direction of the relevant statutory provision has not changed since the 1984 section 201 determinations.

[10] H.R. Rep. No. 93-571, 93d Cong., 1st Sess. 45 (1973) at 46.

[11] This interrelatedness is further evidenced by the increasing flexibility in the use of labor resources. "Not only can the same machines make a variety of products, but also the same workers can produce a large variety of products." USWA Prehearing Injury Br., at 20.

[12] This approach differs importantly from the like product analysis in Title VII investigations where the focus on "similarities in characteristics and end uses" of the products generally results in a more narrow scope of investigation, and thus, a narrowly defined product category and domestic industry.

provide the proper context for assessing the relationship between the imported articles and the condition of the domestic industry as contemplated by Congress.

I further note that the class of products methodology, in the context of the four classes of products identified by the President and the Senate Finance Committee, produces different results for carbon and alloy products and stainless and tool steel products, which are not unexpected given the somewhat different industry structure and market conditions for carbon and alloy products compared to stainless and tool steel products. For example, as discussed below, I defined separate like products and corresponding domestic industries for carbon and alloy flat products and carbon and alloy long products. In contrast, I combined several stainless and tool steel flat and long products into one class of products and therefore one corresponding domestic industry. In my view, the President's and Senate Finance Committee's grouping of stainless and tool steel products into one imported article category correctly recognizes that the production of stainless and tool steel products involves a higher degree of interrelatedness between productive facilities and operations than the production of carbon and alloy flat and long products.[13]

Findings. Carbon and alloy flat products - This product category presents the clearest example of why the class of products approach is appropriate in this investigation. The covered carbon flat products share certain basic physical properties and are interrelated to some degree.[14] These products also possess a common metallurgical base, with some desired properties and essential characteristics embodied in the steel prior to the casting or semifinished stage.[15] The record further indicates that the products are generally either internally consumed or shipped to end-users or distributors, thus traveling through similar channels of distribution.[16] In addition, although there is only limited overlap in end-uses for these products, I find that domestic producers often shift production among these products.[17]

More importantly, the record also indicates that the flat products subject to this investigation are strongly related by a commonality of productive facilities.[18] The domestic flat products industry is made up primarily of producers that melt steel, produce slabs, and then roll the slabs into downstream products.[19] The record also indicates that most large volume producers which do not produce slab nonetheless produce multiple downstream flat products.[20] Another important factor is that slab represents the largest percentage of raw material costs of producing downstream flat products and the highest percentage of capital costs for those entities that produce both slab and downstream products.[21]

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[13] Having set forth the above methodology, I recognize that the class of products approach raises double-counting issues. This concern can be alleviated, however, by: (1) relying on commercial shipments as a measure of domestic shipments; (2) recognizing that double-counting does not affect the critical financial data in this investigation and also does not distort many domestic industry performance trends; and (3) reviewing the separate data for each of the 33 individual product categories for which the Commission collected data in comparison with the aggregated class of products data to ensure that the aggregated data do not misrepresent market realities. Where appropriate, I have done so; and by doing so, I am confident that I have minimized any distortions due to double-counting.

[14] CR and PR at OVERVIEW at 7-12.

[15] CR and PR at OVERVIEW at 7-12.

[16] CR and PR at OVERVIEW at 53.

[17] USWA Prehearing Injury Br., at 20.

[18] CR and PR at OVERVIEW at 7-12.

[19] CR and PR at Table FLAT-1; Prehearing Injury Br. of Bethlehem Steel, LTV Steel Company, Inc., National Steel Corporation and United States Steel LLC, at 11, n.12 ("Bethlehem Prehearing Injury Br.").

[20] CR and PR at Table FLAT-1.

[21] Bethlehem Prehearing Injury Br., at Ex. 2.

Accordingly, I find one like product comprised of all carbon and alloy flat products subject to this investigation as well as one domestic industry comprised of the producers of this class of products.

Carbon and alloy long products - As with carbon and alloy flat products, the carbon and alloy long products comprise a single class of products and therefore one like product. Domestic producers of ingots/billets, hot-rolled bar, cold-finished bar, rebar, rail and railway products, and heavy structural shapes and sheet pilings comprise a discrete domestic industry, especially considering the market realities of the domestic productive resources (capital, physical facilities, and labor), the economic relationship among long products, and the ability of domestic producers to shift among production of these products.

The record indicates that many producers manufacture two or more of the following: ingots/billets, hot-rolled bar, cold-finished bar, rebar, rails and railway products, and structural shapes and sheet pilings.[22] In addition, these products share similar physical properties and similar core metallurgy.[23] The record also indicates that the channels of distribution for these products overlap. In particular, distribution for hot-rolled bar, cold-finished bar, rebar, rail and railway products, and structural shapes and sheet pilings is similarly divided between sales directly to end users or fabricators, and sales to service centers that distribute both domestic and imported long steel products.[24] Another important factor is that the production of ingots, billets, and blooms represents the largest percentage of raw material costs of producing downstream long products.[25]

Accordingly, I find that the record indicates that ingots/billets, hot-rolled bar, cold-finished bar, rebar, rail and railway products, and structural shapes and sheet piling products represent a single class of products, and therefore one like product and one domestic industry comprised of the producers of this class of products.

Carbon and alloy wire products - Applying my class of products methodology to this group of products, I find that carbon and alloy wire products, including wire, rope, and nails, represent one like product, given record evidence indicating that there is an important production-based linkage between these products.[26]

Based on domestic volume produced, a substantial number of wire producers also produce rope and/or nails in the same facilities, on the same equipment, and with the same employees.[27] These products also share important physical properties. Furthermore, wire is either used as an intermediate product in the production of rope, nails, staples, and woven products or as an end product, whereby all three product categories, e.g., wire, rope, and nails, are used to lift, support, or secure objects in place.[28] The record also indicates that the channels of distribution for each of the three products moderately overlap as wire, rope, and nails are either sold to end users, e.g., equipment manufacturers and construction firms, or distributors, although some wire is also sold to producers of downstream wire products.[29]

In addition, although it has been argued that the Commission should find that carbon wire rope and stainless wire rope comprise one like product and therefore one domestic industry, I find, based on my class of products approach to the like product analysis, that there is a higher degree of

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[22] CR and PR at Table LONG-1.

[23] CR and PR at LONG-1-4; Posthearing Injury Br. of the Minimill 201 Coalition, at 11.

[24] Injury Hearing Tr. at 1312 (Mr. Copper); Injury Hearing Tr. at 1313 (Mr. Gnazzo).

[25] CR and PR at LONG-1; Posthearing Injury Br. of Minimill 201 Coalition, at 6.

[26] CR and PR at Table LONG-1.

[27] CR and PR at Table LONG-1.

[28] CR and PR at LONG-4.

[29] CR and PR at LONG-96-98.

interrelatedness in productive facilities between producers of stainless wire and stainless rope than between producers of carbon wire rope and stainless wire rope.[30]

Accordingly, I find that the record indicates that carbon and alloy wire, rope, and nails represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Carbon and alloy fabricated structural units - The class of products approach applied to carbon and alloy fabricated structural units indicates that this product category represents a distinct like product. Nearly all domestically-produced fabricated structural units are manufactured by independent fabricators for project-specific end-uses.[31] For example, in 2000, only two domestic producers out of thirty-four responding companies produced other long steel products; however, I do note that the quantity and share of fabricated structural units produced by those two domestic producers were not insignificant.[32] The record also indicates that although fabricated structural units have physical properties similar to other long steel products, fabricated structural units often do not share end uses with other long products.[33] In addition, because fabricated structural units are produced for specific projects, the products generally travel through channels of distribution distinct from other long products.[34]

Accordingly, I find that the record indicates that carbon and alloy fabricated structural units represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Carbon and alloy welded tubular products - The class of products approach indicates that carbon and alloy welded tubular products represent a single like product. The record indicates that there is a significant overlap in the production facilities used to make all welded pipe and tube products, including both welded tubular products other than OCTG and welded OCTG products.[35] In particular, a greater number of domestic tubular producers manufacturing the largest volume of tubular products produced both welded tubular other than OCTG and welded OCTG, rather than producing either all tubular products together or all OCTG (welded and seamless) together.[36]

The record also indicates that all welded tubular products are produced from carbon and alloy flat products, using the same production process, same equipment, and same employees; the only distinction among welded tubular products other than OCTG and welded OCTG products is an additional finishing process for welded OCTG products.[37] All welded tubular products also have the same physical properties, such as shape and weld seam.[38] In addition, all welded tubular products are generally sold through similar channels of distribution.[39] In contrast, the record indicates that, at times, demand trends of welded OCTG products differed somewhat for demand trends for welded tubular other than OCTG

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[30] CR and PR at Tables LONG-1 and STAINLESS-1.

[31] CR and PR at LONG-4 & Table LONG-1.

[32] CR and PR at Table LONG-1.

[33] CR and PR at LONG-4.

[34] CR and PR at LONG-4.

[35] Posthearing Injury Br. of U.S. Steel regarding Tubular Products, at 8; Injury Hearing Tr. at 2529-30.

[36] CR and PR at Table LONG-1.

[37] CR and PR at TUBULAR-1, 3-4.

[38] CR and PR at TUBULAR-3-4.

[39] CR at TUBULAR-51, PR at TUBULAR-39.

products.[40] In addition, there is only limited overlap in end uses for OCTG and non-OCTG welded tubular products, although OCTG welded tubular products are substitutable in non-OCTG applications.[41]

Accordingly, on balance, the record indicates that carbon and alloy welded tubular products, including both welded tubular other than OCTG and welded OCTG, represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Carbon and alloy seamless tubular products - It follows from the preceding discussion that the class of products approach indicates that carbon and alloy seamless tubular products represent a single like product. The record indicates that there is a significant overlap in the production facilities used to make all seamless pipe and tube products.[42] In particular, a greater number of domestic tubular producers manufacturing the largest volume of tubular products produced both seamless tubular other than OCTG and seamless OCTG, rather than producing either all tubular products together or all OCTG (welded and seamless) together.[43] The record also indicates that all seamless tubular products are produced from billets.[44] In addition, seamless tubular products are manufactured using the same production process, same equipment, and same employees; the only difference is the additional finishing process for seamless OCTG products.[45] The record also indicates that all seamless tubular products are generally sold through similar channels of distribution.[46] In contrast, the record indicates that, at times, demand trends of seamless OCTG products differed somewhat for demand trends for seamless tubular other than OCTG.[47] In addition, there is only limited overlap in end uses for OCTG and non-OCTG seamless tubular products, although seamless OCTG tubular products are substitutable in non-OCTG applications.[48]

Accordingly, on balance, the record indicates that carbon and alloy seamless tubular products, including seamless tubular other than OCTG and seamless OCTG, represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Carbon and alloy fittings, flanges, and tool joints - The fittings, flanges, and tool joint category for which data were collected presents a more divergent analysis regarding my methodology for determining like product. To begin, I note the record offers little evidence concerning the production facilities of tool joints.[49] However, the record does indicate that fittings and flanges are produced by the same producers using the same productive resources.[50] In particular, fittings and flanges are produced by both integrated and non-integrated producers.[51] Integrated producers manufacture fitting forgings and flange forgings, and further convert such forges into fittings and flanges, respectively.[52] In contrast, non-

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[40] CR and PR at TUBULAR-54-55

[41] CR at TUBULAR-54-55, PR at TUBULAR-42-43.

[42] Posthearing Injury Br. of U.S. Steel Regarding Tubular Products, at 8; Injury Hearing Tr. 2529-30.

[43] CR and PR at Table LONG-1.

[44] CR and PR at TUBULAR-1.

[45] CR and PR at TUBULAR-1, 54-55.

[46] CR and PR at TUBULAR-51.

[47] CR and PR at TUBULAR-54-55.

[48] CR and PR at TUBULAR-61-63.

[49] Injury Hearing Tr. at 2625-26; Grant PrideCo's Prehearing Injury Br., at 5

[50] Injury Hearing Tr. at 2521-22 & 2685.

[51] CR at TUBULAR-51, PR at TUBULAR-39.

[52] CR at TUBULAR-51, PR at TUBULAR-39.

integrated producers purchase forgings and perform only the conversion into finished fittings and forgings.[53]

In addition, fittings, flanges, and tool joints are all designed to connect sections of piping systems. Specifically, fittings and flanges are generally used for connecting the bores of two or more pipes or tubes together, a pipe or tube together with some other apparatus, or for closing the tube aperture, while tool joints are used to attach lengths of drill pipe together.[54] Due to the similar uses, fittings, flanges, and tool joints have similar production processes, physical characteristics, and channels of distribution.[55]

Accordingly, on balance, the record indicates that, despite limited evidence regarding productive facilities of tool joints, carbon and alloy fittings, flanges, and tool joints represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Stainless and tool steel flat and long products - Given the President's and the Senate Finance Committee's product groupings and acknowledging the higher degree of interrelatedness between the production of stainless and tool steel products when compared to carbon and alloy products, the class of products methodology when applied to the covered stainless and tool steel products results in a broader like product definition than was found for many of the above carbon and alloy products. The record indicates that the manufacture of stainless and tool steel begins with the production of molten steel in an argon-oxygen-decarburization ("AOD") furnace. Importantly, AOD refining facilities are generally not utilized in the production of other grades of steel; and thus, there is minimal overlap between stainless and tool steel and carbon and alloy production workers.[56]

The record also indicates that only a few companies that produce stainless slabs also produce alloy steel or tool steel slabs using the same melting and casting equipment.[57] In addition, stainless steel bloom and billet melt shops often produce semifinished tool steel products, in addition to the production of bar and rod.[58] Thus, although there is only limited direct linkage between the production of stainless and tool steel flat products and stainless and tool steel long products, both flat and long tool steel semifinished products are produced in the same facilities as stainless semi-finished products and are used in the production of finished tool steel products.[59] I find this connection important because it reveals a relationship among the production of stainless and tool steel semifinished products, cut-to-length plate, bar, rod, and downstream tool steel, which are effectively pulled into a commonality of productive interests by the tool steel product category, therefore representing a single class of products.

In this context, in my view, it would be inconsistent to first group those producers of slabs, billets, blooms, and ingots into one domestic industry but then proceed to find that these producers' production of downstream products is unrelated, i.e., to include a domestic producer of stainless slab within the same domestic industry as a producer of stainless billet, but then determine that these producers' related cut-to-length plate and bar operations are separate domestic industries. In my view, despite the distinctions between stainless flat and long products, the fact that many producers of stainless and tool steel semifinished products, cut-to-length plate, bar, and rod share a common interest in the production of downstream tool steel products is important. The removal of any one of these products

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[53] CR at TUBULAR-51, PR at TUBULAR-39.

[54] CR and PR at TUBULAR-1-2.

[55] CR at TUBULAR-55, PR at TUBULAR-43.

[56] CR and PR at STAINLESS-1.

[57] CR and PR at STAINLESS-1.

[58] CR and PR at STAINLESS-1.

[59] CR and PR at Table STAINLESS-1.

from this class of products would frustrate the purpose of this section 201 investigation–to assess the underlying impact of imports on the productive resources of the given domestic industry.

Accordingly, on balance, the record indicates that stainless and tool steel flat and long products (including stainless slab, ingots, cut-to-length plate, bar, and rod and tool steel) represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Stainless steel wire products - The class of products methodology also leads to a similar result for stainless wire and wire rope as a result of the focus of the methodology on the interrelatedness of productive facilities. The record indicates that there are substantial physical, end use, and, most importantly, production-related differences between stainless steel wire products and other stainless products. Although there are also physical and end use differences between stainless steel wire products, the record indicates that on a volume basis, nearly all those domestic producers which produce stainless wire rope also produce relatively large volumes of stainless wire.[60] The record therefore evidences an important overlap in productive resources for stainless steel wire products.

In addition, although it has been argued that the Commission should find that carbon wire rope and stainless wire rope comprise one like product and therefore one domestic industry, I find, based on my class of products, productive resources approach to the like product analysis, that there is a higher degree of interrelatedness in productive facilities between producers of stainless wire and stainless rope than between producers of carbon wire rope and stainless wire rope.[61]

Accordingly, on balance, the record indicates that stainless steel wire products represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Stainless steel fittings and flanges - Initially, I reject some domestic producers' contention that stainless fittings and flanges should be considered a part of the same like product as welded stainless tubular products, primarily given that all parties agree that welded products and fittings and flanges are produced in entirely different facilities and use different production processes. I next consider whether stainless fittings and flanges should be one like product or two. Upon review of the record, I determine that stainless fittings and flanges are one like product. Several domestic producers representing a large volume and share of domestic production of these products produce both stainless steel fittings and flanges in the same facilities.[62] The record further indicates that these products are generally used for the same purposes and sold through similar channels of distribution.[63]

Accordingly, on balance, the record indicates that stainless fittings and flanges represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Stainless cloth products - Stainless woven cloth is a high-value-added stainless product that has different physical characteristics, end uses, and production processes than the other stainless products within the scope of this investigation. For example, unlike other stainless products, stainless cloth is essentially a metal cloth that is woven from stainless wire. Although this might suggest that stainless cloth be grouped in the same product class as stainless steel wire products, the only producer who reported production of stainless cloth reported ***.[64]

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[60] CR and PR at Table STAINLESS-1.

[61] CR and PR at Tables LONG-1 and STAINLESS-1.

[62] Post-hearing Injury Br. of Gerlin, Inc., at 12.

[63] Pre-hearing Injury Br. of Flowline, at 2-10.

[64] CR and PR at Table STAINLESS-1.

Given these differences between the physical characteristics, uses, production processes, and productive facilities of woven cloth and other stainless products, I find that stainless wire cloth represents a single like product and a single corresponding domestic industry.

Stainless welded tubular products - The class of products approach indicates that stainless welded tubular products represent a single like product. Stainless welded tubular products are distinguishable from most other stainless products in terms of physical characteristics, end uses, and production processes and facilities.[65] Importantly, stainless welded tubular products are produced in separate facilities from other stainless products. In addition, the record indicates, similar to the corresponding carbon and alloy products, that stainless welded tubular products are produced from flat products, while stainless seamless tubular products are produced from long products. Although, as discussed below, stainless seamless tubular products are substitutable for stainless welded tubular products, welded products are generally not suitable in seamless applications.

Accordingly, on balance, the record indicates that stainless welded tubular products represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

Stainless seamless tubular products - It follows from the preceding discussion that the class of products approach indicates that stainless seamless tubular products represent a single like product. Stainless seamless tubular products are distinguishable from most other stainless products in terms of physical characteristics, end uses, and production processes and facilities.[66] The record further indicates that stainless seamless tubular products are distinguishable from stainless welded tubular products given that welded products are not suitable for a variety of high pressure applications for which seamless products are suitable.[67] In addition, as noted above, the production processes and facilities between stainless seamless and welded tubular products are distinct.

Accordingly, on balance, the record indicates that stainless seamless tubular products represent a single class of products, and therefore one like product and one corresponding domestic industry comprised of the producers of this class of products.

III. INCREASED IMPORTS

Framework. The first of the three statutory criteria is that imports must be in "increased quantities." Under section 202 of the Trade Act, imports have increased when the increase is "either actual or relative to domestic production."[68] In global safeguard investigations, the Commission considers imports from all sources in determining whether imports have increased. The Commission traditionally has considered import trends over the most recent five-year period. There is no minimum quantity by which imports must have increased; a simple increase is sufficient.

Upon review of the record in this investigation, I find, as discussed in more detail below, that for each of the thirteen like products and corresponding domestic industries I have defined, imports have increased in actual terms. I therefore find that the statutory standard that imports be in "increased quantities" is satisfied. Nonetheless, as set forth in my causation discussion below, given the downturn in the volume of imports for many of these product classes towards the end of the period of investigation, further examination is warranted as to whether the intervening declines in imports diminish the causal connection between increased imports and the serious injury or threat of serious injury to the relevant industries.

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[65] Prehearing Injury Br. on Behalf of Pipe and Tube Producers of Japan, at 15.

[66] Prehearing Injury Br. on Behalf of Pipe and Tube Producers of Japan, at 15.

[67] Prehearing Injury Br. on Behalf of Pipe and Tube Producers of Japan, at 15.

[68] 19 U.S.C. § 2252(c)(1)(C).

Findings. Carbon and alloy flat products - The volume of carbon and alloy flat product imports increased by 14.1 percent from 1996 to 2000, from 18,851,160 short tons in 1996, to 19,743,380 short tons in 1997, to 25,822,437 short tons in 1998, declining to 21,544,945 short tons in 1999, and falling slightly to 21,510,296 short tons in 2000.[69] The volume of imports continued to decline between the interim periods, from 11,794,609 short tons in interim (January-June) 2000 to 7,210,099 short tons in interim 2001.[70]

Carbon and alloy long products - The absolute volume of carbon and alloy long product imports surged 63.2 percent from 1996 to 2000, from 4,665,948 short tons in 1996, to 4,776,132 short tons in 1997, to 8,127,996 short tons in 1998, with a slight decline in 1999 to 6,824,391 short tons, and then rising again in 2000 to 7,616,601 short tons.[71] Between the interim periods, imports of long products decreased 32.8 percent, declining from 4,081,646 short tons in interim 2000 to 2,774,310 short tons in interim 2001.[72]

Carbon and alloy fabricated structural products - The absolute volume of fabricated product imports surged 202.9 percent from 1996 to 2000, increasing from 217,550 short tons in 1996, to 279,836 short tons in 1997, to 363,642 short tons in 1998, to 498,842 short tons in 1999, and to 658,950 short tons in 2000.[73] Between the interim periods, imports of fabricated products increased again from 277,135 short tons in interim 2000 to 370,158 short tons in interim 2001.[74]

Carbon and alloy wire products - The absolute volume of wire products, including wire, rope, and nail imports surged 41.6 percent from 1996 to 2000, increasing from 1,176,602 short tons in 1996, to 1,338,653 short tons in 1997, to 1,464,424 short tons in 1998, to 1,638,453 short tons in 1999, and to 1,665,566 short tons in 2000.[75] Between the interim periods, imports of carbon wire products decreased 8.9 percent, declining from 844,164 short tons in interim 2000 to 769,277 short tons in interim 2001.[76]

Carbon and alloy welded tubular products - The absolute volume of welded tubular product imports, including welded other than OCTG and welded OCTG imports, surged 75.1 percent from 1996 to 2000, increasing from 1,634,053 short tons in 1996, to 1,994,463 short tons in 1997, to 2,391,664 short tons in 1998, with a slight decline in 1999 to 2,185,530 short tons, and rising again in 2000 to 2,860,802 short tons.[77] Between the interim periods, imports of welded tubular products continued their increasing trend, from 1,519,002 short tons in interim 2000 to 1,682,134 short tons in interim 2001.[78]

Carbon and alloy seamless tubular products - The absolute volume of seamless tubular product imports, including seamless other than OCTG and seamless OCTG imports surged 70.6 percent from 1996 to 2000, increasing from 615,074 short tons in 1996, to 751,073 short tons in 1997, to 874,490 short tons in 1998, with a decline in 1999 to 507,608 short tons, and rising in 2000 to more than double the previous year's levels at 1,049,570 short tons.[79] Between the interim periods, imports of seamless tubular

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[69] CR and PR at Table FLAT-C-1.

[70] CR and PR at Table FLAT-C-1.

[71] INV-Y-209 at Table LONG-C-ALT-2.

[72] INV-Y-209 at Table LONG-C-ALT-2.

[73] CR and PR at Table LONG-C-11.

[74] CR and PR at Table LONG-C-11.

[75] INV-Y-209 at Table LONG C-ALT-3.

[76] INV-Y-209 at Table LONG C-ALT-3.

[77] INV-Y-217 at Table TUBULAR C-ALT-4.

[78] INV-Y-217 at Table TUBULAR C-ALT-4.

[79] INV-Y-207 at Table TUBULAR C-ALT-3.

products continued their increasing trend, from 520,367 short tons in interim 2000 to 607,933 short tons in interim 2001.[80]

Carbon and alloy fittings, flanges, and tool joint products - The absolute volume of fittings, flanges, and tool joint imports surged 30.8 percent from 1996 to 2000, increasing from 103,507 short tons in 1996, to 105,313 short tons in 1997, to 117,093 short tons in 1998, to 117,461 short tons in 1999, and to 135,399 short tons in 2000.[81] Between the interim periods, imports of fittings, flanges, and tool joint products continued the increasing trend, from 61,588 short tons in interim 2000 to 81,380 short tons in interim 2001.[82]

Stainless and tool steel flat and long products - The absolute volume of stainless and tool steel flat and long imports surged 99.8 percent from 1996 to 2000, increasing from 353,955 short tons in 1996, to 376,410 short tons in 1997, to 458,163 short tons in 1998, to 639,655 short tons in 1999, and to 707,192 short tons in 2000.[83] In contrast, between the interim periods, stainless and tool steel flat and long imports decreased from 383,448 short tons in interim 2000 to 312,991 short tons in interim 2001.[84]

Stainless steel wire products - The absolute volume of stainless steel wire products imports increased by 21.1 percent from 1996 to 2000, increasing from 33,647 short tons in 1996, to 34,701 short tons in 1997, to 40,287 short tons in 1998, falling to 33,141 short tons in 1999, and then increasing to 40,758 short tons in 2000.[85] Between the interim periods, imports of stainless steel wire products declined slightly from 21,654 in interim 2000 to 21,052 short tons in interim 2001.[86]

Stainless woven cloth - The absolute volume of stainless woven cloth imports increased 22.5 percent from 1996 to 2000, from 5,794 short tons in 1996, to 10,532 short tons in 1997, to 13,649 short tons in 1998, declining to 5,497 short tons in 1999, and increasing to 7,099 short tons in 2000.[87] Between the interim periods, imports of stainless cloth continued the increasing trend, from 3,407 short tons in interim 2000 to 3,949 short tons in interim 2001.[88]

Stainless welded tubular products - The absolute volume of stainless welded tubular product imports surged 108.2 percent from 1996 to 2000, increasing from 26,608 short tons in 1996, to 27,696 short tons in 1997, to 33,414 short tons in 1998, to 44,843 short tons in 1999, and to 55,408 short tons in 2000.[89] Between the interim periods, imports of stainless welded tubular product imports declined from 28,673 short tons in interim 2000 to 21,679 short tons in interim 2001.[90]

Stainless seamless tubular products - The absolute volume of stainless seamless tubular product imports increased 26.5 percent from 1996 to 2000, initially declining from 32,660 short tons in 1996, to 30,063 short tons in 1997, then increasing to 40,904 short tons in 1998, falling to 38,462 short tons in 1999, and then increasing again to 41,326 short tons in 2000.[91] Between the interim periods, imports of

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[80] INV-Y-207 at Table TUBULAR C-ALT-3

[81] CR and PR at Table TUBULAR C-6.

[82] CR and PR at Table TUBULAR C-6.

[83] INV-Y-209 at Table STAINLESS-C-ALT-4.

[84] INV-Y-209 at Table STAINLESS-C-ALT-4.

[85] INV-Y-218 at Table STAINLESS-C-ALT-5.

[86] INV-Y-218 at Table STAINLESS-C-ALT-5.

[87] CR and PR at Table STAINLESS-C-8.

[88] CR and PR at Table STAINLESS-C-8.

[89] CR and PR at Table STAINLESS-C-11.

[90] CR and PR at Table STAINLESS-C-11.

[91] CR and PR at Table STAINLESS-C-10.

stainless seamless tubular products declined from 21,086 short tons in interim 2000 to 20,859 short tons in interim 2001.[92]

Stainless fittings and flanges - The absolute volume of stainless fittings and flange imports surged 73.5 percent from 1996 to 2000, increasing from 18,345 short tons in 1996, to 22,430 short tons in 1997, to 23,768 short tons in 1998, falling slightly to 23,761 short tons in 1999, and then increasing again to 31,826 short tons in 2000.[93] Between the interim periods, imports declined from 18,112 short tons in interim 2000 to 13,252 short tons in interim 2001.[94]

IV. SERIOUS INJURY AND THREAT OF SERIOUS INJURY

Framework. I now turn to the second of the three statutory criteria: that is, whether the domestic industry is seriously injured or threatened with serious injury. The term "serious injury" is defined in the statute to mean "a significant overall impairment in the position of a domestic industry,"[95] and the term "threat of serious injury" is defined to mean "serious injury that is clearly imminent."[96]

The statute sets out certain economic factors that must be taken into account. With respect to serious injury, these factors are: (1) the significant idling of productive facilities in the domestic industry;[97] (2) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and (3) significant unemployment or underemployment within the domestic industry.

With respect to threat of serious injury, these factors are: (1) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry; (2) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and (3) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.[98]

The above factors are not exclusive; the statute directs consideration of all economic factors that are found to be relevant, including the listed factors. Also, the statute directs that the presence or absence of any of these factors shall not be considered "necessarily dispositive."[99] The Commission has developed no set formula for determining whether an industry is seriously injured or threatened with serious injury, but instead has examined the relevant facts in the record of each investigation and made its determination on the basis of the totality of these facts.

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[92] CR and PR at Table STAINLESS-C-10.

[93] CR and PR at Table STAINLESS-C-12.

[94] CR and PR at Table STAINLESS-C-12.

[95] 19 U.S.C. § 2252(c)(6)(C).

[96] 19 U.S.C. § 2252(c)(6)(D). This definition is also consistent with the legislative history, which defines a "threat" of serious injury to exist "when serious injury, although not yet existing, is clearly imminent if imports [sic] trends continued unabated." *Trade Reform Act of 1974, Report of the Committee on Finance . . . on H.R. 10710*, S. Rep. 93-1298, 93d Cong., 2d Sess. (1974), at 121.

[97] The statute further provides that the term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity. 19 U.S.C. § 2252(c)(6)(B).

[98] 19 U.S.C. § 2252(c)(1)(A) & (B).

[99] 19 U.S.C. § 2252(c)(3).

In assessing injury to each of the domestic industries I have identified in this investigation, I focused my analysis on: (1) the extent to which productive facilities have been idled; (2) domestic producers' financial performance; (3) employment trends; and (4) the extent to which firms in the domestic industry are unable to generate capital, from either cash flow, debt, or the issuance of equity shares, to finance existing investments, restructure, or maintain existing levels of expenditures for research and development.[100] As indicated below, the levels of injury sustained over the period of investigation by many of the domestic industries I have identified are unprecedented and go well beyond the statutory threshold of serious injury.

A. AFFIRMATIVE INJURY FINDINGS

Findings. Carbon and alloy flat products - With respect to each of the serious injury factors, i.e., significant overall impairment in the position of the domestic industry, significant idling of productive facilities, and whether a significant number of domestic producers are unable to carry out domestic production operations at a reasonable level of profit, the domestic carbon flat products industry is, by any measure, seriously injured.

Domestic flat product producers *** during 2000. This *** in 1999.[101] In the first six months of 2001, ***.[102] Thus, over the past two and one half years, the domestic industry has incurred ***. I highlight the fact that these losses occurred during a period, for the most part, of robust apparent U.S. consumption.[103] Additionally, the record indicates that the operating margin for this industry declined from *** percent in 1996 to *** percent in 2000, and then fell from *** percent in interim 2000 to *** percent in interim 2001.[104] Sharp declines in the performance of the domestic flat products industry are also apparent on an individual company basis for nearly every domestic producer. This is a particularly important point because it underscores the broad level of injury sustained by this domestic industry over the period of investigation.

The record also indicates that despite growth in apparent U.S. consumption from 1996 to 2000, decreased revenues forced U.S. producers to idle significant production facilities, including the closing of plants and the underutilization of capacity.[105] Over the period of investigation, five major flat-rolled production facilities, each with significant capacity, were shut down, resulting in a reduction of 7.6 million tons of production capacity.[106] In addition, numerous other facilities have either shut down temporarily or curtailed production operations, including layoffs, temporary closures, and shift

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[100] Furthermore, given the litany of bankruptcies in this industry over the period of investigation, and recognizing that the Commission does not have company-specific data for some of these absent producers, some of the Commission's data are likely significantly overstated. CR and PR at Table OVERVIEW-11. I note that in assessing injury I also considered other factors including: a decline in sales or market share; a higher and growing inventory; a downward trend in productivity; and the extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports in third country markets and have included a discussion of these other factors where such factors were of particular relevance. The omission of any of these factors from the textual discussion above should not be taken to indicate that such factors were not considered in my analysis.

[101] CR and PR at Table FLAT-C-1.

[102] CR and PR at Table FLAT-C-1.

[103] CR and PR at Table FLAT-C-1.

[104] CR and PR at Table FLAT-C-1.

[105] CR and PR at Table FLAT-C-1 and OVERVIEW-11.

[106] CR and PR at Table OVERVIEW-11.

reductions.[107] For example, U.S. Steel reduced production at its Gary, Indiana, facility in response to declining orders and Weirton Steel idled a blast furnace as a cost-reduction measure.[108] In addition, capacity utilization rates for survivors declined from *** percent in 1996 to *** percent in 2000, and then to *** percent in interim 2001.[109] Likewise, each of the individual flat producers' data reflects a similar trend of idled facilities.[110] Furthermore, since September of 1998, ten companies that produce flat products filed for bankruptcy, representing at least 18.4 million short tons of production capacity and well over 4,000 jobs.[111]

In addition, both wages and employment data reveal devastating declines over the period.[112] According to the United Steelworkers of America, nearly 15,000 jobs have been lost in the steel industry since the middle of 1998.[113] While these figures include all steel jobs, much of these losses occurred within the flat products industry. The record also indicates that in the first half of 2001, the average number of production and related workers employed in the flat products industry declined to ***, compared to *** at the beginning of the period of investigation.[114]

I also find that other employment-related factors demonstrate the industry's serious injury. Not only have domestic producers had to reduce their workforce, they have also been severely constrained in their ability to hire and train younger workers to replace the aging, highly-skilled workforce.[115] In this context, it is reasonable to assume that even if domestic producers were able to increase employment in the future, the domestic industry's long-term health has been severely compromised by not only the loss of employees but also lost opportunities to sustain the competitive viability of the domestic industry by providing younger workers with the necessary training for these increasingly technologically-sophisticated positions.

With respect to the question of the extent to which firms in the domestic industry cannot generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development, the evidence is clear–nearly every domestic flat products producer experienced a sharp decline in its ability to finance modernization through either cash flow, equity, or debt.[116] In fact, only a few U.S. steel companies are currently in a position to raise capital or refinance their existing debt through the issuance of unsecured bonds, and the senior debt of only five U.S. steel companies is rated investment grade.[117] Accordingly, I find that the domestic carbon and alloy flat products industry is seriously injured.

Carbon and alloy long products - During the period of investigation, the operating profits of the domestic producers of long products turned into operating losses, which then resulted in the idling of

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[107] CR and PR at Table OVERVIEW-11.

[108] *U.S. Steel Idles Gary Blast Furnace, Metalbulletin.com* (Oct. 24, 2000); *Weirton Steel Cutting Management Staff, American Metal Market* at 2 (Mar. 12, 2001), Bethlehem Prehearing Injury Br., at 59.

[109] CR and PR at Table FLAT-C-1 and OVERVIEW-11.

[110] INV-Y-209 Table-FLAT.

[111] CR and PR at Table FLAT-C-1.

[112] CR and PR at Table FLAT-C-1.

[113] *15,000 Jobs Have Been Lost in the Steel Industry Since the 1998 Crisis Began, United Steelworkers of America, Jan. 23, 2001,* http://www.fairtradewatch.org, Bethlehem Prehearing Injury Br., at 55.

[114] CR and PR at Table FLAT-C-1.

[115] USWA Prehearing Injury Br., at 20-21, 43-49.

[116] CR and PR at Table OVERVIEW-10. I recognize that a few domestic producers were constrained in their ability to raise capital even before imports increased.

[117] CR and PR at Table OVERVIEW-10.

productive facilities. These curtailments of operations, including the shuttering of companies, have in turn resulted in layoffs, shift reductions, and the underemployment of U.S. workers.[118]

Despite the growth in apparent U.S. consumption from 1996 to 2000, decreased revenues forced U.S. producers to idle significant production facilities, including the closing of plants and the underutilization of capacity.[119] During the period of investigation, at least nineteen facilities representing over 10 million short tons of capacity were shuttered.[120] Furthermore, numerous other mills filed for bankruptcy and curtailed production operations, including lay-offs, temporary closures, and shift reductions.[121] In addition, capacity utilization rates for survivors declined from 77.2 percent in 1996 to 76.4 percent in 2000, and then to 69.3 percent in interim 2001.[122] Likewise, most of the individual long product producers' data reflect a similar trend of idled facilities.[123]

A significant number of U.S. producers are also unable to operate at a reasonable level of profit, as increased import volumes reduced the profits of a significant number of domestic producers. Most notably, the domestic long products industry moved from operating income profits to operating losses.[124] The domestic industry's operating margin peaked at 7.2 percent in 1998, but declined significantly to a low of 3.6 percent in 2000, and dropped to a loss of 0.7 percent in interim 2001.[125] I note that such low overall operating margins demonstrate that profits cannot adequately cover capital costs, a finding corroborated by the poor financial performance of a significant number of domestic producers.[126]

For example, 26 of 94 domestic producers who reported usable data operated with annual losses in 1998, 38 of 94 domestic producers experienced operating losses in 2000, and 46 of 95 producers experienced operating losses in interim 2001.[127] The significance of the 1998 and 2000 operating losses is especially important within the context of the business cycle, as the industry was experiencing an upturn during the period 1998 through a portion of 2000.[128] In addition, seven domestic producers of long products filed for bankruptcy during the period.[129]

I also acknowledge respondents' contention that the data on individual products for this class of products do not evidence serious injury; rather, many respondents attribute the financial condition of the

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[118] Posthearing Injury Br. of Minimill 201 Coalition (Long Products), Ex. 1-D: Company-Specific Data.

[119] INV-Y-209 at Table LONG-ALT-2.

[120] CR and PR at Table OVERVIEW-11.

[121] CR and PR at Table OVERVIEW-11.

[122] INV-Y-209 at Table LONG-ALT-2.

[123] INV-Y-212 at Tables LONG-26-30 & 34.

[124] INV-Y-209 at Table LONG-ALT-2.

[125] INV-Y-209 at Table LONG-ALT-2.

[126] INV-Y-209 at Table LONG-ALT-2; Prehearing Injury Br. of Minimill 201 Coalition (Long Products), at 28-34 and 72-75; Posthearing Injury Br. of Minimill 201 Coalition (Long Products), at 23-28.

[127] See CR and PR at Tables LONG-26, LONG-27, LONG-28, LONG-29, LONG-30, and LONG-34. I note that because the data were organized according to ingot/billets, hot bar, cold bar, rebar, rails, and shapes individually, the number of firms reporting operating losses may present problems of double counting, as many domestic producers manufacture several products. Nonetheless, the data reliably indicate a trend of increasingly more domestic producers operating with losses throughout the investigation period.

[128] Prehearing Injury Br. of Minimill 201 Coalition (Long Products), at 3.

[129] CR and PR at Table OVERVIEW-11.

domestic industry as a whole to only a few companies in each industry segment.[130] However, I find, based on my definition of the like product and the domestic industry, that the record as a whole indicates similar trends of severely declining financial performance for the individual domestic producers of each of the products within this class, as well as for the domestic industry in the aggregate.[131] Accordingly, I find that the domestic carbon and alloy long products industry is seriously injured.

Carbon and alloy wire products - The record indicates that the domestic wire products industry is threatened with serious injury. As apparent U.S. consumption grew 27.3 percent from 1996 to 2000, domestic production tracked that trend and increased 23.8 percent, and employment also grew by 10.6 percent.[132] Several domestic producers prospered with healthy operating margins ranging from 9.1 to 10.8 percent over much of the period of investigation.[133] However, the record indicates that as the period of investigation progressed a number of producers struggled with operating losses, curtailed production facilities, and eventually filed for bankruptcy.[134] Even in the face of rising apparent U.S. consumption, aggregate capacity utilization rates of domestic producers declined from 81.2 percent in 1996 to 80.4 percent in 2000, and dropped to 71.7 percent in interim 2001.[135] In addition, domestic producers' inventories grew 16.8 percent between 1996 and 2000, while domestic producers' market share fell from 75.7 percent in 1996 to 72.9 percent in 2000.[136] Domestic commercial sales and capital expenditures began to decline in 2000, even as apparent U.S. consumption grew and U.S. imports continued to surge. In addition, during the period of investigation, two domestic steel wire rope producers exited the industry in the face of increasing imports.[137] Accordingly, I find that serious injury is clearly imminent and that therefore the domestic carbon and alloy wire products industry is threatened with serious injury.

Carbon and alloy welded tubular products - Despite the growth in apparent U.S. consumption of 22.7 percent from 1996 to 2000, the record indicates that employment in the domestic welded tubular industry only marginally increased, from 8,063 production workers in 1996 to 8,414 production workers in 2000.[138] These apparent steady employment data are misleading, however, because welded tubular workers have significantly reduced work hours and altered plant locations to limit unemployment.[139] During that same period, the record indicates significant idling of domestic welded tubular production facilities. Although domestic production slightly increased 7.3 percent, U.S. producers' share of the U.S. market declined 10.1 percent.[140] Another indication of the domestic industry's serious injury is the

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[130] Prehearing Injury Br. of Japanese and European Respondents, at 73-76; Prehearing Injury Br. regarding Cold-Finished Bar, at 18-23; Prehearing Injury Br. of Respondents from Europe, South Africa, and Turkey on Hot-Rolled Bar and Light Shapes, at 70-82; Posthearing Injury Br. of Japanese and European Respondents, at 23-30; Posthearing Injury Br. of Respondents from Europe, South Africa, and Turkey on Hot-Rolled Bar and Light Shapes, at 13-22.

[131] CR and PR at Tables LONG C-1-6 & 10; INV-Y-212 at Tables LONG-26-30 & 34.

[132] INV-Y-209 at Table LONG-ALT-3.

[133] INV-Y-209 at Table LONG-ALT-3; INV-Y-212 at Tables LONG-31-33.

[134] CR and PR at Table OVERVIEW-11.

[135] INV-Y-209 at Table LONG-ALT-3.

[136] INV-Y-209 at Table LONG-ALT-3.

[137] The Rochester Corporation shut down its production plant in 1998, and the Macwhyte Company shut down its primary production facility and sold an ancillary facility in 1999. Prehearing Injury Br. on behalf of the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, at 25-29.

[138] INV-Y-207 at Table TUBULAR-C-ALT-4.

[139] Injury Hearing Tr. at 2558-63 (Commissioner Bragg question, and answers from Mr. Usher, Mr. Dunn, Mr. Hooper, and Mr. Hamilton).

[140] INV-Y-207 at Table TUBULAR-C-ALT-4.

decline in the industry's capacity utilization, from 64.8 percent in 1996, to 56.8 percent in 2000, and then to 55.1 percent in interim 2001.[141] The record also indicates that U.S. production capacity declined over the period. For example, the closure of two pipe mills by Laclede and two by Excaliber represented approximately 750,000 tons of U.S. welded capacity, or 12 percent of 2000 total domestic welded production.[142] Since submitting questionnaire responses, OCTG production by U.S. Steel, ***, was significantly idled in multiple plants, as recently as August-October 2001, and reductions are expected to continue throughout the year.[143]

A significant and increasing number of U.S. producers are also unable to operate at a reasonable level of profit,[144] as indicated by declining operating margins ranging from 8.7 percent in 1997 to 4.6 percent in 2000.[145] In 1996, 5 of 37 domestic producers experienced annual operating losses; in 1999, 17 of 38 domestic producers had annual losses, and since then, the number of firms operating with annual losses has been in the double digits.[146] Finally, three U.S. producers of welded tubular products filed for bankruptcy during the period of investigation.[147] Accordingly, I find that the domestic carbon and alloy welded tubular products industry is seriously injured.

Carbon and alloy seamless tubular products - Despite the marginal growth in apparent U.S. consumption of 7.8 percent from 1996 to 2000 and again between interim 2000 and interim 2001 by 15.8 percent, the record indicates that employment in the domestic seamless tubular industry declined from 5,005 production workers in 1996 to 4,872 production workers in 2000, but increased to 5,047 production workers in interim 2001.[148] Furthermore, employees have reduced work hours and shifted between different production plants in order to limit increases in unemployment as domestic seamless production decreased over the period of investigation.[149]

During the same period, there were significant declines in capacity utilization rates, from 67.8 percent in 1996 to 42.7 percent in 1999.[150] Although capacity utilization rebounded to 64.9 percent in 2000, it was still lower than at the start of the period of investigation, which demonstrates a significant idling of productive capacity by domestic seamless producers.[151] For example, U.S. Steel significantly idled production at two of its three mills producing seamless OCTG products.[152] Moreover, domestic seamless production decreased 4.9 percent over the period of investigation and was at its lowest annual levels in 1998, 1999, and 2000.[153]

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[141] INV-Y-207 at Table TUBULAR-C-ALT-4.

[142] CR and PR at TUBULAR-16 (CR and PR at Table TUBULAR-11); Domestic Producers' Prehearing Injury Br., at IV-13.

[143] U.S. Steel Prehearing Injury Br., at 24; See also, ***, U.S. Steel Prehearing Injury Br., at Ex. 15.

[144] INV-Y-212 at Tables TUBULAR-18 & 19.

[145] INV-Y-207 at Table TUBULAR-C-ALT-4.

[146] CR and PR at Tables TUBULAR-18 & 19. I note that these data include some double counting.

[147] CR and PR at Table OVERVIEW-11.

[148] INV-Y-207 at Table TUBULAR-C-ALT-3.

[149] Injury Hearing Tr. at 2558-63 (Bragg question and answers from Mr. Usher, Mr. Dunn, Mr. Hooper, and Mr. Hamilton); U.S. Steel Posthearing Injury Br., at Ex. 1 (Answers to Questions from Commissioner Bragg), p.10.

[150] INV-Y-207 at Table TUBULAR-C-ALT-3.

[151] INV-Y-207 at Table TUBULAR-C-ALT-3.

[152] U.S. Steel Prehearing Injury Br., at 24; See also, ***, U.S. Steel Prehearing Injury Br., at Ex. 15.

[153] INV-Y-207 at Table TUBULAR-C-ALT-3.

The record further indicates that, upon consideration of the period of investigation as a whole, a significant number of domestic producers are unable to operate at a reasonable level of profit,[154] as indicated by operating income margins declining sharply from 12.2 percent in 1997 to a loss of 3.6 percent in 1999, then improving to 9.6 percent in 2000.[155] On balance, the record indicates that industry performance declined precipitously after 1997.[156] For example, operating income was $213.1 million in 1996 and $273.8 million in 1997, but fell to $168.4 million in 1997 and plummeted to a loss of $44.1 million in 1999. Profits remained considerably lower than at the beginning of the period at $170.9 million in 2000.[157]

Moreover, in 1999, 8 of 16 domestic producers performed with annual operating losses, and a number of domestic producers continued to produce with an operating loss throughout the period of investigation.[158] Accordingly, I find that, although the indicia of injury for this domestic industry are not as severe as the indicia for other domestic industries, the record nonetheless indicates that the carbon and alloy seamless tubular products industry is seriously injured.

Carbon and alloy fittings, flanges, and tool joints - Despite the moderate growth in apparent U.S. consumption of 9.7 percent from 1996 to 2000, the record indicates that employment in this industry decreased from 2,703 production workers in 1996 to 2,671 production workers in 2000.[159] In addition, employees were working increasingly fewer hours.[160]

During the same period, the record evidences a decline in capacity utilization, from 76.3 percent in 1996, to a low of 61.4 percent in 1999, and then rebounding somewhat to 65.2 percent in interim 2001, which indicates significant idling of domestic production facilities.[161] In addition, the domestic fittings, flanges, and tool joint industry reduced production capacity over the period. For example, Ladish, a longstanding producer of finished carbon steel fittings and flanges, recently left the industry, and Hackney recently shut down its flange operations.[162] In addition, domestic production decreased 5.3 percent over the period. At the same time, domestic producers' share of the U.S. market declined 6.7 percent as these producers rapidly lost commercial sales.[163]

The record also indicates that a significant number of U.S. producers are unable to operate at a reasonable level of profit, as indicated by the declining over-all operating income margins ranging from 8.9 percent in 1996 to a loss of 0.1 percent in 2000.[164] The record also indicates that by 1999, 8 of 18 domestic producers operated with annual losses.[165] Accordingly, I find that the carbon and alloy fittings, flanges, and tool joints industry is seriously injured.

Stainless and tool steel flat and long products - With respect to each of the serious injury factors, the record indicates that domestic stainless and tool steel producers are seriously injured.[166] Although the

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[154] INV-Y-212 at Table TUBULAR-16 & 17.

[155] INV-Y-207 at Table TUBULAR-C-ALT-3.

[156] INV-Y-212 at TUBULAR-16 & 17.

[157] INV-Y-207 at Table TUBULAR-C-ALT-3.

[158] CR and PR at Tables TUBULAR-16 & 17. I note that these data include some double counting.

[159] CR and PR at Table TUBULAR-C-6.

[160] Prehearing Injury Br. of Boltex, at 16-17.

[161] CR and PR at Table TUBULAR-C-6.

[162] Prehearing Injury Br. of Boltex, at 16.

[163] Prehearing Injury Br. of Boltex, at 16.

[164] INV-Y-212 at Table TUBULAR-20.

[165] CR and PR at Table TUBULAR-20.

[166] INV-Y-209 at Table STAINLESS-ALT-4.

performance indicia for stainless and tool steel producers are not as bleak as those for many domestic carbon steel producers, the record nonetheless indicates that stainless and tool steel producers' performance trended steadily lower over the period of investigation, with indicators accelerating their downward trend between the interim periods.[167] The number of firms reporting operating losses also increased over the period, particularly towards the end of the period.[168]

Specifically, the record indicates that the operating income margin declined from *** percent in 1996 to *** percent in 2000, then fell from *** percent in interim 2000 to negative *** percent in interim 2001.[169] Operating income fell from *** in 1996 to only approximately *** in 2000.[170] Moreover, the number of domestic producers reporting operating losses increased from 10 of 43 in 1996 to 23 of 42 in interim 2001.[171] In addition, production and related workers fell *** percent over the period, hours worked fell *** percent, and wages paid fell *** percent.[172] The record also indicates that although capital expenditures increased from 1996 through 1998, they fell sharply thereafter.[173]

Although capacity utilization remained unchanged from 1996 to 2000, near *** percent, capacity utilization declined from *** percent in interim 2000 to *** percent in interim 2001, thus demonstrating a significant idling of productive capacity.[174] In addition, although domestic production increased from 1996 to 2000, production fell by *** percent between the interim periods.[175] Accordingly, I find that the stainless and tool steel industry is seriously injured.

Stainless steel wire products - Given the relatively stable, but not strong, industry performance from 1996 to 2000, the record does not support a finding of serious injury.[176] The record does, however, support a finding of the threat of serious injury. Although domestic sales increased from 1996 to 2000 and domestic market share remained relatively stable, both domestic sales and market share turned sharply lower in interim 2001, with domestic shipments declining sharply from 56,444 short tons in interim 2000 to 44,312 short tons in interim 2001, and market share dropping from 72.3 percent in interim 2000 to 67.8 percent in interim 2001.[177] In addition, domestic inventories as a ratio to total shipments increased from 36.5 percent in 1996 to 66.7 percent in 2000, and increased from 44.3 percent in interim 2000 to 51.6 percent in interim 2001.[178]

The record also indicates lower trends in production, profits, wages, productivity, and employment between the interim periods.[179] More specifically, the record indicates that operating income margins declined from *** percent in interim 2000 to negative *** percent in interim 2001.[180] In addition, production and related workers fell 8.5 percent during this period, hours worked fell 14.8

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[167] INV-Y-209 at Table STAINLESS-ALT-4.

[168] CR and PR at Tables STAINLESS-28-32.

[169] INV-Y-209 at Table STAINLESS-ALT-4.

[170] INV-Y-209 at Table STAINLESS-ALT-4.

[171] CR and PR at Tables STAINLESS-28-32.

[172] INV-Y-209 at Table STAINLESS-ALT-4.

[173] INV-Y-209 at Table STAINLESS-ALT-4.

[174] INV-Y-209 at Table STAINLESS-ALT-4.

[175] INV-Y-209 at Table STAINLESS-ALT-4.

[176] INV-Y-218 at Table STAINLESS-ALT-5.

[177] INV-Y-218 at Table STAINLESS-ALT-5.

[178] INV-Y-218 at Table STAINLESS-ALT-5.

[179] INV-Y-218 at Table STAINLESS-ALT-5.

[180] INV-Y-218 at Table STAINLESS-ALT-5.

percent, and wages paid fell 13.5 percent.[181] Capacity utilization, although increasing from 1996 to 2000, declined sharply between the interim periods, thus demonstrating a significant idling of productive capacity.[182]

Moreover, while domestic production increased from 1996 to 2000, production fell by 23.5 percent between the interim periods.[183] Capital expenditures also trended downward over the period, from *** in 1996 to *** in 2000.[184] Accordingly, I find that serious injury is clearly imminent and that therefore the domestic stainless steel wire products industry is threatened with serious injury.

Stainless fittings and flanges -The record indicates that the domestic industry is seriously injured. Nearly every indicator of the health of the domestic industry trended downward over the period of investigation.[185] Although the performance indicia for stainless fitting and flange producers are not as bleak as the performance indicia for many domestic carbon and alloy steel producers, the record nonetheless indicates that stainless fittings and flanges producers' performance trended sharply lower over the period, with indicators accelerating downward between the interim periods.[186] The number of firms reporting operating losses also increased over the period.[187]

Specifically, the record indicates that operating income margins declined from *** percent in 1996 to *** percent in 2000, then fell from *** percent in interim 2000 to *** percent in interim 2001.[188] In addition, production and related workers fell *** percent over the period and hours worked fell *** percent.[189] The record also indicates that although capital expenditures increased from 1996 through 1998, they fell sharply thereafter.[190] With respect to capacity utilization, although utilization increased from 1996 to 1999, capacity utilization declined thereafter, falling to only *** percent in interim 2001.[191] I therefore determine that the domestic stainless fittings and flanges industry is seriously injured.

B. NEGATIVE INJURY FINDINGS

Findings. Carbon and alloy fabricated structural products - The financial indicia of the domestic fabricated structural products industry indicate that this industry is neither seriously injured nor threatened with serious injury. Over the period of investigation: (1) employment in this industry grew by 8.3 percent,[192] which negates the unemployment element; (2) capacity utilization rates remained near full capacity,[193] which negates the significant idled facilities element; and (3) operating income showed

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[181] INV-Y-218 at Table STAINLESS-ALT-5.

[182] INV-Y-218 at Table STAINLESS-ALT-5.

[183] INV-Y-218 at Table STAINLESS-ALT-5.

[184] INV-Y-218 at Table STAINLESS-ALT-5.

[185] CR and PR at Table STAINLESS-C-12.

[186] CR and PR at Table STAINLESS-C-12.

[187] CR and PR at Table STAINLESS-C-12.

[188] CR and PR at Table STAINLESS-C-12.

[189] CR and PR at Table STAINLESS-C-12.

[190] CR and PR at Table STAINLESS-C-12.

[191] CR and PR at Table STAINLESS-C-12.

[192] CR and PR at Table LONG C-11.

[193] CR and PR at Table LONG C-11.

consistently robust gains,[194] which negates the factor that a significant number of U.S. producers are unable to operate at a reasonable level of profit.[195] Regarding threat of serious injury, the data indicate that domestic producers' share of the U.S. market declined marginally and inventories increased.[196] The record, however, also indicates that sales, production, wages, productivity, and employment have increased.[197] Furthermore, the record data do not indicate that domestic producers are unable to maintain and modernize equipment, nor that the U.S. is a focal point for exports diverted from third country markets.[198]

I also acknowledge that the Commission received only limited responses from domestic fabricated structural producers.[199] However, I decline to draw adverse inferences, as respondents request, from the lack of domestic industry participation and rather find that the record evidence alone substantiates my determination.[200] Thus, I determine that even in the context of the business cycle, the record indicates that the domestic fabricated structural industry, unlike other industries covered by this investigation, was able to benefit from the cyclical expansion of demand over the whole period of investigation.[201] Accordingly, I find that the record indicates that the domestic fabricated structural products industry is neither seriously injured nor threatened with serious injury.

Stainless woven cloth - The domestic stainless cloth industry is neither seriously injured nor threatened with serious injury. The record indicates that the condition of the domestic industry was relatively strong over the period of investigation. Operating income margins increased from *** percent in 1996 to *** percent in 1997, declined to *** percent in 1998, improved to *** percent in 1999, then declined to *** percent in 2000.[202] Operating income margins increased from *** percent in interim 2000 to *** percent in interim 2001.[203] Although other indicators declined somewhat over the period, no indicator suggests the presence of serious injury. Regarding any threat of serious injury, there is no compelling record evidence which suggests that the currently healthy domestic industry is likely to experience a decline in sales or market share, a higher and growing inventory, or a downward trend in production, profits, wages, productivity, or employment. There is also no indication that the domestic stainless cloth industry is unable to generate adequate capital to finance the modernization of domestic plants and equipment, or is unable to maintain existing levels of expenditures for research and

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[194] CR and PR at Table LONG C-11. I note that even considering the relatively higher unit value of the fabricated products compared to the other long steel products for which data were collected, the operating margin consistently earned by each domestic fabricated producer was high (ranging from 13.6 percent to 16.2 percent) during the investigation period. CR and PR at Table LONG-35.

[195] CR and PR at Table OVERVIEW-11.

[196] CR and PR at Table LONG C-11.

[197] CR and PR at Table LONG C-11.

[198] CR and PR at Table LONG-64.

[199] Posthearing Injury Br. of CAB Inc. regarding Fabricated Structural Units, at 2-3.

[200] I do, however, find some persuasive value in respondents' contention that the lack of participation or response could be interpreted to indicate that non-responding domestic producers may view imports as not being relevant to their economic interests.

[201] Injury Hearing Tr., at 1570; Posthearing Injury Br. of Hunton & Williams for Fabricated Structural Steel, at A-1-4. There is no indication that this industry sustained numerous bankruptcies during the period of investigation and no indication that a significant number of producers are operating at a loss.

[202] CR and PR at Table STAINLESS-C-8.

[203] CR and PR at Table STAINLESS-C-8.

development.[204] I therefore find that the domestic stainless cloth industry is neither seriously injured nor threatened with serious injury.

Stainless welded tubular - The record indicates that although stainless welded tubular producers' capacity utilization declined over the period of investigation, production capacity grew by 50.3 percent.[205] The record also indicates that domestic shipments fluctuated over the period while demand increased steadily.[206] In addition, nearly every indicator of the health of the domestic industry was either stable or improved from 1996 to 2000, with operating income margins declining only somewhat, from 6.8 percent in 1996 to 4.4 percent in 2000.[207] Although domestic performance declined in interim 2001, given the relatively stable industry performance from 1996 to 2000, the declines between the interim periods do not appear to rise to a level of serious injury.

With respect to the threat of serious injury, although domestic performance turned lower between the interim periods, the declines appear to be largely the result of declines in demand.[208] Given the relatively healthy condition of the domestic industry over most of the period of investigation,[209] this industry is well positioned to sustain the cyclical downturn, in contrast to many of the industries discussed above where the injury resulting from increased imports weakened these industries' ability to withstand the downturn. I therefore determine that the stainless welded tubular industry is neither seriously injured nor threatened with serious injury.

Stainless seamless tubular products - The record indicates that the domestic industry is neither seriously injured nor threatened with serious injury. Importantly, several domestic stainless seamless tubular producers agree with this conclusion, although the USWA contends that the stainless steel industry as a whole is seriously injured.[210] Several domestic producers state that, in their view, the disruptive influence in the U.S. market for stainless seamless products in recent years has been and remains low-priced imports from Japan, and it was for this reason that they filed an antidumping petition against such imports in October 1999.[211]

The record indicates that the condition of the domestic industry fluctuated over the period, with most indicators turning down in interim 2001, although not rising to the level of serious injury or the threat of serious injury.[212] Alternatively, given the domestic industry's fluctuating performance in the face of increased imports, I find there is no causal nexus between increased imports and alleged injury to the domestic industry.

I further note that given the relatively healthy condition of the domestic industry over most of the period of investigation the industry is well positioned to sustain the cyclical downturn, in contrast to

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[204] CR and PR at Table OVERVIEW-11. There is no indication that this industry sustained numerous bankruptcies during the period of investigation and no indication that a significant number of producers are operating at a loss.

[205] CR and PR at Table STAINLESS-C-11.

[206] CR and PR at Table STAINLESS-C-11.

[207] CR and PR at Table STAINLESS-C-11.

[208] CR and PR at Table STAINLESS-C-11

[209] CR and PR at Table OVERVIEW-11. There is no indication that this industry sustained numerous bankruptcies during the period of investigation and no indication that a significant number of producers are operating at a loss.

[210] Prehearing Injury Brief of Altx, Inc., DMV Stainless USA Tube, Inc., Pennsylvania Extruded Tube Co., Salem Tube, Inc., and Sandvik Steel Company; USWA Prehearing Injury Br., at V-1-V-27.

[211] I note that I recently reaffirmed my findings of no material injury or threat of material injury in *Circular Seamless Stainless Steel Hollow Products from Japan*, USITC Pub. 3344 (Sept. 2000).

[212] CR and PR at Table STAINLESS-C-10.

many of the industries discussed above where the injury resulting from increased imports weakened these industries' ability to withstand the cyclical downturn. Thus, based on the limited evidence of injury to the domestic industry,[213] domestic producers' opposition to relief, and the obvious lack of a casual nexus even if one were to find a threat of serious injury, I find that the domestic stainless seamless tubular industry is neither seriously injured nor threatened with serious injury.

V. CAUSATION

Framework. The third statutory criterion concerns whether the subject article is being imported in such increased quantities as to be a "substantial cause" of serious injury or threat thereof. The term "substantial cause" is defined in section 202(b)(1)(B) to mean "a cause which is important and not less than any other cause."[214] Thus, increased imports must be both an important cause of the serious injury or threat thereof *and* a cause that is equal to or greater than any other cause.

In determining whether increased imports are a substantial cause of serious injury or threat thereof, the statute instructs that all relevant economic factors be taken into account, including but not limited to "an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers."[215] In addition, the statute directs that the condition of the domestic industry be considered over the course of the relevant business cycle.[216] The statute further directs the Commission to "examine factors other than imports" that may be a cause of serious injury or threat to the domestic industry, and to include such findings in the Commission's report.[217]

During the course of these proceedings, I requested, both in writing and through hearing questions, that the parties suggest a methodology for distinguishing causation factors, i.e., how to quantify causal factors.[218] In response, the parties generally agreed that while economic modeling could prove useful in the Commission's causation analysis, economic modeling should be considered but one of several analytical tools.[219] The parties also generally agreed that where the results of an economic model conflict with conclusions reached through the Commission's more traditional trends analysis, the trends analysis is controlling.[220] Upon comparison of the results of each of the economic models on causation submitted by the parties with conclusions reached through my trends analysis, I find the trends

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[213] There is also no indication that this industry sustained numerous bankruptcies during the period of investigation. CR and PR at Table OVERVIEW-11.

[214] 19 U.S.C. § 2252(b)(1)(A).

[215] 19 U.S.C. § 2252(c)(1)(C).

[216] 19 U.S.C. § 2252(c)(2)(A).

[217] 19 U.S.C. § 2252(c)(2)(B). The legislative history of the Trade Act includes examples of other causes "such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management," which, if found to be more important causes of injury than increased imports, would require a negative determination. *Trade Reform Act of 1974, Report of the Committee on Finance . . . on H.R. 10710*, S. Rep. 93-1298, 93d Cong., 2d Sess. (1974), at 121.

[218] See Commissioner Lynn M. Bragg's Pre-hearing Questions for the Parties and Injury Hearing Tr. at 472-478, 622-629.

[219] Injury Hearing Tr. at 472-478, 622-629 (questioning by Commissioner Bragg).

[220] Injury Hearing Tr. at 472-478, 622-629 (questioning by Commissioner Bragg). "Of course, the 'hard numbers' produced by the statistical analysis must be consistent with the patterns unearthed in the trends analysis. If the two methods produce contrasting findings, the more sophisticated methods have only served to confuse rather than clarify the proceedings." Joint Prehearing Injury Br. of Respondent Producers in Argentina, Brazil, European Union, India, Japan, Russia, Taiwan, Thailand, and Venezuela, at Ex. 8, p.5.

analysis controlling with respect to each domestic industry. In my view, the trends analysis is particularly appropriate in this investigation in that the trends analysis better captures the business realities of the U.S. steel market, such as market fluctuations, than would a more theoretical, static economic modeling methodology.[221] I have therefore applied a trends analysis, as several respondents agree could be appropriate.[222]

Prior to the application of my trends analysis, I first considered the proper context for performing the analysis. The above statutory directive that the Commission consider the condition of the domestic industry over the course of the relevant business cycle is, in my view, the single most important factor to properly understand the role of imports in the U.S. market over the period of this investigation. As noted earlier, only by viewing the increased imports in the context of the entire business cycle is one able to adequately discern the full impact of imports on the domestic industry over the entire period. Failure to assess the role of imports within the context of the business cycle would, in this investigation, lead to a misdirected analysis, and in turn, flawed conclusions.

Although imports increased over the period of investigation, the volume of imports for many of the products at issue declined towards the end of the period. This recent downturn was argued to have diminished the causal connection between increased imports and the serious injury or threat of serious injury to the relevant industries, and arguably lead to a negative causation finding. However, although many imports did in fact decline towards the end of the period of investigation, with imports from some categories beginning their decline in 1999, none of the declines is sufficient to break the causal nexus between increased imports and serious injury or the threat of serious injury when the behavior of imports is viewed in the context of the relevant business cycles and worsening condition of the domestic industries over the entire period of investigation. In fact, in my view, this investigation provides an important example as to why a focus on a latter, "recent" portion of the period of investigation and selective consideration of the operation of the business cycle could fail to capture the extent to which increased imports have unexpectedly altered conditions of competition in the U.S. market and thereby caused injury to domestic producers.

Specifically, imports, although increasing over the entire period, for many of the product categories at issue, peaked in 1998. The import peak in 1998 came at a time when domestic producers would be expected to enjoy gains in profitability given that there was a general upswing in the business cycles at that time. It is empirical that gains achieved during upswings in the relevant business cycle are essential for domestic producers to build financial resources in order to withstand downturns in the cycle.[223] Thus, the impact of opportunities lost during an upswing in the given cycle would not only have an immediate impact on the domestic industry by virtue of suppressed and depressed prices, lost sales, and resulting lost revenues, but would also be expected to have lingering carryover effects on the domestic industry as the cycle turned lower. This is exactly what happened, or will happen imminently, to many of the domestic industries at issue in this investigation.

Having lost opportunities during upturns in the cycle, many of the industries were weakened in their ability to withstand a downturn and unprepared for the continued impact of increased imports. As the cycles turned lower towards the end of the period, imports continued entering the United States at relatively high levels further pressuring the domestic market. The combined effects of injury carryover from the 1998 surges and the more contemporaneous injury resulting from imports continuing to enter the United States at high levels, although not at their 1998 peak, had a hammering effect on the various domestic industries. As a result, profits for most domestic industries declined sharply and several

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[221] EC-Y-042 (staff information regarding econometric models submitted in this investigation).

[222] See Joint Prehearing Injury Br. of Respondent Producers in Argentina, Brazil, European Union, India, Japan, Russia, Taiwan, Thailand, and Venezuela, at Ex. 8, p.5.

[223] USWA Posthearing Injury Br., answers to Commissioner Bragg's questions at 1-7.

domestic steel producers were forced into bankruptcy, including: Riverview Steel Corp., Laclede Steel Co., Excaliber Holdings Corp., Freedom Forge, Great Lakes Metals, LLC, Republic Technologies International, Trico Steel, GS Industries, Heartland Steel, CSC Ltd., Northwestern Steel & Wire, LTV Steel Co., Inc., Erie Forge and Steel, Inc., Vision Metals, Inc., Wheeling-Pittsburgh Steel Corp., J&L Structural Inc., Gulf States Steel Inc., Qualitech Steel Corp., Geneva Steel Co., WorldClass Processing Inc., Acme Metals, AL Tech Specialty Steel Corp., and most recently, Bethlehem Steel Corporation.[224] It is therefore apparent that only by viewing the increased imports in the context of the business cycle, and in particular the condition of the industry, is one then able to adequately discern the full impact of imports on the domestic industry over the entire period of investigation.

I further observe that there exists a commonality of causation for nearly every industry for which I made affirmative injury findings. In the first instance, imports and the various like products are generally highly substitutable, with purchasing decisions therefore primarily based on price. In addition, for most of these industries, domestic producers sustained unprecedented losses as apparent U.S. consumption and demand increased, while imports increasingly undersold the domestic products and prices in the U.S. market fell sharply. Accordingly, the record indicates that imports are a substantial cause of the serious injury or threat of serious injury suffered by domestic producers. In nearly every instance in which I render an affirmative serious injury or threat of serious injury finding, the level of injury caused by imports is unprecedented, with the level of injury sustained by the flat products industry the most severe. Therefore, to the extent that there are other potential causal factors which could explain some of the injury suffered by the domestic producers, all such factors are far outweighed by the dramatic levels of injury resulting from increased imports.[225]

Findings.[226] Carbon and alloy flat products - Although the volume of carbon and alloy flat product imports declined towards the end of the period of investigation, imports remained at relatively high levels and continued to negatively impact prices for the domestic product throughout the period. By forcing domestic prices lower, imports deprived domestic producers of revenue.[226] It should also be recognized that given the worsening condition of the domestic industry over the period of investigation, the amount (level) of imports sufficient to cause serious industry declined correspondingly.[227]

With respect to other possible causation factors, I note respondents' contentions that the serious injury sustained by the domestic flat products industry is the result of: (1) the effects of increased domestic capacity causing prices to decrease; (2) the integrated mills adding liabilities without addressing problems of rising energy and legacy costs, structural problems, and over-leverage; (3) slow productivity growth brought on in part by slow implementation of new technology and little effort at research and development; (4) disproportionately high labor costs; (5) old integrated plants that are too

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[224] CR and PR at Table OVERVIEW-11.

[225] These other, potential causal factors include (but are not limited to): domestic capacity expansion; a general downturn in the U.S. economy; intra-industry competition; outdated facilities; demand changes in energy markets; and changes in raw material costs. In this context, in my view, there was no empirical or theoretical evidence offered by any party which indicated that a cause other than increased imports approximated the level of injury sustained by domestic producers as a result of increased imports, such as suppressed and depressed domestic prices, lost sales, lost market share, and resulting lost revenues.

[226] In the following causation discussion for each domestic industry for which I found serious injury or threat of serious injury, I specifically address the primary factors I relied upon in reaching my findings. Given the sheer number of the arguments put forth by the parties, I have not included in my discussion every potential causal factor raised by the parties in these proceedings; although, in performing my causation analyses, I did consider each of the parties' arguments.

[226] CR and PR at Tables FLAT-66-75 and 77.

[227] See supra, serious injury discussion regarding carbon and alloy flat products.

small for efficient production using modern technologies; and (6) an abundance of cheap steel scrap available for use by the mini-mills.

Any injury sustained by the domestic industry stems solely from increased imports. For example, the record indicates that the domestic industry's decision to expand capacity was reasonable in light of the forecast growth in apparent U.S. consumption at the time investment decisions to expand capacity were made.[228] In addition, had imports not surged into the U.S. market in 1998 and then continued their steady, unrelenting flow as domestic performance deteriorated through the end of the period of investigation, domestic producers would have been expected to have garnered sufficient income to: (1) adequately fund existing and future investments and rising energy, legacy, and labor costs; (2) address any industry structural problems; and (3) withstand temporary productivity declines.[229]

Each of these factors is in my view directly linked to the operation of the business cycle in this investigation. For example, to the extent there is any need for rationalization or consolidation of this industry, as respondents argue, consolidation could only be possible if some domestic producers had the ability to fund the integration of operations or shutter existing facilities. Had imports not prevented the domestic industry from achieving expected gains during the upturn in the business cycle, both in 1998 and through much of 2000, it is clear that domestic producers would currently have the resources to consolidate. Increased imports deprived the domestic industry of these opportunities and therefore removed the industry's ability to address alleged structural problems of which respondents now complain. In fact, increased imports pre-empted the domestic industry from pursuing a pro-active business strategy and, instead, forced domestic producers to instead react to increased imports by idling facilities and delaying investments in order to pursue a survival strategy.[230] It is therefore unreasonable for respondents now to complain that any structural problems the domestic industry currently faces, all of which could have been addressed had it not been for increased imports, are the cause of the serious injury suffered by the domestic industry.

With respect to the seventh factor listed above, an abundance of cheap steel scrap available for use by the mini-mills, I find that while reductions in the price of scrap could have resulted in modest declines in the price of products produced by mini-mills, declining scrap costs could not explain the sharp decline in domestic prices during a period of rising apparent U.S. consumption. The decline in flat product prices over the period were well in excess of price reductions reasonably associated with declines in scrap costs.[231] Accordingly, I find that increased imports are a substantial cause of the serious injury suffered by the domestic carbon and alloy flat products industry and a cause that is equal to or greater than any other cause.

Carbon and alloy long products - The record indicates that increased imports are the cause of serious injury to the domestic industry, particularly when one considers the devastated condition of the industry and the business cycle. For example, throughout the investigation period, U.S. import prices of long products undersold domestic prices in 115 of 154 instances, or 75 percent, with margins of underselling ranging from 0.1 to 83.7 percent.[232] The record also indicates that as purchasers shifted to lower-priced imports, imports surged into the U.S. market and captured U.S. market share.[233] The imports' share of the U.S. market increased from 9.9 percent in 1996 to 14.7 percent in 1998, and settled at 13.6 percent in 2000, all at the expense of the domestic producers who lost substantial U.S. market

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[228] CR and PR at Table FLAT-C-1.

[229] CR and PR at Table FLAT-C-1.

[230] CR and PR at Table FLAT-C-1.

[231] CR and PR at Table FLAT-C-1; CR and PR at Tables FLAT-66-75.

[232] CR and PR at Tables LONG-89-94 & 98.

[233] INV-Y-209 at Table LONG-ALT-2.

share during the relative upswings of apparent U.S. consumption.[234] In many instances, domestic producers attempted to retain market share by lowering prices to compete with underselling import prices, but the ultimate result was not only lost market share but also increasingly poor financial performance suffered by the domestic industry.[235]

Accordingly, within the context of the business cycle, the decline in domestic prices, caused by the massive flood of underselling imports, cost the domestic industry at ***[236] and deprived domestic producers of much needed revenue.[237] The record therefore indicates that increased imports are the principal cause of injury suffered by domestic producers. In addition, given the worsening condition of the domestic industry over the period of investigation, the amount (level) of imports sufficient to cause serious industry declined correspondingly.

Although several respondents identified numerous other potential causes for the declining performance of the domestic long products industry, the record indicates that within the context of the business cycle no other cause or causes are more important than increased imports. In particular, respondents contend that the serious injury sustained by the domestic long products industry is the result intra-industry competition and the inability of the domestic industry to finance the modernization of equipment and new technology.[238] I first find that respondents' intra-industry competition argument does not completely explain the domestic producers' persistently low and declining market share and poor financial performance throughout the period of investigation, and especially during the upswings of the business cycle, as in 1998.[239]

Furthermore, the deteriorating financial performance of all domestic producers evidences the devastating effect of surging imports on the entire domestic industry, not only on an isolated few producers.[240] Regarding the domestic industry's inability to adequately finance research and development to modernize equipment and new technology,[241] my reasoning is similar to my discussion in the carbon and alloy flat industry causal section.[242] Had imports not prevented the domestic industry from achieving expected gains during the upturn in the business cycle in 1998, domestic producers would have the resources to continue to invest in modernization.[243] However, imports pre-empted the domestic industry from pursuing innovative business strategies, and instead, forced domestic producers to react to increased imports by idling facilities and delaying investments in order to pursue a survival strategy.[244] Accordingly, increased imports caused the financial devastation suffered by the domestic industry.

In addition, respondents contend that existing antidumping and countervailing duty orders on select countries covering specific long products restrained the increase of imports, and therefore, have

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[234] INV-Y-209 at Table LONG-ALT-2.

[235] CR and PR at Tables LONG-106-120 & 127-29.

[236] Minimill 201 Coalition Post-hearing Injury Br., at 30-31.

[237] CR and PR at Tables LONG-89-94 & 98.

[238] Joint Respondents' Prehearing Framework Injury Br., at 63-82; Prehearing Submission by Embassy of India, at 8-10; Injury Hearing Tr. at 1471-72 (Mr. Cunningham).

[239] INV-Y-209 at Table LONG-ALT-2.

[240] INV-Y-212 at Tables LONG-26-30.

[241] Prehearing Rebar Injury Br., at 20-21.

[242] See supra, carbon and alloy flat products causation discussion.

[243] INV-Y-209 at Table LONG-ALT-2; Posthearing Minimill 201 Coalition, at 23-30.

[244] INV-Y-212 at Tables 26-30.

remedied the imports that caused the domestic industry's serious injury.[245] I strongly disagree with this argument. First, as a fundamental matter, antidumping and countervailing duty orders eliminate dumping or subsidies; they are not a "remedy" mechanism. In contrast, the purpose of the section 201 statute is to provide much needed breathing room for the domestic industry's adjustment to serious injury substantially caused by increased import competition. Thus, based on the divergent statutory purposes of these two trade provisions, I find respondents' argumentation inaccurate and therefore inapplicable.

Second, I note that the scope of this 201 investigation is broader than the various title VII investigations respondents cite. In particular, title VII investigations generally focus on a much more narrow scope, in that they cover only specific subject countries' imports and a much smaller range of imported articles; thus, a different analysis to determine the like product and domestic industry is required. In contrast, during this section 201 investigation, the Commission examined a broad range of products sourced from a large number of countries. Respondents also argue that the title VII measures have "remedied" any serious injury.[246] However, the record indicates that long product imports from countries including those currently subject to duty orders continued to surge into the U.S. market throughout the period of investigation.[247] Accordingly, I find that increased imports are a substantial cause of the serious injury sustained by the domestic carbon and alloy long products industry and a cause that is equal to or greater than any other cause.

Carbon and alloy wire products - Within the context of the business cycle, the record indicates that increased imports are an imminent threat of serious injury to the domestic carbon and alloy wire products industry. Although the volume of wire products declined towards the end of the investigation, imports remained at relatively high levels and maintained significant market share.[248] By forcing domestic prices lower, imports persistently deprived domestic producers of revenue.[249] In particular, the record indicates that prices trended downward throughout the period of investigation, and also provides 44 instances of underselling of 66 price comparisons throughout the period of investigation.[250] The record also indicates that domestic producers lost 2.7 percent of the U.S. market to imports as apparent U.S. consumption rose 27.3 percent from 1996 to 2000.[251]

Even within the context of the recent economic downturn in interim 2001, imports maintained a 27 percent share of the U.S. market, which is above the 24.3 percent share of the U.S. market held by imports at the beginning of the period.[252] Rather than exiting the U.S. market as apparent U.S. consumption declined, the volume of imports decreased at an appreciably lower rate than the drop in U.S. production.[253] The domestic industry, therefore, must not only cope with the downturn of the economy, but also faces the persistent downward pressure of lower-priced imports that continue to capture a significant share of the U.S. market and undersell domestic prices. In addition, I note that the threat of

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[245] Joint Respondents' Prehearing Framework Injury Br., at 83-90; Prehearing Injury Br. regarding Rebar, at 6-7; Turkish Respondents on Rebar, at 3, 5-7.

[246] Joint Respondents' Prehearing Injury Br., at 83-90.

[247] INV-Y-209 at Table LONG-ALT-2.

[248] INV-Y-212 at Tables 31-33.

[249] CR and PR at Tables 31-33.

[250] CR and PR at Tables LONG-95-97. Although I note that the majority of underselling occurred in the wire and nails comparisons, declining price trends were equally applicable to wire, nails, and rope throughout the period of investigation.

[251] INV-Y-209 at Table LONG-ALT-3.

[252] INV-Y-209 at Table LONG-ALT-3.

[253] INV-Y-209 at Table LONG-ALT-3.

serious injury grew over the period of investigation, as domestic inventory continued to rise and global capacity targeted to the U.S. market expanded, and is now imminent.[254]

Regarding other causes, the respondents contend that the domestic industry is not seriously injured or that any serious injury sustained by the wire products industry is the result of conditions of competition in the industry other than imports. The record indicates that imports captured sales from domestic producers,[255] foreign producer capacity substantially increased over the period of investigation,[256] and domestic market share and profits weakened.[257] Again, each of these economic factors is especially enlightening in the context of the business cycle. For example, as increased imports continue their steady flow into the U.S. market, capture domestic sales, and force domestic prices down, the domestic producers' financial performance will continue to weaken. Most recently, the negative effects of the imports are evidenced by lower operating margins, decreased production, and steadily increasing domestic inventory.[258]

Accordingly, I acknowledge that relative to other domestic carbon and alloy flat and long producers, wire producers experienced better financial performance over the period of investigation. However, in view of the recent performance of the domestic wire products industry, the constant presence of increasing imports, I find that increased imports are a substantial cause of the threat of serious injury to the domestic carbon and alloy wire products industry and a cause that is equal to or greater than any other cause. In short, I am satisfied that serious injury, although not yet evident, is clearly imminent as import trends continue unabated.

Carbon and alloy welded tubular products - The record indicates that the persistent volume of increased imports was the most important cause of serious injury to the domestic welded tubular industry's performance as purchasers continued to shift to lower-priced imports throughout the period of investigation.[259] Thus, as import volumes surged and the market share of imports steadily increased, U.S. producers' market share eroded, resulting in drastic declines in the domestic industry's performance.[260] The price competition between imported and domestic welded tubular products plays an important role based on the commodity nature of many of the products at issue.[261] In addition, imports significantly undersold the domestic product throughout the period, which amplifies the devastating effect of the surging imports.[262]

Regarding other causes, the respondents contend that the serious injury sustained by the welded tubular products industry is the result of changes in the energy market and that recent title VII orders remedied any injury to the domestic industry.[263] The record first indicates that only a portion of welded

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[254] CR and PR at Table 67 and Tables 52-60.

[255] Joint Respondents' Injury Br., at 20-23; INV-Y-209 at Table LONG-ALT-3.

[256] CR and PR at Tables 52-60.

[257] INV-Y-209 at Table LONG-ALT-3.

[258] INV-Y-209 at Table LONG-ALT-3.

[259] CR and PR at Tables TUBULAR-58-60. I note that the record provides 50 of 51 instances, equivalent to 98 percent, of import prices underselling domestic prices, as well as the fact that import prices trended lower over the period of investigation. INV-Y-207 at Table TUBULAR-C-ALT-4.

[260] INV-Y-207at Table TUBULAR-C-ALT-4; Domestic Producers' Prehearing Injury Br., at IV-12-19; U.S. Steel's Prehearing Injury Br., at 8-28; Bethlehem's Prehearing Tubular Injury Br., at 5-8.

[261] CR and PR at TUBULAR-55, 57-58.

[262] INV-Y-207 at Table TUBULAR-C-ALT-4.

[263] Joint Respondents' Prehearing Injury Br. for welded tubular products, at 22-39; ESTA's Prehearing Injury Br. for welded tubular products, at 9-12.

tubular products (namely OCTG) demand is reliant upon the activity level of the energy market.[264] In addition, despite the business cycle upswings in the energy market, overall welded tubular domestic industry performance deteriorated over the period.[265] I also point to a statement by a respondent witness that a healthy operating margin for the domestic injury was estimated at 10 percent.[266] Interestingly, the operating margin for welded tubular producers was persistently below 10 percent over the period.[267] Thus, by respondents' own standard, the domestic industry could not be considered "healthy."

Regarding the respondents' contention that the recent title VII orders remedied any injury to the domestic industry, I refer to my previous discussion on this issue with respect to long products.[268] Accordingly, I find that increased imports are a substantial cause of the serious injury sustained by the domestic carbon and alloy welded tubular products industry and a cause that is equal to or greater than any other cause.

Carbon and alloy seamless tubular products - In the context of the business cycle, the significant presence of increasing imports in the U.S. market is the most important causal factor throughout the period of investigation. As demand was strong in the U.S. market, imports surged into the United States.[269] When demand softened in 1999, imports maintained significant market share at the expense of domestic producers' market share, which caused serious injury to the domestic industry.[270] Furthermore, data indicate that import prices declined despite the overall increase in apparent U.S. consumption.[271] Import prices also undersold domestic seamless tubular prices in 42 of 64 instances, or 66 percent of the comparisons, with margins of underselling ranging from 0.9 to 34.4 percent.[272] As a result, domestic producers reduced domestic production and lost commercial sales and U.S. market share, which adversely affected the domestic industry's performance.[273]

Regarding other causes, the respondents contend that the domestic industry is sufficiently profitable and therefore not seriously injured or that any serious injury sustained by the industry is the result of demand changes in the energy market.[274] Respondents also contend that recent title VII orders remedied any injury to the domestic industry.[275] I find that the record indicates that only a portion of seamless tubular products (namely OCTG) industry demand is tied to the activity level of the energy

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[264] CR and PR at TUBULAR 58-59.

[265] INV-Y-207 at Table TUBULAR-C-ALT-4.

[266] Injury Hearing Tr. at 2732-33.

[267] INV-Y-207 at Table TUBULAR-C-ALT-4.

[268] See supra, carbon and alloy long products causation discussion. Specifically, I reiterate that I strongly disagree with the joint respondents' inference that antidumping and countervailing duty measures "have already remedied (or about to remedy)" any perceived injury from imports. Joint Prehearing Framework Injury Br., at 5. Antidumping and countervailing duty orders are designed to eliminate dumping or subsidies; they are not a "remedy" mechanism.

[269] INV-Y-207 at Table TUBULAR-C-ALT-3.

[270] INV-Y-207 at Table TUBULAR-C-ALT-3.

[271] CR and PR at Tables TUBULAR 55-57; Figure TUBULAR-2-4, 6 & 7.

[272] CR and PR at Tables TUBULAR 55-57.

[273] INV-Y-207 at Table TUBULAR-C-ALT-3; Domestic Producers' Prehearing Injury Br., at IV-25-29; U.S. Steel's Prehearing Injury Br., at 29-37.

[274] Respondents' Joint Prehearing Injury Br. for product #18, at 44-45; INV-Y-207 at Table TUBULAR-C-ALT-3; The Committee on Pipe and Tube Imports Posthearing Injury Br., at 13-30.

[275] Respondents' Joint Prehearing Injury Br. for product #18, at 44-45; INV-Y-207 at Table TUBULAR-C-ALT-3; The Committee on Pipe and Tube Imports Posthearing Injury Br., at 13-30.

market.[276] In addition, despite the business cycle upswings in the energy market, the domestic seamless tubular industry's performance deteriorated.[277] Furthermore, the record indicates that the majority of domestic producers suffered deteriorating profits throughout the period.[278] I also point to a statement by a respondent witness that a healthy operating margin for the domestic injury was estimated at 10 percent.[279] Interestingly, the operating margin for seamless tubular producers was persistently below 10 percent over the period.[280] Thus, by respondents' own standard, the domestic industry could not be considered "healthy."

Regarding the respondents' contention that the recent title VII orders remedied any injury to the domestic industry,[281] I again refer to the related discussion outlined in the long products industry causation section. Accordingly, I find that increased imports are a substantial cause of the serious injury sustained by the domestic carbon and alloy seamless tubular products industry and a cause that is equal to or greater than any other cause.

Carbon and alloy fittings, flanges, and tool joints - The influx of imported flanges, fittings, and tool joints are a substantial cause of the serious injury suffered by the domestic industry. First, the record indicates that the imports have been rising at an extraordinary rate.[282] Second, prices of imports declined over the period of investigation.[283] Third, the significant decrease in import prices enabled imports to undersell domestic competition in all record comparisons, with margins of underselling ranging from 7.3 to 36.5 percent. As a result, imports captured 11.2 percent of the U.S. market from 1996-2000.[284]

Regarding other causes, the respondents contend that the serious injury sustained by the seamless tubular products industry is the result of: (1) changes in the energy market;[285] (2) inefficient and outdated production processes; (3) limited competition due to insufficient domestic supply and unavailable production workers; (4) domestic capacity expansion; and (5) intra-industry competition.[286] Similar to each of the formerly discussed carbon and alloy steel products causation analyses, I find that within the context of the business cycle the record indicates that each of the other causes stems most importantly from the serious injury caused by increased imports. For example, the record evidences some impact of the energy market on domestic industry performance, but I note that despite the business cycle upswings in the energy market, overall fittings, flanges, and tool steel domestic industry performance still deteriorated.[287]

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[276] CR and PR at TUBULAR 58-59.

[277] INV-Y-207 at Table-C-ALT-4.

[278] CR and PR at Tables TUBULAR-18 & 19; Domestic Producers' Posthearing Injury Br., at 47-52.

[279] Injury Hearing Tr., at 2732-33.

[280] INV-Y-207 at Table TUBULAR-C-ALT-4.

[281] See supra, carbon and alloy long products causation discussion. I reiterate, that I strongly disagree with the joint respondents' inference that antidumping and countervailing duty measures "have already remedied (or about to remedy)" any perceived injury from imports. Joint Prehearing Framework Injury Br., at 5. Antidumping and countervailing duty orders are designed to eliminate dumping or subsidies; they are not a "remedy" mechanism.

[282] CR and PR at Table TUBULAR-C-5.

[283] CR and PR at Tables TUBULAR-61 & 67; Figure TUBULAR-14.

[284] CR and PR at Table TUBULAR-C-5; CR and PR at Table TUBULAR-67.

[285] Joint Respondents' Prehearing Injury Br. regarding product 22, at 49-60; Joint Respondents' Posthearing Injury Br. regarding product 22, at 49.

[286] Joint Respondents' Posthearing Injury Br. regarding product 22, at 50-60.

[287] CR and PR at Table TUBULAR-C-5.

Furthermore, that the record indicates that the majority of domestic fitting, flanges, and tool joint producers experienced deteriorating profits throughout the period, and the situation only worsened during periods of slowing demand.[288] Therefore, although respondents' other causal factors may be considered conditions of market competition, these factors did not substantially cause the serious injury to the domestic industry. Rather, respondents' factors are symptoms or market effects of the continuous increase of lower priced imports into the U.S. market.[289] Accordingly, I find that increased imports are a substantial cause of serious injury to the domestic fittings, flanges, and tool joints industry and a cause that is equal to or greater than any other cause.

Stainless and tool steel flat and long products - Both the increase in imports and declines in the performance of the domestic industry coincided with strong growth in apparent U.S. consumption, which increased by *** percent from 1996 to 2000.[290] As with other domestic industries, the record indicates that increased imports at declining prices prevented domestic stainless and tool steel flat and long producers from taking advantage of an upswing in the business cycle.[291] Imports' share of apparent U.S. consumption, on a volume basis, increased from *** percent in 1996 to *** percent in 2000.[292] Between the interim periods, imports' market share increased further, from *** percent to *** percent.[293] In contrast, domestic producers' share of the market declined from *** percent in 1996 to *** percent in 2000.[294] Between the interim periods, domestic producers' market share declined further from *** percent in interim 2000 to *** percent in interim 2001.[295]

The record also indicates that domestic and import prices trended downward over the period and that imports consistently undersold the domestic product, in 141 of 171 instances where direct price comparisons were possible.[296] In addition, the record indicates that although the general downturn in the economy;[297] the industry's raw material costs;[298] and the appreciation of the dollar all have had some impact on domestic industry performance,[299] these factors are each far outweighed by the impact of imports. The record therefore does not support a conclusion that each factor is a more important cause of injury than imports. Accordingly, I find that increased imports are a substantial cause of the serious injury sustained by the domestic stainless and tool steel flat and long products industry and a cause that is equal to or greater than any other cause.

Stainless steel wire products - Importantly, although apparent U.S. consumption increased by 23.4 percent from 1996 to 2000, domestic producers' operating profitability declined from *** percent in

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[288] INV-Y-212 at Table TUBULAR-14 & 20.

[289] Domestic Producers' (Mills Iron Works, etc.) Posthearing Injury Br., at 25-30.

[290] INV-Y-209 at Table STAINLESS-C-ALT-4.

[291] INV-Y-209 at Table STAINLESS-C-ALT-4.

[292] INV-Y-209 at Table STAINLESS-C-ALT-4.

[293] INV-Y-209 at Table STAINLESS-C-ALT-4.

[294] INV-Y-209 at Table STAINLESS-C-ALT-4.

[295] INV-Y-209 at Table STAINLESS-C-ALT-4.

[296] CR and PR at Tables STAINLESS-97-101.

[297] It was not until late in the period of investigation that domestic stainless and tool steel consumption showed any meaningful decline. INV-Y-209 at Table STAINLESS-C-ALT-4.

[298] Any declines in raw material costs were far outweighed by the adverse effect of increased imports. INV-Y-209 at Table STAINLESS-C-ALT-4.

[299] As the dollar appreciated, U.S. importers and their customers were offered lower prices on imports, thus making the foreign product more attractive. INV-Y-209 at Table STAINLESS-C-ALT-4.

1996 to *** percent in 2000.[300] The record therefore indicates that increased imports at declining prices prevented domestic stainless wire producers from taking advantage of an upswing in the business cycle.[301] Although imports' share of apparent U.S. consumption declined slightly from 1996 to 2000, between the interim periods, imports' market share increased from 27.7 percent in interim 2000 to 32.2 percent in interim 2001.[302] In contrast, domestic producers' share of the market declined from 72.3 percent in interim 2000 to 67.8 percent in interim 2001.[303] Although not yet manifested as serious injury, domestic producers are likely to be seriously injured in the imminent future given the recent downturn in demand.

The record also indicates that although the general downturn in the economy;[304] the industry's raw material costs;[305] and the appreciation of the dollar have had,[306] and will continue to have, some impact on domestic industry performance, these factors are far outweighed by the imminent impact of imports.[307] The record therefore does not support a conclusion that any one of the above factors is a more important source of the threat of injury than imports. Accordingly, I find that increased imports are a substantial cause of the threat of serious injury to the domestic stainless steel wire products industry and a cause that is equal to or greater than any other cause. In short, I am satisfied that serious injury, although not yet evident, is clearly imminent if import trends continue unabated.

Stainless fittings and flanges - Importantly, both the increase in imports and declines in the performance of the domestic industry coincided with strong growth in apparent U.S. consumption, which increased by *** percent from 1996 to 2000.[308] Thus, as with other industries, it appears that increased imports at declining prices prevented domestic stainless fittings and flange producers from taking advantage of an upswing in the business cycle.[309]

The record also indicates that although the general downturn in the economy,[310] the industry's raw material costs,[311] and the appreciation of the dollar[312] have had some impact on domestic industry performance, these factors are far outweighed by the impact of imports. The record therefore does not support a conclusion that any one of the above factors is a more important source of injury than imports.

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[300] INV-Y-218 at Table STAINLESS-ALT-5.

[301] INV-Y-218 at Table STAINLESS-ALT-5.

[302] INV-Y-218 at Table STAINLESS-ALT-5.

[303] INV-Y-218 at Table STAINLESS-ALT-5.

[304] It was not until late in the period of investigation that domestic stainless steel wire products consumption showed any meaningful decline. INV-Y-218 at Table STAINLESS-ALT-5.

[305] Any declines in raw material costs were far outweighed by the adverse effect of increased imports. INV-Y-218 at Table STAINLESS-ALT-5.

[306] As the dollar appreciated, U.S. importers and their customers were offered lower prices on imports, thus making the foreign product more attractive.

[307] INV-Y-218 at Table STAINLESS-ALT-5.

[308] CR and PR at STAINLESS-C-12.

[309] CR and PR at STAINLESS-C-12.

[310] It was not until late in the period of investigation that domestic stainless fittings and flanges consumption showed any meaningful decline. CR and PR at Table STAINLESS C-12.

[311] While the unit value of net commercial sales of stainless fittings and flanges fell by *** percent from 1996 to 2000, the unit costs of goods sold declined by just *** percent over the same period. CR and PR at STAINLESS-C-12.

[312] As the dollar appreciated, U.S. importers and their customers were offered lower prices on imports, thus making the foreign product more attractive.

While domestic producer's U.S. shipments declined in each year of the period of investigation, the volume of imports increased.[313] Reflecting these trends, imports captured a growing share, on a volume basis, of apparent U.S. consumption over the period.[314] In addition, the record pricing data indicate that prices for both imports and the domestic product declined steadily over the period and that price declines for imports exceeded declines in domestic prices, indicating that imports led prices down.[315] Accordingly, I find that increased imports are a substantial cause of the serious injury sustained by the domestic stainless fittings and flanges industry and a cause that is equal to or greater than any other cause.

VI. FINDINGS WITH RESPECT TO NAFTA COUNTRY IMPORTS

Framework. Section 311(a) of the NAFTA Implementation Act[316] provides that if the Commission makes an affirmative determination in an investigation under section 202 of the Trade Act, or if the Commission is equally divided, the Commission must also find whether–

(1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and

(2) imports of the article from the NAFTA country considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

Section 311(b)(1) states that imports from a NAFTA country "normally" will not be considered to account for a substantial share of total imports if that country is not among "the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period." Section 311(c) defines "contribute importantly" to mean "an important cause, but not necessarily the most important cause." In determining whether imports have contributed importantly to the serious injury or threat of serious injury, the Commission is directed to consider "such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports from a NAFTA country or countries."[317] Imports from a NAFTA country or countries "normally" will not be considered to contribute importantly to the serious injury or threat "if the growth rate of imports from such country or countries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the period."[318]

Findings. Carbon and alloy flat products - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada and Mexico each represent a substantial share of total imports.[319] Regarding the second prong, the record indicates that imports from Canada do not contribute importantly to serious injury, given that the growth rate of imports from Canada is appreciably lower than the growth rate from other countries.[320] However, the record indicates that

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[313] CR and PR at STAINLESS-C-12.

[314] CR and PR at STAINLESS-C-12.

[315] CR and PR at Table STAINLESS-95.

[316] 19 U.S.C. § 1371(a).

[317] Section 311(b)(2) of the NAFTA Implementation Act.

[318] Section 311(b)(2) of the NAFTA Implementation Act.

[319] CR and PR at Table FLAT-C-1.

[320] CR and PR at Table FLAT-C-1.

imports from Mexico do contribute importantly to serious injury, given that the growth rate in imports from Mexico is greater than the growth rate of other, non-NAFTA imports.[321] Accordingly, I find in the negative with respect to Canada but in the affirmative with respect to Mexico. I also note that the exclusion of Canada from the analysis does not change the recommended findings, i.e., serious injury by reason of increased imports.

Carbon and alloy long products - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada represent a substantial share of total imports while imports from Mexico do not.[322] Regarding the second prong, the record indicates that imports from Canada do not contribute importantly to serious injury, given that the growth rate of imports from Canada is appreciably lower than the growth rate from other countries.[323] Accordingly, I find in the negative with respect to Canada and Mexico. Furthermore, I note that the exclusion of Canada and Mexico from the analysis does not change the recommended findings, i.e., serious injury by reason of increased imports.

Carbon and alloy wire products - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada and Mexico represent a substantial share of total imports as they are among the top-five exporters to the United States.[324] Regarding the second prong, the record indicates that imports from Canada and Mexico contribute importantly to the threat of serious injury, given that the growth rates of imports from Canada and Mexico are similar to the growth rate for other imports.[325] Accordingly, I find in the affirmative with respect to both Canada and Mexico.

Carbon and alloy welded tubular products - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada and Mexico each represent a substantial share of total imports.[326] Regarding the second prong, the record indicates that imports from Canada contribute importantly to the serious injury as the growth rate for Canadian imports mirrored the growth rate for other non-NAFTA imports.[327] However, the trend of imports from Mexico differed and therefore imports from Mexico do not contribute importantly to serious injury.[328] Accordingly, under section 311 of the NAFTA, I find in the affirmative with respect to Canada and in the negative with respect to Mexico. In addition, I note that the exclusion of Mexico from the analysis does not change the recommended findings, i.e., serious injury by reason of increased imports.

Carbon and alloy seamless tubular products - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada and Mexico each do not represent a substantial share of total imports.[329] Regarding the second prong, the record indicates that imports from Canada and Mexico each do not contribute importantly to serious injury.[330] Therefore, under section 311 of the NAFTA, I make a negative determination with respect to Canada and Mexico. I also note that the exclusion of Canada and Mexico from the analysis does not change the recommended findings, i.e., serious injury by reason of increased imports.

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[321] CR and PR at Table FLAT-C-1.

[322] INV-Y-209 at Table LONG-ALT-2.

[323] INV-Y-209 at Table LONG-ALT-2.

[324] INV-Y-209 at Table LONG-ALT-3.

[325] INV-Y-209 at Table LONG-ALT-3.

[326] INV-Y-207 at Table TUBULAR-C-ALT-4.

[327] INV-Y-207 at Table TUBULAR-C-ALT-4.

[328] INV-Y-207 at Table TUBULAR-C-ALT-4.

[329] INV-Y-207 at Table TUBULAR-C-ALT-3.

[330] INV-Y-207 at Table TUBULAR-C-ALT-3.

Carbon and alloy fittings, flanges, and tool joints - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada and Mexico each represent a substantial share of total imports, as both countries are among the top-five countries that import carbon and alloy fittings, flanges, and tool joints.[331] Regarding the second prong, the record indicates that imports from Canada and Mexico each contribute importantly to serious injury.[332] Accordingly, I find in the affirmative with respect to Canada and Mexico under section 311 of the NAFTA.

Stainless and tool steel flat and long products - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada represent a substantial share of total imports while imports from Mexico do not.[333] Regarding the second prong, the record indicates that imports from Canada do not contribute importantly to serious injury, given that the growth rate of imports from Canada is appreciably lower than the growth rate from other countries.[334] Accordingly, I find in the negative with respect to Canada and Mexico under section 311 of the NAFTA. I also note that the exclusion of Canada and Mexico from the analysis does not change the recommended findings, i.e., serious injury by reason of increased imports.

Stainless wire and wire rope - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada and Mexico each do not represent a substantial share of total imports.[335] Regarding the second prong, the record indicates that imports from Canada and Mexico each do not contribute importantly to the threat of serious injury, given that the growth rate of imports from Canada and Mexico is appreciably lower than the growth rate from other countries and not expected to change.[336] Accordingly, I find in the negative with respect to Canada and Mexico under section 311 of the NAFTA. I also note that the exclusion of Canada and Mexico from the analysis does not change the recommended findings, i.e., threat of serious injury by reason of increased imports.

Stainless fittings and flanges - With respect to the first prong of the NAFTA section 311 provision, the record indicates that imports from Canada and Mexico each represent a substantial share of total imports.[337] Although Mexico was never one of the top five suppliers over the last three year period, the volume of imports from Mexico, with an 8.3 percent share of apparent U.S. consumption is nonetheless substantial and increased throughout the period.[338] I therefore find that departure from the "normal" outcome is warranted with respect to Mexico. Regarding the second prong, the record indicates that imports from Canada and Mexico each contribute importantly to serious injury.[339] Accordingly, I find in the affirmative with respect to Canada and Mexico under section 311 of the NAFTA.

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[331] CR and PR at Table TUBULAR-C-5.

[332] CR and PR at Table TUBULAR-C-5.

[333] INV-Y-209 at Table STAINLESS-ALT-4.

[334] INV-Y-209 at Table STAINLESS-ALT-4.

[335] INV-Y-218 at Table STAINLESS-ALT-5.

[336] INV-Y-218 at Table STAINLESS-ALT-5.

[337] CR and PR at Table STAINLESS-C-12.

[338] CR and PR at Table STAINLESS-C-12.

[339] CR and PR at Table STAINLESS-C-12.

SEPARATE AND DISSENTING VIEWS OF COMMISSIONER MARCIA E. MILLER ON INJURY WITH RESPECT TO TIN MILL PRODUCTS

I join in the views of Chairman Koplan, Vice Chairman Okun, and Commissioner Hillman contained in the Views of the Commission on Injury in finding increased imports of tin mill products during the period examined and serious injury to the domestic industry. However, because I find that increased imports of tin mill products are a substantial cause of serious injury to the domestic tin mill industry, I write separately to express my views on causation. My remedy recommendation for tin mill products is found in the remedy section of these views.

I. Substantial Cause of Serious Injury

A. Conditions of Competition

U.S. demand for tin mill products, as measured by apparent U.S. consumption, declined overall from 1996 to 2000 by 4.9 percent, although the decline was not steady, as both 1997 and 1999 saw upturns in demand.[1] Producers and consumers agree that the increased use of alternative packaging material has led to a long-term general decline in the use of tin mill products in the United States which began before the period examined.[2] U.S. producers have reacted to the decline in demand by taking steps to rationalize their production. From 1996 to 2000, U.S. capacity decreased by 3.7 percent, from 4,740,145 short tons to 4,566,145 short tons.[3]

Purchasers generally consider imported and domestically produced tin mill products to be substitutable.[4] While quality, product consistency, and on-time delivery are important factors in purchasing decisions, the market is highly price sensitive.[5] Supply contracts for both domestic and imported tin mill products are negotiated annually. Prices are established through the use of price lists and negotiation of discounts from the list;[6] import prices are a factor when discounts are negotiated.[7]

The consolidation of purchasers has enhanced their negotiating power, although much of the consolidation took place before the period examined. The number of large tin mill purchasers declined from 49 in 1990 to 26 in 2000, with four to six can manufacturers accounting for 75 to 80 percent of all consumption.[8]

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[1] CR/PR at Table FLAT-C-8.

[2] Joint Respondents Tin Mill Prehearing Injury Brief at 15-17; Can Manufacturers' Coalition Prehearing Injury Brief at 8-9; Minimill 201 Coalition, *et al.*, Posthearing Injury Brief at 13; CR at FLAT-73.

[3] CR/PR at Table FLAT-C-8.

[4] CR at FLAT-68, PR at FLAT-54.

[5] CR at FLAT-67, PR at FLAT-53.

[6] Joint Respondents' Tin Mill Prehearing Brief at 29-30; Can Manufacturers' Coalition Prehearing Injury Brief at 12-13; Minimill 201 Coalition, *et al.*, Posthearing Injury Brief at 14-16; Bethlehem, *et al.* Posthearing Injury Brief at 63-64.

[7] Minimill 201 Coalition, *et al.*, Posthearing Injury Brief at 14-16; Bethlehem, *et al.* Posthearing Injury Brief at 63-64.

[8] CR at FLAT-67, 75, PR at FLAT-53, 61; Joint Respondents' Tin Mill Prehearing Injury Brief at 27-29.

An antidumping duty order was imposed on imports of tin mill products from Japan in the second half of 2000, but imports from Japan continue to have a significant presence in the U.S. market,[9] along with imports from other countries.

B. Analysis

I find that increased imports of tin mill products are a substantial cause of serious injury to the domestic tin mill industry. Imports increased overall during the period, but surged in 1999, increasing by 45.0 percent from 1998 to 1999, as compared to 30.5 percent from 1996 to 2000.[10] Although the industry was unprofitable before and throughout the period, it suffered a serious downturn in 1999 as imports surged. Its operating margin was a negative 6.9 percent, the lowest of any full-year period examined.[11] Thus, although 1999 was one of the years of greatest demand during the period, second only to 1997, the industry realized no gain, and in fact a serious loss, in profitability. Imports also showed their greatest increase in U.S. market share over this period, from 12.8 to 17.7 percent; during the whole period examined, import market share increased by 4.2 percentage points.[12]

As import volumes increased, they exerted downward pressure on U.S. prices, which led to the industry's deteriorating financial condition. U.S. prices showed a steady decline over the period examined and never returned to their highest levels seen in the first half of 1996. U.S. prices were at their lowest in 1999, the year imports surged.[13] The industry's average unit values (AUVs) declined overall by 4.5 percent from 1996 to 2000 and were also at their lowest level in 1999.[14] Import AUVs declined more steeply from 1996 to 2000, by 11.6 percent, and the pricing data also show some underselling of the domestic product by imports.[15]

In view of the general substitutability of imports for the domestic product and the intense price competition among importers and domestic producers that occurs during annual contract negotiations with purchasers, I attribute these downward price trends and the domestic industry's resultant loss of revenue and market share to the surge in import volumes over the period, particularly in 1999. In addition, because contracts are negotiated annually, the negotiated price can continue to exert downward pressure on prices, even when import volumes begin to subside.[16] Thus, the industry showed no signs of recovery in 2000 or the first half of 2001, despite the drop-off in import volumes, due to the continuing price effects. In fact, this seriously injured industry only continued to deteriorate, registering a negative 6.1 percent operating margin in 2000, and its lowest operating margin of the period, a negative 7.4 percent, in the first half of 2001.[17]

I thus find that increased imports are a substantial cause of serious injury to the domestic industry in that they are a cause which is important and not less than any other cause. Respondents argue that other causes are more important causes than increased imports of the serious injury experienced by the domestic industry. These include: declining demand due to consumer preferences for other types of

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[9] U.S. Customs data show that, for the first half of 2001, imports of tin mill products from Japan were valued at $38,074,947, or 23.4 percent of the value of all tin mill imports during that period.

[10] CR/PR at Table FLAT-C-8.

[11] CR/PR at Table FLAT-C-8.

[12] CR/PR at Table FLAT-C-8.

[13] CR/PR at Table-FLAT-75.

[14] CR/PR at Table FLAT-C-8.

[15] CR/PR at Table-FLAT-75; CR/PR at Table FLAT-C-8.

[16] Bethlehem, *et al.*, Posthearing Injury Brief at 63-64.

[17] CR/PR at Table-FLAT-C-8.

packaging; purchaser consolidation; and overcapacity.[18] Declining overall demand for tin mill products began long before the period examined and may account in part for the fact that the industry was already in a weakened state in 1996. However, demand actually took an upswing in 1999, and were declining demand the true cause of the industry's current woes, the period of increased demand would have been expected to be one of some economic recovery by the industry. But, because imports surged during this period, precisely the opposite happened: the domestic industry lost significant market share and recorded its heaviest losses of the entire period examined. I thus find that declining demand is not a cause of serious injury to the domestic industry that is equal to or greater than increased imports.

With respect to purchaser consolidation as an alternative cause, the record indicates that most of the purchaser consolidation took place prior to the period being examined. I thus find that purchaser consolidation is not a cause of serious injury that is equal to or greater than increased imports. Purchaser consolidation does, however, signal the intense price competition that exists for tin mill products, both domestic and imported. The record shows that it was in 1999, when imports surged, that price competition was the fiercest, leading me to conclude that increased imports, not purchaser consolidation (which existed throughout the period examined), were chiefly responsible for the industry's serious decline in 1999.

Finally, I do not find that domestic overcapacity is a cause of serious injury that is equal to or greater than increased imports. The domestic industry had some excess capacity to produce tin mill products during the period examined; however, the decrease in capacity utilization over the period coincided with the import surge: capacity utilization was 78.3 percent in 1996 and 72.8 percent in 1999, even though apparent consumption in 1999 was at about the same level as in 1996. Morever, the industry's overall capacity *decreased* by 3.7 percentage points from 1996 to 2000.[19] The record shows, in addition, that the tin mill industry had already taken steps prior to the period examined to rationalize their capacity in line with declining consumer preference for tin mill products.[20]

For the foregoing reasons, I find that increased imports are a substantial cause of serious injury to the domestic tin mill products industry. Accordingly I make an affirmative determination.

II Finding With Respect to NAFTA Country Imports

I make a negative finding with respect to imports of tin mill products from Mexico and an affirmative finding with respect to imports of tin mill products from Canada. Mexico was not among the top five suppliers of tin mill products to the United States during the most recent 3-year period and thus does not account for a substantial share of total imports.[21] In addition, because imports from Mexico were at minimal levels throughout the period examined, I do not find that they contribute importantly to the serious injury I have found.[22]

Canada, however, was among the top five suppliers of tin mill products to the United States during 1998-2000 and therefore accounts for a substantial share of total imports.[23] Moreover, the quantity of imports from Canada doubled over the period, from 45,332 tons in 1996 to 91,570 tons in 2000, while the growth rate of imports from all countries increased by 30.5 percent over the period, and

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[18] Joint Respondents Tin Mill Prehearing Injury Brief at 9-11; Can Manufacturers' Coalition Prehearing Injury Brief at 7-13.

[19] CR/PR at Table-FLAT-C-8.

[20] Bethlehem, *et al.*, Posthearing Injury Brief at 66.

[21] INV-Y-180.

[22] CR/PR at Table FLAT-C-8.

[23] INV-Y-180.

from non-NAFTA countries, by 22.4 percent.[24] Imports from Canada peaked at 97,282 tons in 1999, and were higher in interim 2001 than in interim 2000. As a share of total imports, imports from Canada also grew, from 10.2 percent by volume in 1996 to 15.8 percent by volume in 2000; they were 21.7 percent of total imports in interim 2001. Their ratio to U.S. production increased from 1.2 percent in 1996 to 2.8 percent in 2000.[25] Their share of the U.S. market doubled, from 1.2 percent in 1996 to 2.4 percent in 2000.[26] The AUVs of imports from Canada declined overall from 1996 to 2000 and were lowest in 1999, when imports generally surged and the U.S. industry's condition worsened.[27] I therefore find that imports of tin mill products from Canada account for a substantial share of total imports and contribute importantly to the serious injury.[28] [29]

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[24] CR/PR at Table-FLAT-C-8.

[25] CR at Table FLAT-10.

[26] CR at Table FLAT-C-8.

[27] CR at Table FLAT-C-8.

[28] I note that in my analysis of whether increased imports as a whole are a substantial causes of serious injury, I would have reached the same result had I excluded imports from Mexico. The quantity of imports from Mexico was so minuscule – 57 tons in 1996, 21 tons in 1997, 286 tons in 1998, 156 tons in 1999, 39 tons in 2000, and no imports in 2001 – that it accounted for zero percent of U.S. market share in each year of the period examined. At their highest, in 1998, imports from Mexico represented 0.1 percent of imports, and zero percent in all other years. Therefore, the results with respect to increases in imports, their share of apparent U.S. consumption, and their ratio to U.S. production are virtually the same whether imports from Mexico are included in total imports or not. CR/PR at Table FLAT-10, Table FLAT-C-8.

[29] I further note that I would have found imports of tin mill products to be a substantial cause of serious injury had I excluded imports from Canada. Imports from all other sources increased by a significant amount – 22.4 percent – over the period, despite an overall decline in consumption. In addition, the U.S. market share held by these imports increased by 2.9 percentage points over the period, while imports from Canada as a share of the U.S. market increased by only 1.3 percentage points. CR/PR at Table-FLAT-C-8. The pricing data collected by the Commission show no underselling by imports from Canada. CR/PR at Table-FLAT-75. Also, while the AUVs of imports from Canada declined overall during the period, the rate of decline – 3.5 percentage points – was significantly lower than that of all other imports – 13.1 percentage points, and toward the end of the period, in 1999, 2000, and interim 2001, the AUVs of imports from Canada were higher than those of the other imports. CR/PR at Table-FLAT-C-8.

SEPARATE VIEWS OF COMMISSIONER DENNIS M. DEVANEY ON INJURY

I. INTRODUCTION

On October 22, 2001, the Commission found unanimously that portions of the steel industry representing approximately 74 percent of the imports covered under this investigation were substantially injured by reason of imports. I am writing separately to explain and present several concerns that are unique to my view of the record.

The Commission instituted this investigation on June 22, 2001, following receipt of a request from the United States Trade Representative (USTR). USTR's request was made at the behest of the President as a part of his June 5, 2001 three point initiative to deal with the critical economic conditions facing the United States steel industry. The request, pursuant to section 202 of the Trade Act of 1974 (Act) (19 U.S.C. §2252 *et. seq.*), was also made by Resolution of the Senate Finance Committee, dated July 26, 2001. The request of the Committee mirrored the request of USTR and therefore the two requests were combined into the already proceeding investigation. This is the only time in the history of the ITC that both the executive and legislative branches have made parallel requests for investigation.

My approach to this case was initially formed by the structure of the President's three part approach to the steel problem. I tried to fulfill my responsibilities as a Commissioner by fully recognizing that my role is to interpret U.S. trade remedy laws and not to legislate or make new law which is the province of Congress. The President directed the USTR and the Secretaries of Commerce and Treasury to begin negotiations with our trading partners seeking to eliminate inefficient, worldwide excess steel making capacity in the long term. The President directed those same individuals to also negotiate on rules to govern the steel trade in order to eliminate subsidies which have distorted the market and led to many of the current difficulties in the world steel industry. Finally the President directed USTR to request the Commission to conduct this investigation.[1]

My recommendation is based on the evidence presented which demonstrates that steel production, particularly following the technological innovation of continuous casting, is largely an integrated manufacturing process, whether steel is being made by mini-mills or integrated steel companies. In the vast majority of sales, the end-use form of steel is determined before any ore or scrap steel is placed into a furnace for melting. Not only is the industry organized on a highly integrated, continuous production model, but additionally price and supply effects are felt across the range of products produced by the industry. A decrease in the price of cold rolled steel tends to decrease the price of both hot rolled steel and plate steel. The record evidence indicates that this elasticity of price across a wide range of steel products actually multiplies the harmful effects of import penetration in the domestic marketplace.

I am convinced based on the information gathered during ten days of hearings and after extensive briefing by the parties, that injury to the steel industry has occurred over a number of years. I am mindful that both the U.S. economy and the world economy are in recession, but I am also aware that steel is not bought and sold in world markets in a vaccum. Those countries which export steel to the United States have steel industries and lawyers who understand the rules of the game. Upon the initiation of this 201 action by the President, indeed, even at the suggestion of a 201 action by the President, certain parties clearly curtailed exports into this country in order to lessen the apparent impact and quantity of imports entering the United States. In this case, however, the presence of imports in the domestic market has been causing injury to the domestic industry for years.

Having reached an affirmative determination regarding injury, and in view of the President's

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[1] Statement by the President Regarding a Multilateral Initiative on Steel, June 5, 2001.

three phase initiative, I believe that it is of paramount importance to provide him with the widest degree of latitude and leverage in deciding what remedy is most appropriate. Given the current state of steel manufacturing in America and the lack of strength in the global economy, and in the aftermath of September 11, the President should have a very strong set of tools to address the industry's systemic problems.

By sending a strong recommendation to the President, I believe we give him the maximum degree of flexibility to deal with steel trade issues. In poker parlance, a weak recommendation puts the President in the position of holding a pair of tens, when we can give him a straight flush instead. A weak recommendation will also lead to a papering over of the problems of the industry, sending the wrong message here at home and abroad. If, at the end of the day, a weak remedy is adopted, it is unlikely that needed restructuring will occur. Our steel industry will merely see its death watch prolonged.

I join the majority as to Sections II and III of the final report with the reservations noted in my footnotes.

IV. CARBON AND ALLOY LONG PRODUCTS

In analyzing the category of long products, and for the reasons discussed below, I find one domestic industry producing long products. I find two distinct classes of articles similar to the imported articles subject to investigation. Specifically, I find: a class of like articles consisting of ingots, billets, blooms, Hot rolled bar, Cold-finished bar, rebar, rails and rail products, wire and wire products, including wire rope and nail products, and heavy structural shapes, ("certain carbon and alloy long products") and; a class of articles consisting of fabricated structural units.

A. Certain Carbon and Alloy Long Products

I find similarly to my determination in flat-rolled steel, that long products are one class of articles similar to the imported articles which are subject to investigation. In terms of physical properties, imported and domestic carbon long products share the same physical attributes and are generally interchangeable.[2] As noted in the flat-rolled section, the production process is generally the same in the U.S. and abroad.

Also as noted in the flat-rolled determination, the process of creating all of the products is integrated. The final use of the steel is determined before the billet is formed, the billet thus becoming the raw material for derivative downstream products. The production process for these articles is continuous. A very high percentage (70-80%) of the production cost of these products is generated at the time the billets are made.[3] Most of these products are produced by manufacturers who can and do shift from one product to another, thus evidencing a high degree of product interchangeability in terms of production.[4]

Fabricated structurals are set apart from the other long products by the need for a large amount of further processing after initial feed stock processing. Structural units are frequently custom-made thereby changing the "use determined at melt" nature of the rest of these products.[5]

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[2] CR at L-95.

[3] USWA Prehearing Brief, Section III at 3-5.

[4] Minimill 201 Coalition Brief at 5-7; Minimill Coalition Posthearing Brief, vol. 1 at 4-10.

[5] CISC Posthearing Brief at 10-17.

1. *Conditions of Competition*

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported long products in the U.S. market.

First, demand grew steadily throughout the period of investigation except between 1998 and 1999.[6] Apparent U.S. consumption of long products increased from 53.4 million tons in 1996 to 62.8 million tons in 1998 but then dropped to 60.5 million tons in 1999 and only rose to 64.4 million tons in 2000.[7] This level of consumption was 20.5 percent larger than in 1996.[8] As the overall economy declined in 2001, apparent consumption declined by 14.1 percent between interim 2000 and interim 2001.[9]

Second, price is the second most important factor in purchasing decisions.[10] While more purchasers listed quality rather than price as their top factor in purchasing, they generally deemed domestically-produced long products and imports to be comparable with respect to quality considerations.[11]

Third, capacity utilization fluctuated throughout the period of examination.[12] Capacity utilization rose from 77.7 percent in 1996 to it highest level of 82.1 percent in 1997 then fell to its lowest level of 74.7 percent in 1999, and recovered slightly to 77.0 percent in 2000.[13] Between interim 2000 and 2001, capacity utilization fell by 10.9 percent.[14]

Fourth, imports gained market share from 15.7 percent in 1997, to 20.4 percent in 1998, and then to 21.2 percent in 2000.[15] Between interim 2000 and 2001, import market share remained relatively steady.[16]

2. *Increased Imports*

Finding. I find that there were increased imports of long products over the period of investigation.

In terms of quantity, imports of long products increased by 64 percent during the five full years of the period of investigation, growing from 6 million tons in 1996 to 9.9 million tons in 2000.[17] The largest single increase in import quantity occurred between 1997 and 1998 ***.[18] Although the quantity of imports declined between interim 2000 and 2001, dropping from 5.2 million tons to 3.9 million tons

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[6] CR and PR at Table L-C-1.

[7] CR and PR at Table L-C-1.

[8] CR and PR at Table L-C-1.

[9] CR and PR at Table L-C-1.

[10] INV-Y-212 at 44-52.

[11] INV-Y-212 at 44-52.

[12] CR and PR at Table L-C-1.

[13] CR and PR at Table L-C-1.

[14] CR and PR at Table L-C-1.

[15] CR and PR at Table L-C-1.

[16] CR and PR at Table L-C-1.

[17] CR and PR at Table L-C-1.

[18] CR and PR at Table L-C-1.

***,[19] this decline occurred during a period when there was also a substantial decline in apparent domestic consumption by ***.[20] The ratio of imports of long products to domestic production also increased during the period, growing from 12.6 percent in 1996 to 17.7 percent in 2000.[21] Although there was a decline in the ratio between interim 2000 and 2001, imports still retained a significant market share.[22] Accordingly, I find that imports increased in quantities and thus the first statutory criterion is satisfied.

3. *Serious Injury*

Finding. I find that the domestic long products industry is seriously injured; that is, I find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is seriously injured, I have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors show that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

There has been a significant idling of productive facilities in the domestic industry during the period of investigation. Despite an overall growth in demand of 20.5 percent during the period between 1996 and 2000, the industry's production increased only 16.7 percent during that period, with production falling from 54.5 million tons in 1998 to 52.2 million tons in 1998 despite an increase in apparent consumption.[23] The industry's production levels declined by an additional 13.8 percent in interim 2001.[24] As a result of this production decline, the industry's capacity utilization rates declined in 1999.[25] Inventories held grew 26.5 percent from 1996 to 2000, and as a share of total shipments, increased from 7.1 percent in 1997 to 9.2 percent in 2000.[26] In addition, the bankruptcy of Bethlehem Steel, ***[27], and other long products producers will further impact the industry. These bankruptcies, a number of which occurred during the last six months, are a forceful reminder of the ongoing injury that has occurred over a number of years. The evidence also indicates that the industry has experienced a significant idling of its productive facilities during the period of investigation.

I further find that a significant number of firms have been unable to carry out domestic production operations at a reasonable level of profit during the period of investigation. During the period of investigation, the domestic industry experienced a serious decline in profitability levels from 1997 to 2000.[28] The industry's operating income fell consistently and significantly from 1997 to 2000, decreasing from $1.14 billion to $772 million with the largest fall taking place from 1999 to 2000 despite

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[19] CR and PR at Table L-C-1.

[20] CR and PR at Table L-C-1.

[21] CR and PR at Table L-C-1.

[22] CR and PR at Table L-C-1.

[23] CR and PR at Table L-C-1.

[24] CR and PR at Table L-C-1.

[25] CR and PR at Table L-C-1.

[26] CR and PR at Table L-C-1.

[27] CR and PR at Table L-1.

[28] CR and PR at Table L-C-1.

an increase in demand.[29] The industry's operating income then dropped to $152 million in interim 2001.[30] The industry's operating margin followed the same trend, declining from 8.3 percent in 1997 to 5.9 percent in 2000, and then to its lowest point in the period of investigation, 2.7 percent, in interim 2001.[31] Moreover, during the period of investigation, the number of firms reporting operating losses grew, increasing from 31 firms in 1996 to 40 in 2000, and 56 in interim 2001.[32] In light of the consistent and significant declines in the industry's operating income and the growth in the number of firms reporting operating losses over the period, I find that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

I also find that the industry experienced significant unemployment and underemployment during the period of investigation. While the number of production-related workers, hours worked, wages paid, hourly wages, and productivity increased from 1996 to 2000, all these factors except for hourly wages fell in interim 2001 by significant amounts.[33] The increases do not offset the impact on the industry of the declines in the level of workers employed, wages paid, and hours worked in interim 2001.[34]

Finally, other trade and financial data for the industry also indicate that the industry producing long products was seriously injured during the period of investigation. The market share of the industry declined by 5.0 percent during the period from 1997 to 1998, falling from 89.1 percent to 84.1 percent, and only regained a small amount of market share by 2000 to 84.6 percent.[35] The industry's net commercial sales declined from 29 million tons in 1997 to 28.6 million tons in 2000, and its sales value dropped from $13.9 billion to $13.0 billion.[36] The value of its shipments from $20.1 billion in 1997 to $19.3 billion in 2000 despite increasing in quantity from 52.5 million tons to 54.5 million tons.[37] Both the value of the domestic industry's commercial shipments and the quantity of its shipment fell by 17.3 percent and 12.1 percent, respectively, between interim 2000 and interim 2001.[38] The industry was unable to make significant improvements in its productive facilities as capital expenditures fell from $1.2 billion in 1998 to $441 million in 2000 with depreciation reaching $575.5 million in 2000.[39] In the interim period of 2001, capital expenditures fell another 3.3 percent.[40] The domestic industry showed significant declines in cash flow during the period of investigation.[41]

In sum, the financial and trade indicia for the long products industry show an industry in serious decline. The industry lost 4.1 percentage points of market share during the period of investigation and experienced a continuing and serious decline in its profitability levels.[42] The industry's production levels and capacity utilization rates fell during the period, indicating that the industry suffered serious

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[29] CR and PR at Table L-C-1.

[30] CR and PR at Table L-C-1.

[31] CR and PR at Table L-C-1.

[32] CR and PR at Tables L-26 to L-34.

[33] CR and PR at Table L-C-1.

[34] CR and PR at Table L-C-1.

[35] CR and PR at Table L-C-1.

[36] CR and PR at Table L-C-1.

[37] CR and PR at Table L-C-1.

[38] CR and PR at Table L-C-1.

[39] CR and PR at Table L-26 to L-34.

[40] CR and PR at Table L-C-1.

[41] CR and PR at Table L-26 to L-34.

[42] CR and PR at Table L-C-1.

injury during the period. Furthermore, industry employment levels fell significantly in the interim period of 2001. Accordingly, I find that, on the whole, the long products industry is seriously injured.

4. *Causation*

Finding. I find that increased imports of long products are a substantial cause of serious injury to the domestic industry.

I find first that the import increases between 1996 and 2000 had a serious adverse impact on the production levels, shipments, commercial sales and market share of the domestic industry. As I described above, the quantity and market share of imports both increased considerably during the period of investigation, with the quantity of imports increasing by 64 percent during the period from 1996 to 2000 and import market share increasing by 4.1 percentage points during that period as well.[43] Despite a drop in demand, imports surged dramatically from 1997 to 1998 by 55.7 percent devastating the domestic industry.[44] Production levels for the domestic industry had been increasing until this import surge. Capacity utilization was at its lowest levels in 1999.[45] Domestic shipments, sales, and operating income all fell in 1999. In 1999, capital expenditures were half of what they were in 1998.[46] The industry's production volumes, shipment levels and sales revenues all declined significantly as a result of increases in import volume during the period.[47] Despite the fact that demand was at its highest in 2000, the industry's capacity utilization rates were lower than in 1996.[48] Imports were almost at the level they were in 1998.[49] In sum, the import increases that occurred during the period clearly had a serious adverse impact on the production volumes, sales levels, sales revenues and market share of the industry during the period.

The record also indicates that imports seriously depressed and suppressed domestic prices of long products during the period of investigation. The evidence shows that price is an important part of the purchasing decision[50] and that imports consistently and significantly undersold the domestic merchandise throughout the period of investigation, with imports of the price comparison product underselling domestic merchandise in 134 of 219 possible quarterly comparisons at underselling margins of up to 83.7 percent.[51] Most of these underselling instances occurred in 1999, 2000, and 2001.[52] The average unit price of domestic shipments fell 7.2 percent from 1998 and 1999, and 6 percent between interim 2000 and 2001.[53] The average unit price of domestic sales followed a similar trend. While unit costs of goods sold also followed this pattern, other unit costs offset this trend.[54] The fall in demand

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[43] CR and PR at Table L-C-1.

[44] CR and PR at Table L-C-1.

[45] CR and PR at Table L-C-1.

[46] CR and PR at Table L-C-1.

[47] CR and PR at Table L-C-1.

[48] CR and PR at Table L-C-1.

[49] CR and PR at Table L-C-1.

[50] INV-Y-212 at 44-52.

[51] INV-Y-212 at LONG-ALT4.

[52] INV-Y-212 at Table LONG-ALT89 to Table LONG-ALT98.

[53] CR and PR at Table L-C-1.

[54] CR and PR at Table L-C-1.

from 1998 to 1999 was not as dramatic as the fall in prices or the increase in underselling.[55] Thus, imports were a substantial cause of the price depression or suppression on the domestic prices of long products.

In sum, I find that increased quantities of imports coupled with significant underselling during the period were causing declines in the industry's trade and financial condition during the period. While, I note that foreign producers have claimed that Nucor is the primary driver of price depression in the market, Nucor has***.[56] I do not find the bankruptcies and underperformance of certain domestic producers as altering the statistics of the health of the industry. Instead I find this evidence further indicates the serious injury that the industry is experiencing.

In light of the foregoing, I conclude that increased imports of long products are an important cause, and a cause not less important than any other cause, of serious injury to the domestic industry producing these products. Accordingly, I find that the increased imports are a substantial cause of serious injury to the domestic industry.

5. *Findings with Respect to NAFTA Imports*

Finding. *Canada.* I find that imports from Canada did not contribute importantly to the serious injury suffered by the domestic industry. Canadian imports were among the top five sources of imports in 2000.[57] Although they accounted for 23 percent of total imports in 2000, this was down from 29 percent in 1996.[58] Furthermore, the Canadian imports increased only 28.2 percent when demand increased 20.5 percent.[59] Imports from non-NAFTA sources increased by 101.8 percent.[60] Accordingly, I find that Canada did not contribute importantly to the serious injury being suffered by the industry.

Mexico. I find that imports of long products from Mexico did not contribute importantly to the serious injury suffered by the domestic industry. In this regard, the record shows that Mexico was one of the top five importers of long products in 2000.[61] But Mexican imports fell 35.5 percent throughout the period of investigation.[62] Accordingly, I find that Mexico did not contribute importantly to the serious injury being suffered by the industry.

B. Fabricated Structural Units

I join the majority finding that fabricated structural units are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic fabricated structural units industry.

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[55] CR and PR at Table L-C-1.

[56] INV-Y-212.

[57] INV-Y-180.

[58] CR and PR at Table L-C-1.

[59] CR and PR at Table L-C-1.

[60] CR and PR at Table L-C-1.

[61] INV-Y-180.

[62] CR and PR at Table L-C-1.

V. CARBON AND ALLOY TUBULAR PRODUCTS

A. Classes of Articles which are Similar to, or Directly Competitive, with products which are subject to investigation

1. *Finding*

I find that there are three classes of articles within the carbon and alloy tubular product grouping, similar to imported articles which are subject to investigation. These classes are: (i) carbon and alloy welded pipe and tube including OCTG; (ii) carbon and alloy seamless pipe and tube including OCTG; and (iii) carbon and alloy fittings, flanges, and tool joints.

2. *Analysis*

While I do not find that all tubular products constitute one class of articles, as urged by some of the parties, their basic arguments do form a jumping off point of my analytical framework in that the products share physical properties, manufacturing processes and facilities and are produced by the same employees. However, I find that there are three distinct product groups which have distinct production characteristics: (i) welded pipe and tube; (ii) seamless pipe and tube; and (iii) fittings, flanges, and tool joints("fittings").

As the USWA stated, all tubular products share the same basic physical properties and end uses. At the same time, welded, seamless, and fittings display marked differences in the methods of their manufacturing process. Seamless tubular products have no joint along the longitudinal axis of the product, and are required in applications where the added strength and durability over welded products are needed.[63] Fittings are used to fasten either seamless or welded pipe and tube to other objects.[64]

Among each of the three categories, I have found that OCTG and non-OCTG products share manufacturing processes. Both seamless OCTG and seamless non-OCTG may be produced on the same manufacturing line, and use the same methods of production, such as hot-rolling, hot extrusion, deep drawing of a disc, forging, and casting.[65] Similarly, welded OCTG and welded non-OCTG share the same methods of production, and are generally made in facilities which are distinct from other tubular products.[66]

There is an overlap of production facilities, employees and processes within each of the three product categories. For example, half of the producers of seamless products produce both OCTG and non-OCTG products.[67] These producers accounted for 98.2 percent of all production of seamless OCTG products.[68] Within the welded producers, all welded OCTG producers are also producers of non-OCTG welded pipe.[69] Seamless and welded products of either type are not made in the same facilities. ***[70] Thus, I find three distinct classes of articles which are similar or directly competitive with imported

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[63] CR and PR at T-1 to T-2.

[64] CR and PR at T-4.

[65] CR and PR at T-1 to T-2.

[66] CR and PR at T-3 to T-4.

[67] CR and PR at Table T-1.

[68] CR and PR at Table T-1.

[69] CR and PR at Table T-1.

[70] CR and PR at Table T-1.

articles subject to investigation.

B. Domestic Industry

In past safeguard determinations, the Commission has stated that where "there is domestic production of one like or directly competitive product, it will find a single domestic industry and evaluate the impact of the pertinent imports on the facilities and workers producing that product."[71] Having found that there are three separate classes of articles in this investigation with respect to the carbon and alloy tubular products grouping, I find that there are three separate industries consisting of: (i) carbon and alloy welded pipe and tube including OCTG; (ii) carbon and alloy seamless pipe and tube including OCTG; and (iii) carbon and alloy fittings, flanges, and tool joints.

C. Carbon and Alloy Seamless Tubular Products

I find that carbon and alloy seamless tubular products are being imported in such quantities as to be a substantial cause of serious injury to the domestic industries producing seamless tubular products.

1. *Conditions of Competition*

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported seamless tubular products in the U.S. market.

First, demand grew between 1996 and 1997, then fell until 1999, and recovered in 2000 to a level greater than that at the beginning of the period of investigation.[72] Apparent U.S. consumption of seamless tubular products increased from 2.7 million tons in 1996 to 3.1 million tons in 1997 but then dropped to 1.8 million tons in 1999 and rose to only 2.9 million tons in 2000.[73]

Second, capacity utilization followed the demand trends closely.[74] Capacity utilization of seamless tubular producers increased from 67.8 percent in 1996 to 72.2 percent in 1997 but then dropped to 42.7 percent in 1999 and rose to only 64.9 percent in 2000.[75]

Third, imports gained market share, rising from a 22.6 percent share in 1996, to a 32.3 percent share in 1998, and climbing again to a 35.8 percent share in 2000.[76] Between interim 2000 and 2001, import market share remained relatively steady.[77]

2. *Increased Imports*

Finding. I find that there were increased imports of seamless tubular products over the period of investigation.

In terms of quantity, imports of seamless tubular products increased by 70.6 percent during the five full years of the period of investigation, growing from 615 thousand tons in 1996 to one million tons

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[71] *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-8 (December 2000).

[72] INV-Y-207 at Table TUBULAR-C-ALT3.

[73] INV-Y-207 at Table TUBULAR-C-ALT3.

[74] INV-Y-207 at Table TUBULAR-C-ALT3.

[75] INV-Y-207 at Table TUBULAR-C-ALT3.

[76] INV-Y-207 at Table TUBULAR-C-ALT3.

[77] INV-Y-207 at Table TUBULAR-C-ALT3.

in 2000.[78] The largest single increase occurred between 1999 and 2000 when import quantity rose by 106.8 percent.[79] The quantity of imports increased between interim 2000 and 2001 from 520 thousand tons to 608 thousand tons, a 16.8 percent increase.[80] The ratio of imports of seamless tubular products to domestic production also increased during the period, growing from 26.3 percent in 1996 to 47 percent percent in 2000.[81] There was an increase in the ratio between interim 2000 and 2001 from 46.7 percent to 49.3 percent.[82] Accordingly, I find that imports are entering the domestic market in increased quantities and that the first statutory criterion is satisfied.

3. *Serious Injury*

Finding. I find that the domestic seamless tubular products industry is seriously injured; that is, I find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is seriously injured, I have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

I first find that there has been a significant idling of productive facilities in the domestic industry during the period of investigation. Despite an overall growth in demand of 7.8 percent during the period between 1996 and 2000, the industry's production fell by 4.9 percent during that period.[83] When consumption was at its highest between 1996 and 1998 increasing by 15.6 percent, domestic production grew only 8.0 percent.[84] When consumption dropped from 1997 to 1998 by 14 percent, domestic production fell 20.1 percent.[85] When demand fell dramatically by 33.1 percent from 1998 to 1999, domestic production mirrored this decline.[86] When demand recovered in 2000 by 62.1 percent , domestic production recovered by only 55.3 percent.[87] The industry's production levels only increased by an additional 10.5 percent between interim 2000 and 2001 despite a consumption increase of 15.8 percent.[88] As a result of this production decline and failure to take advantage of strong demand, the industry's capacity utilization rates declined from 1997 to 1999, and were lower at the end of the period of investigation then they were at the beginning.[89] Inventories held compared to total shipments grew from

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[78] INV-Y-207 at Table TUBULAR-C-ALT3.

[79] INV-Y-207 at Table TUBULAR-C-ALT3.

[80] INV-Y-207 at Table TUBULAR-C-ALT3.

[81] INV-Y-207 at Table TUBULAR-C-ALT3.

[82] INV-Y-207 at Table TUBULAR-C-ALT3.

[83] INV-Y-207 at Table TUBULAR-C-ALT3.

[84] INV-Y-207 at Table TUBULAR-C-ALT3.

[85] INV-Y-207 at Table TUBULAR-C-ALT3.

[86] INV-Y-207 at Table TUBULAR-C-ALT3.

[87] INV-Y-207 at Table TUBULAR-C-ALT3.

[88] INV-Y-207 at Table TUBULAR-C-ALT3.

[89] INV-Y-207 at Table TUBULAR-C-ALT3.

9.8 percent from 1997 to 14.2 percent in 1999, and only decreased to 13 percent in 2000.[90] These trends show an idling of productive facilities over a number of years even in periods of strong demand.[91] On the whole, I believe this evidence indicates that the industry has experienced a significant idling of its productive facilities during the period of investigation.

I further find that a significant number of firms have been unable to carry out domestic production operations at a reasonable level of profit during the period of investigation. During the period of investigation, the domestic industry experienced a serious decline in its profitability levels from 1996 to 1999.[92] The industry's operating income fell consistently and significantly from 1996 to 1999, decreasing from $213 billion earnings to a loss of $44 million.[93] Even though operating income recovered to $170 million in 2000, it was still lower than 1996 levels.[94] The industry's operating margin followed the same trend, declining from 1996 to 1999, decreasing from 12.2 percent to a loss of 3.6 percent.[95] Even though the operating margin recovered to 9.6 percent in 2000, it was still lower than 1996 levels.[96] In light of the consistent and significant declines in the industry's operating income, I find that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

I also find that the industry experienced significant unemployment and underemployment during the period of investigation. While the hours worked, wages paid, and hourly wages increased from 1996 to 2000, the number of production-related workers and productivity fell.[97] Increases in the wage earnings of some workers do not offset, in my view, the impact on the industry of the declines in the level of workers employed and in the levels of productivity. Despite strong demand between interim 2000 and 2001, the number of workers employed has only increased by 6.2 percent, and is only slightly higher than employment in 1996.[98]

Finally, other trade and financial data for the industry also indicate that the industry producing seamless tubular products was seriously injured during the period of investigation. The market share of the domestic industry declined by 13.2 percent during the period from 1996 to 2000, falling from 77.4 percent in 1996 to 67.7 percent in 1998, and then again from 72 percent in 1999 to 64.2 percent in 2000.[99] The industry's net commercial sales and shipments followed trends similar to production.[100] The industry was unable to make significant improvements in its productive facilities as capital expenditures fell from $138 million in 1998 to $42.3 million in 2000 with depreciation reaching $59.2 million in 2000.[101] In the interim period of 2001, capital expenditures fell another 9.1 percent.[102]

In sum, the financial and trade indicia of the seamless tubular products industry show an industry

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[90] INV-Y-207 at Table TUBULAR-C-ALT3.

[91] INV-Y-207 at Table TUBULAR-C-ALT3.

[92] INV-Y-207 at Table TUBULAR-C-ALT3.

[93] INV-Y-207 at Table TUBULAR-C-ALT3.

[94] INV-Y-207 at Table TUBULAR-C-ALT3.

[95] INV-Y-207 at Table TUBULAR-C-ALT3.

[96] INV-Y-207 at Table TUBULAR-C-ALT3.

[97] INV-Y-207 at Table TUBULAR-C-ALT3.

[98] INV-Y-207 at Table TUBULAR-C-ALT3.

[99] INV-Y-207 at Table TUBULAR-C-ALT3.

[100] INV-Y-207 at Table TUBULAR-C-ALT3.

[101] INV-Y-207 at Table TUBULAR-C-ALT3. CR and PR at Tables T-16 & T-17.

[102] INV-Y-207 at Table TUBULAR-C-ALT3.

in serious decline. The industry lost 13.2 percentage points of market share during the period of investigation and experienced a continuing and serious decline in its profitability levels.[103] The industry's production levels and capacity utilization rates fell during the period, indicating that the industry suffered serious injury during the period. Furthermore, the employment levels fell significantly during the period of investigation. Accordingly, I find that, on the whole, the seamless tubular products industry is seriously injured.

4. *Causation*

Finding. I find that the increased imports of seamless tubular products are a substantial cause of serious injury to the domestic industry.

I find first that the import increases between 1996 and 2000 had a serious adverse impact on the production levels, shipments, commercial sales and market share of the domestic industry. As I described above, both the quantity and market share of imports increased well beyond the pace of demand increases during the period of investigation. Despite a drop in demand from 1997 to 1998, imports still increased by 16.4 percent undercutting the domestic industry whose production fell 20.1 percent.[104] Surges of imports from 1996 to 1998 and 1999 to 2000 outpaced demand, and prevented the domestic industry from recovering from a severe economic slowdown in 1999.[105] Capacity utilization was at its lowest levels in 1999, causing the domestic industry to lose 4.1 percent of capacity.[106] Domestic shipments, sales, and operating income all followed similar trends to production levels.[107] In 2000, capital expenditures were nearly a third of what they were in 1998 despite a recovery in demand.[108] In sum, the import increases that occurred during the period clearly had a serious adverse impact on the production volumes, sales levels, sales revenues and market share of the industry during the period.

The record also indicates that imports seriously depressed and suppressed domestic prices of seamless tubular products during the period of investigation. The record of this investigation indicates that price is an important part of the purchasing decision[109] and that imports consistently and significantly undersold the domestic merchandise throughout the period of investigation, with imports of the price comparison product underselling domestic merchandise in 49 of the 73 possible quarterly comparisons at underselling margins of up to 50.9 percent.[110] Underselling instances were highest in the 1996 to 1998 period before imports initially began to surge.[111] The average unit price of imports fell 17 percent from 1996 to 2000, and fell by 12.5 percent between 1999 and 2000 when they surged tremendously in quantity going up 106.8 percent.[112] As a result of the surge in imports, though costs of goods sold and

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[103] INV-Y-207 at Table TUBULAR-C-ALT3.

[104] INV-Y-207 at Table TUBULAR-C-ALT3.

[105] INV-Y-207 at Table TUBULAR-C-ALT3.

[106] INV-Y-207 at Table TUBULAR-C-ALT3.

[107] INV-Y-207 at Table TUBULAR-C-ALT3.

[108] INV-Y-207 at Table TUBULAR-C-ALT3.

[109] CR and PR at Table T-54.

[110] CR and PR at Tables T-63 and T-64.

[111] CR and PR at Tables T-55 to T–57.

[112] INV-Y-207 at Table TUBULAR-C-ALT3.

other production costs except for labor fell, operating income also fell.[113] Thus, imports were the cause of the price depression or suppression on the domestic prices of seamless tubular products.

In sum, I find that increased quantities of imports coupled with significant underselling during the period were a substantial cause of the declines in the industry's trade and financial condition during the period.

In view of the circumstances of the domestic industry as described above, I conclude that increased imports of seamless tubular products are a substantial cause, and a cause not less important than any other cause, of serious injury to the domestic industry producing these products. Accordingly, I find that the increased imports are a substantial cause of serious injury to the domestic industry.

5. *Findings with Respect to NAFTA Imports*

Finding. *Canada.* I find that imports from Canada did not contribute importantly to the serious injury suffered by the domestic industry. Canadian imports were not among the top five sources of imports in 2000.[114] Furthermore, throughout the period of investigation they steadily declined.[115] Accordingly, I find that Canada did not contribute importantly to the serious injury being suffered by the industry.

Mexico. I find that imports of seamless tubular products from Mexico did not contribute importantly to the serious injury suffered by the domestic industry. In this regard, the record shows that while Mexico was one of the top five importers of seamless non-OCTG, it was not one of the top five importers of seamless OCTG in 2000.[116] In addition, Mexican imports fell 53.7 percent throughout the period of investigation.[117] Accordingly, I find that Mexico did not contribute importantly to the serious injury being suffered by the industry.

D. Carbon and Alloy Welded Tubular Products

I find that carbon and alloy welded tubular products are being imported in such quantities as to be a substantial cause of serious injury to the domestic industries producing welded tubular products.

1. *Conditions of Competition*

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported welded tubular products in the U.S. market.

First, demand increased from 1996 to 1999, falling slightly from 1999 to 2000.[118] Apparent U.S. consumption of welded tubular products increased from 6.9 million tons in 1996 to 8.6 million tons in 1999 dropping to 8.4 million tons in 2000.[119] The level of consumption between 1996 and 2000

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[113] INV-Y-207 at Table TUBULAR-C-ALT3.

[114] INV-Y-180.

[115] INV-Y-207 at Table TUBULAR-C-ALT3.

[116] INV-Y-180.

[117] INV-Y-207 at Table TUBULAR-C-ALT3.

[118] INV-Y-207 at Table TUBULAR-C-ALT4.

[119] INV-Y-207 at Table TUBULAR-C-ALT4.

constituted an increase of 22.7 percent.[120] Even though the overall economy declined in 2001, apparent consumption increased by 6.8 percent between interim 2000 and interim 2001.[121]

Second, capacity utilization began to increase from 1996 to 1997 when demand surged 12.4 percent but fell consistently afterwards.[122] Capacity utilization of seamless tubular producers decreased from 71.7 percent in 1997 to 56.8 percent in 2000.[123]

Third, imports gained market share over the POI, rising from a 23.8 percent share at the beginning of the period to a 33.9 percent share at the end of the period with a slight increase between the interim periods.[124]

2. *Increased Imports*

Finding. I find that there were increased imports of welded tubular products over the period of investigation.

In terms of quantity, imports of welded tubular products increased by 75.1 percent during the five full years of the period of investigation, growing from 1.6 million tons in 1996 to 2.9 million tons in 2000.[125] Surges occurred in import quantity during the 1996 to 1998 period when imports surged by 46.3 percent and again during the 1999 to 2000 period, rising by 30.9 percent.[126] The quantity of imports continued to rise between the interim periods.[127] The ratio of imports of welded tubular products to domestic production also increased during the period, growing from 29.6 percent in 1996 to 48.3 percent percent in 2000.[128] There was a sizable increase in the ratio during the interim period, from 49.6 percent to 53.5 percent.[129] Accordingly, I find that imports are in increased quantities and that the first statutory criterion is satisfied.

3. *Serious Injury*

Finding. I find that the domestic welded tubular products industry is seriously injured; that is, I find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is seriously injured, I have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

I first find that there has been a significant idling of productive facilities in the domestic industry

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[120] INV-Y-207 at Table TUBULAR-C-ALT4.

[121] INV-Y-207 at Table TUBULAR-C-ALT4.

[122] INV-Y-207 at Table TUBULAR-C-ALT4.

[123] INV-Y-207 at Table TUBULAR-C-ALT4.

[124] INV-Y-207 at Table TUBULAR-C-ALT4.

[125] INV-Y-207 at Table TUBULAR-C-ALT4.

[126] INV-Y-207 at Table TUBULAR-C-ALT4.

[127] INV-Y-207 at Table TUBULAR-C-ALT4.

[128] INV-Y-207 at Table TUBULAR-C-ALT4.

[129] INV-Y-207 at Table TUBULAR-C-ALT4.

during the period of investigation. Despite an overall growth in demand of 22.7 percent during the period between 1996 and 2000, the industry's production only increased by 7.3 percent during that period.[130] Significantly the domestic industry's production fell from 6.3 million tons in 1997 to 5.8 million tons in 1999 despite growth in demand.[131] As a result of this loss of production, the industry's capacity utilization rates declined from 1997 to 1999.[132] Inventories held compared to total shipments fluctuated throughout the period of investigation.[133] These trends show an idling of productive facilities over a number of years even in periods of strong demand. On the whole, I believe this evidence indicates that the industry has experienced a significant idling of its productive facilities during the period of investigation.

I further find that a significant number of firms have been unable to carry out domestic production operations at a reasonable level of profit during the period of investigation. From 1996 to 2000, the domestic industry experienced its most serious decline in profitability levels from 1997 to 2000.[134] The industry's operating income fell consistently and significantly from 1997 to 2000, decreasing from $339 million to $158 million.[135] The industry's operating margin followed the same trend, declining from 8.7 percent to 4.6 percent.[136] In light of the consistent and significant declines in the industry's operating income, I find that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

I also find that the industry experienced significant unemployment and underemployment during the period of investigation. While demand was strong from 1997 to 1999, the number of production-related workers, the hours worked, wages paid, productivity, and hourly wages fell.[137] While there was some recovery in 2000, these indicators are still lower than their 1997 levels.[138] Despite strong demand between interim 2000 and 2001, the labor indicators are mixed.[139] Thus, the industry experienced a loss of employment during the period of investigation.

Finally, the other trade and financial data for the industry also indicate that the industry producing welded tubular products was seriously injured during the period of investigation. The market share of the industry declined by 10.1 percent during the period from 1996 to 2000, falling from a 76.2 percent share in 1996 to a 69.8 percent share in 1998, and then again from a 74.7 percent share in 1999 to a mere 66.1 percent share in 2000.[140] The industry's net commercial sales followed trends similar to production.[141] Domestic shipments also followed similar trends except 1999.[142] In order to take advantage of strong U.S. demand in 1999, the industry shifted export shipments to domestic shipments,

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[130] INV-Y-207 at Table TUBULAR-C-ALT4.

[131] INV-Y-207 at Table TUBULAR-C-ALT4.

[132] INV-Y-207 at Table TUBULAR-C-ALT4.

[133] INV-Y-207 at Table TUBULAR-C-ALT4.

[134] INV-Y-207 at Table TUBULAR-C-ALT4.

[135] INV-Y-207 at Table TUBULAR-C-ALT4.

[136] INV-Y-207 at Table TUBULAR-C-ALT4.

[137] INV-Y-207 at Table TUBULAR-C-ALT4.

[138] INV-Y-207 at Table TUBULAR-C-ALT4.

[139] INV-Y-207 at Table TUBULAR-C-ALT4.

[140] INV-Y-207 at Table TUBULAR-C-ALT4.

[141] INV-Y-207 at Table TUBULAR-C-ALT4.

[142] INV-Y-207 at Table TUBULAR-C-ALT4.

because it was unable to increase production.[143] The industry was unable to make significant improvements in its productive facilities as capital expenditures fell from $132.4 million in 1998 to $66 million in 2000 with depreciation reaching $113.9 million in 2000.[144] In interim 2001, capital expenditures fell another 40.8 percent.[145]

In sum, the financial and trade indicia of the welded industry show an industry in serious decline. The industry lost 10.1 percentage points of market share during the period of investigation and experienced a continuing and serious decline in its profitability levels.[146] The industry's production levels and capacity utilization rates fell during the period, indicating that the industry suffered serious injury during the period. Furthermore, the employment levels fell significantly during the period of investigation. Accordingly, I find that, on the whole, the welded tubular products industry is seriously injured.

4. *Causation*

Finding. I find that the increased imports of welded tubular products are a substantial cause of serious injury to the domestic industry.

I find first that the import increases between 1996 and 2000 had a serious adverse impact on the production levels, shipments, commercial sales and market share of the domestic industry. The quantity and market share of imports both increased well beyond the pace of demand increases from 1996 to 1998, and by 30.9 percent from 1999 to 2000 when apparent consumption dropped by 2.1 percent.[147] While imports retracted from 1998 to 1999 somewhat, the industry was so injured that it had to shift export shipments to commercial shipments to take advantage of the strongest demand during the period of investigation.[148] Surges of imports from 1996 to 1998 and 1999 to 2000 prevented the domestic industry from taking advantage of strong domestic demand.[149] Capacity utilization was at its lowest levels in 1999 and 2000 when domestic demand was strong.[150] Operating income consistently fell during the POI, showing the effects of the double surge of imports. While domestic capacity increased during the period, the domestic industry was not able to increase production.[151] In sum, the import increases that occurred during the period clearly had a serious adverse impact on the production volumes, sales levels, sales revenues and market share of the industry during the period.

The record also indicates that imports seriously depressed and suppressed domestic prices of welded tubular products during the period of investigation. The record of this investigation indicates that price is an important part of the purchasing decision[152] and that imports consistently and significantly undersold the domestic merchandise throughout the period of investigation, with imports of the price comparison product underselling domestic merchandise in 123 of the 147 possible quarterly comparisons

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[143] INV-Y-207 at Table TUBULAR-C-ALT4.

[144] INV-Y-207 at Table TUBULAR-C-ALT4. CR and PR at Tables T-20 to T-21.

[145] INV-Y-207 at Table TUBULAR-C-ALT4.

[146] INV-Y-207 at Table TUBULAR-C-ALT4.

[147] INV-Y-207 at Table TUBULAR-C-ALT4.

[148] INV-Y-207 at Table TUBULAR-C-ALT4.

[149] INV-Y-207 at Table TUBULAR-C-ALT4.

[150] INV-Y-207 at Table TUBULAR-C-ALT4.

[151] INV-Y-207 at Table TUBULAR-C-ALT4.

[152] CR and PR at Table T-53.

at underselling margins of up to 29.2 percent.[153] Most of these underselling margins were highest in 1999 to 2000 when demand was at its strongest.[154] Even though the average unit price of domestic shipments shows the same trend as cost of goods sold, the average unit price was lower in 2000 than 1996 even though demand was stronger and the cost of good sold were higher.[155] Thus, imports were the cause of the price depression or suppression on the domestic prices of welded tubular products.

In sum, I find that increased quantities of imports coupled with significant underselling during the period were a substantial cause of the declines in the industry's trade and financial condition during the period.

In light of the foregoing, I conclude that increased imports of welded tubular products are a substantial cause, and a cause not less important than any other cause, of serious injury to the domestic industry producing these products. Accordingly, I find that the increased imports are a substantial cause of serious injury to the domestic industry.

5. *Findings with Respect to NAFTA Imports*

Finding. *Canada.* I find that imports from Canada did not contribute importantly to the serious injury suffered by the domestic industry. While Canadian imports were among the top five sources of imports in 2000[156], they did not follow the same trend as the majority of imports.[157] Between 1996 and 1997, when other imports increased by 38.7 percent, Canadian imports were steady.[158] From 1997 to 1998 and 1999 to 2000, they increased at a slower rate than other imports.[159] In addition, imports from Canada fell between interim 2000 and 2001 when other imports increased dramatically.[160] Accordingly, I find that Canada did not contribute importantly to the serious injury being suffered by the industry.

Mexico. I find that imports of seamless tubular products from Mexico did not contribute importantly to the serious injury suffered by the domestic industry. While Mexican imports were among the top five sources imports in 2000[161], they did not follow the same trend as the majority of imports.[162] Mexican imports show a slowing of growth from 1998 to 1999 while other imports were surging, and a drop in imports during interim period, as other imports increased.[163] In addition, average unit values of Mexican imports increased by 23 percent during the period of investigation.[164] Accordingly, I find that Mexico did not contribute importantly to the serious injury being suffered by the industry.

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[153] CR and PR at Tables T-65 and T-66.

[154] CR and PR at Tables T-58 to T-60.

[155] INV-Y-207 at Table TUBULAR-C-ALT4.

[156] INV-Y-180.

[157] INV-Y-207 at Table TUBULAR-C-ALT4.

[158] INV-Y-207 at Table TUBULAR-C-ALT4.

[159] INV-Y-207 at Table TUBULAR-C-ALT4.

[160] INV-Y-207 at Table TUBULAR-C-ALT4.

[161] INV-Y-180.

[162] INV-Y-207 at Table TUBULAR-C-ALT4.

[163] INV-Y-207 at Table TUBULAR-C-ALT4.

[164] INV-Y-207 at Table TUBULAR-C-ALT4.

E. Carbon and Alloy Fittings, Flanges, and Tool Joints

I find that carbon and alloy fittings, flanges, and tool joints("fittings") are being imported in such quantities as to be a substantial cause of serious injury to the domestic industry.

1. *Conditions of Competition*

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported welded fittings in the U.S. market.

First, demand generally increased from 1996 to 2000, with a slight contraction during the 1998 to 1999 period.[165] Apparent U.S. consumption of fittings increased from 295.9 thousand tons in 1996 to 329.5 thousand tons in 1998, and increased from 311.4 thousand tons in 1999 to 324.7 thousand tons in 2000.[166] The level of consumption between 1996 and 2000 constituted an increase of 9.7 percent.[167] Even though the overall economy declined in 2001, apparent consumption increased by 10.4 percent between interim 2000 and interim 2001.[168] I also would note that the demand for fittings is affected by the demand for welded and seamless tubular products.

Second, capacity utilization fell consistently from 1996 to 1999 at a time when demand was growing, and also fell in the interim period when demand increased.[169] Capacity utilization of fittings producers decreased from 76.3 percent in 1996 to 61.4 percent in 1999.[170] Even though apparent consumption increased by 10.4 percent, capacity utilization fell by 5.2 percent between interim 2000 and interim 2001.[171]

Third, imports gained market share from 32.9 percent in 1997 to 41.7 percent in 2000.[172] Between interim 2000 and 2001, import market share remained relatively stable, increasing only modestly.[173]

2. *Increased Imports*

Finding. I find that there were increased imports of fittings over the period of investigation.

In terms of quantity, imports of fittings increased by 30.8 percent during the five full years of the period of investigation, growing from 103.5 thousand tons in 1996 to 135.4 thousand tons in 2000.[174] This increase of imports was steady throughout the period of investigation with two surge periods: 1997 to 1998; and 1999 to 2000.[175] The quantity of imports increased by 32.1 percent between interim 2000

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[165] CR and PR at Table T-C-6.

[166] CR and PR at Table T-C-6.

[167] CR and PR at Table T-C-6.

[168] CR and PR at Table T-C-6.

[169] CR and PR at Table T-C-6.

[170] CR and PR at Table T-C-6.

[171] CR and PR at Table T-C-6.

[172] CR and PR at Table T-C-6.

[173] CR and PR at Table T-C-6.

[174] CR and PR at Table T-C-6.

[175] CR and PR at Table T-C-6.

and 2001.[176] The ratio of imports of fittings to domestic production also increased during the period, growing from 50.5 percent in 1996 to 69.7 percent percent in 2000.[177] This ratio continued to increase between the interim periods, rising from 59.4 percent in interim 2000 to 88.8 percent in interim 2001.[178] Accordingly, I find that imports are in increased quantities and that the first statutory criterion is satisfied.

3. *Serious Injury*

Finding. I find that the domestic fittings industry is seriously injured; that is, I find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is seriously injured, I have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

I first find that there has been a significant idling of productive facilities in the domestic industry during the period of investigation. Despite an overall growth in demand of 9.7 percent during the period between 1996 and 2000, the industry's production fell by 5.3 percent.[179] The domestic industry's production fell from 220.8 thousand tons in 1997 to 186.5 thousand tons in 1999 increasing slightly to 194.2 tons in 2000.[180] Production fell again between interim 2000 and 2001.[181] As a result of these production declines, the industry's capacity utilization rates declined from 1996 to 1999, and again between interim periods.[182] Inventories held compared to total shipments followed the same pattern as capacity utilization.[183] These trends show an idling of productive facilities over a number of years even in periods of strong demand. On the whole, I believe this evidence indicates that the industry has experienced a significant idling of its productive facilities during the period of investigation.

I further find that a significant number of firms have been unable to carry out domestic production operations at a reasonable level of profit during the period of investigation. During the period of investigation, the domestic industry experienced a serious decline in its profitability levels from 1996 to 2000. The industry's operating income fell consistently and significantly from 1996 to 2000, decreasing from $37.3 million to a loss of $216 thousand.[184] The industry's operating margin followed the same trend, declining from an earnings margin of 8.9 percent to a loss of 0.1 percent.[185] In light of the consistent and significant declines in the industry's operating income, I find that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

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[176] CR and PR at Table T-C-6.

[177] CR and PR at Table T-14

[178] CR and PR at Table T-14.

[179] CR and PR at Table T-C-6.

[180] CR and PR at Table T-C-6.

[181] CR and PR at Table T-C-6.

[182] CR and PR at Table T-C-6.

[183] CR and PR at Table T-C-6.

[184] CR and PR at Table T-C-6.

[185] CR and PR at Table T-C-6.

I also find that the industry experienced significant unemployment and underemployment during the period of investigation. Even though demand fell 1.2 percent between 1998 and 2000, the number of its production-related workers fell more dramatically by 6 percent from 3,112 to 2,925. During this period between 1998 and 2000, the hours worked, wages paid, and hourly wages all fell.[186] Despite strong demand between interim 2000 and 2001, the labor indicators dropped again.[187] Thus, the industry experienced the loss of employment during the period of investigation.

Finally, the other trade and financial data for the industry also indicate that the industry producing fittings was seriously injured during the period of investigation. The market share of the industry declined by 6.7 percent during the period from 1996 to 2000, falling from 67.1 percent in 1997 to 58.3 percent in 2000.[188] The industry's net commercial sales and domestic shipments both fell from 1997 and 2000.[189] Domestic shipments also followed similar trends except 1999. In order to take advantage of strong demand in the U.S. market in 1999, the industry shifted export shipments to domestic shipments, as it could not increase production to do so.[190] The industry was unable to make significant improvements in its productive facilities as capital expenditures fell from $19.3 million to $11.3 million.[191]

In sum, the financial and trade indicia of the fittings industry show an industry in serious decline. The industry lost 6.7 percentage points of market share during the period of investigation and experienced a continuing and serious decline in its profitability levels.[192] The industry's production levels and capacity utilization rates fell during the period, indicating that the industry suffered serious injury during the period. Furthermore, the employment levels fell significantly during the period of investigation. Accordingly, I find that, on the whole, the fittings industry is seriously injured.

4. *Causation*

Finding. I find that the increased imports of welded tubular products are a substantial cause of serious injury to the domestic industry.

I find first that the import increases during the POI had a serious adverse impact on the production levels, shipments, commercial sales and market share of the domestic industry.[193] The quantity and market share of imports both increased well beyond the pace of demand increases over the period.[194] Specifically imports increased by 11.2 percent from 1997 to 1998 when apparent consumption only increased by 3.0 percent, and by 15.3 percent between 1999 and 2000 while apparent consumption increased only by 4.3 percent.[195] Even though demand fell between 1998 and 1999, imports increased

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[186] CR and PR at Table T-C-6.

[187] CR and PR at Table T-C-6.

[188] CR and PR at Table T-C-6.

[189] CR and PR at Table T-C-6.

[190] CR and PR at Table T-C-6.

[191] CR and PR at Table T-C-6.

[192] CR and PR at Table T-C-6.

[193] CR and PR at Table T-C-6.

[194] CR and PR at Table T-C-6.

[195] CR and PR at Table T-C-6.

slightly.[196] These surges of imports which outpaced demand prevented the domestic industry from taking advantage of strong domestic demand.[197] Significant idling of facilities occurred as the industry lost capacity from 1999 to 2000. Operating income consistently fell showing the effects of the constant increase in imports. In sum, the import increases that occurred during the period clearly had a catastrophic impact on the production volumes, sales levels, sales revenues and market share of the industry during the period.

The record also indicates that imports seriously depressed and suppressed domestic prices of fittings during the period of investigation. The record of this investigation indicates that price is an important part of the purchasing decision[198] and that imports consistently and significantly undersold the domestic merchandise throughout the period of investigation, with imports of the price comparison product underselling domestic merchandise in all 40 possible quarterly comparisons at underselling margins as large as 25.8 percent.[199] Most of these underselling instances were highest in 2000 when demand was at its strongest, and the domestic industry was at its weakest.[200] Average unit prices of domestic shipments fell throughout the period of investigation even though demand was stronger and the cost of goods sold increased between 1996 and 1998.[201] Thus, imports were the cause of the price depression or suppression on the domestic prices of fittings.

In sum, I find that increased quantities of imports coupled with significant underselling during the period were a substantial cause of the declines in the industry's trade and financial condition during the period.

In light of the foregoing, I conclude that increased imports of fittings are an important cause, and a cause not less important than any other cause, of serious injury to the domestic industry producing these products. Accordingly, I find that the increased imports are a substantial cause of serious injury to the domestic industry.

5. *Findings with Respect to NAFTA Imports*

Finding. *Canada.* I find that imports from Canada did not contribute importantly to the serious injury suffered by the domestic industry. Canadian imports were among the top five sources of imports in 2000.[202] But these imports accounted for only 12 percent of total imports, and these imports only increased 9.9 percent between interim 2000 and 2001 while other imports increased 38.8 percent.[203] Accordingly, I find that Canada did not contribute importantly to the serious injury being suffered by the industry.

Mexico. I find that imports of fittings from Mexico did not contribute importantly to the serious injury suffered by the domestic industry. While Mexican imports were among the top five sources of

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[196] CR and PR at Table T-C-6.

[197] CR and PR at Table T-C-6.

[198] CR and PR at Table T-53.

[199] CR and PR at Table T-67.

[200] CR and PR at Table T-61.

[201] CR and PR at Table T-C-6.

[202] INV-Y-180.

[203] CR and PR at Table T-C-6.

imports in 2000[204], they did not follow the same trend as the majority of imports.[205] Mexican imports fell by 32.7 percent from 1998 to 2000 when other imports increased by 15.6 percent.[206] Accordingly, I find that Mexico did not contribute importantly to the serious injury being suffered by the industry.

VI. STAINLESS AND TOOL STEEL PRODUCTS

A. Classes of Articles which are Similar to, or Directly Competitive, with products which are subject to investigation

1. *Finding*

I find that there are six classes of articles within the stainless steel and tool steel product grouping, which are similar to imported products subject to investigation. These classes are: (i) stainless semi-finished steel, stainless steel plate, stainless steel bar, stainless steel rod, and tool steel; (ii) stainless steel wire and rope; (iii) stainless steel woven cloth; (iv) stainless steel welded tubular products; (v) stainless steel seamless tubular products; and (vi) stainless steel fittings and flanges.

2. *Arguments of the Parties*

The United Steelworkers of America ("USWA") argues that the Commission should find that all of the stainless steel products covered by the scope of this investigation are part of the same industry.[207] The USWA asserts that all covered stainless products are produced from the semifinished stainless products included within the scope of this investigation. In this regard, the USWA contends that stainless and tool steel products are defined by their metallurgical composition, which is set at the melt stage of the production process. They assert, therefore, that all stainless producers are affected by the loss of any sale at any stage of the production process for stainless steel. Accordingly, the USWA contends that the interrelationship of these products at the production stage indicates that these products are all produced by the same industry.[208]

Some of the domestic producers and respondent parties argue that the Commission should define the classes of articles for stainless steel to consist of as many as ten separate classes. In essence, these parties argue that these ten product categories are sufficiently different from one another in terms of their manufacturing processes, physical characteristics, end uses, customs treatment, and channels of distribution to treat them as separate classes.

The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers argues that carbon and stainless steel wire rope should be found to be one class of articles.[209] Additionally, the Committee on Pipe and Tube Imports, an association of stainless and carbon pipe and tube producers, argues that the Commission should find that stainless welded tubular products and stainless fittings are part of the same class. The Committee asserts that welded tubular products and fittings/flanges are both generally made to specification and are used together in all applications. The Committee contends that

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[204] INV-Y-180.

[205] CR and PR at Table T-C-6.

[206] CR and PR at Table T-C-6.

[207] USWA Prehearing Injury Brief at 1.

[208] USWA Prehearing Injury Brief at 3-6.

[209] Domestic Steel Wire Rope Manufacturers Prehearing Injury Brief at 6 n.7.

many types of fittings/flanges are made from welded pipe and therefore have the same basic chemical properties and they are both sold primarily from stock.[210]

Finally, three parties argue that the Commission should define the classes of articles in this investigation more narrowly than the classes we have described above. The foreign tool steel producer, Eramet, argues in its brief that high speed steel, a form of tool steel, should be a separate class of article from other forms of tool steel.[211] Babcock & Wilcox, a domestic purchaser of seamless tubular products, argues that seamless boiler tubes, whether or not made of stainless or carbon steel, constitute a separate class of article from seamless tubular products.[212] Also, the domestic stainless flange producer Gerlin, argues that stainless steel flanges and stainless steel forgings should be found to be different classes in this investigation.[213]

3. *Analysis*

I find the USWA's argument that all stainless steel products should be found to be one class of articles quite compelling. But I will further discuss why I find that certain products should be considered separate classes of similar or directly competitive articles in this investigation.

a. The USWA's Argument for One Like or Directly Competive Product Covering All Stainless and Tool Steel Products

While I do not find that all stainless steel products constitute one class of articles, as urged by the USWA, their basic argument forms the foundation of my analytical framework in that the products share physical properties and end uses, customs treatment, manufacturing processes and employees, and marketing channels.

As a starting point, stainless steel products share the same basic chemical composition in that they all share the requisite levels of chromium and carbon.[214] As a result of this chemical composition, stainless steel products are recognized for their high levels of corrosion-resistance, heat resistance, and/or ease of maintenance.[215] All of these products are used in industries, such as petrochemical, chemical, dairy, restaurant, pharmaceutical, and marine products, that require such performance characteristics in certain end uses.[216]

Second, these products share similar manufacturing processes. The manufacturing process of all stainless steel begins with production of molten stainless steel in electric furnaces, which, unlike carbon and alloy steel, is refined through either an argon-oxygen-decarburization (AOD) furnace or similar

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[210] In its posthearing brief, however, it stated that it would not object to a decision to treat the two products as separate like products. Committee on Pipe and Tube Imports Posthearing Injury Brief at 10.

[211] Eramet Posthearing Injury Brief at 2-4.

[212] Prehearing Injury Brief of Babcock at 3-6.

[213] Gerlin Prehearing Injury Brief at 4-9. It asserts that imports of forgings, the semifinished product used to produce fittings and flanges, are the only forgings available to non-integrated flange manufacturers like Gerlin. Without a reliable supply, it asserts, it would be driven from business.

[214] HTS Chapter 72, note 1(c). CR at ST-1. PR at ST-1.

[215] *See* CR at ST-3 to ST-7.

[216] *See* CR at ST-3 to ST-7.

technology.[217] The first solid form of stainless steel is an ingot, billet, bloom, or slab.[218] From these initial forms, plate, bar, rod, and tool steel are formed.

For example, the production of stainless steel bar and stainless steel rod are highly interconnected. Stainless steel rod is produced on the same bar mill rolling lines as small bars[219]. In fact, the smaller sizes of stainless bar are often produced by cutting stainless steel rod to length and straightening it. Additionally, there has been some evidence to show that when duties have been emplaced on either stainless steel bar or on stainless steel rod, imports of the other article increased.[220] This continuum of production causes price and volume effects on any one stainless steel product to affect all other stainless steel products.

Third, there is an overlap of production facilities, employees and processes across the basic stainless steel product categories (such as bar, wire and rod). For example, all of the producers of stainless steel plate in 2000, except a small producer, ***, produced significant amounts of other stainless steel products.[221] There are eight corporations which produced at least three of the product subcategories. Amongst these producers, *** is the largest producer of stainless steel bar and stainless steel rod in the United States and was one of the three largest producers of stainless steel wire in the United States in 2000.[222] In addition, *** produced a significant amount of tool steel and some stainless steel slab/ingot products.[223] ***, the largest producer of stainless steel slabs/ingots, second largest producer of tool steel, and second largest producer of stainless steel plate in the United States in 2000, also produced significant amounts of stainless steel bar through its subsidiary, ***.[224] In 2000, these integrated producers constituted 46 percent of stainless steel slab/ingot production, 84 percent of stainless steel plate production, 62 percent of stainless steel bar production, 87 percent of stainless steel rod production, and 49 percent of tool steel production.[225]

While the scope of the investigation does not cover stainless steel sheet and strip products, the stainless steel and tool steel products that are covered are still highly intertwined. During the hearing, the stainless steel producers testified that these products were so integrated that they would be unable to meet their cost of capital if relief were granted to one part of the industry and not the other.[226] But there are differences in certain later stage products such as stainless steel tubular products in manufacturing processes, end uses, and market characteristics that are significant enough to constitute separate classes of articles.

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[217] CR and PR at ST-1.

[218] CR and PR at ST-1.

[219] CR and PR at ST-1

[220] Injury Hearing Transcript at 1996(Testimony of Mr. Pendelton).

[221] CR and PR at Table ST-1.

[222] CR and PR at Table ST-1.

[223] CR and PR at Table ST-1.

[224] CR and PR at Table ST-1.

[225] CR and PR at Table ST-1.

[226] TR 1994-1995(Testimony of Mr. Hartquist and Mr. McElwee).

b. Stainless Steel Wire and Wire Rope

I find that stainless steel wire[227] and wire rope is a separate class of article from other stainless steel products. A majority of wire producers (accounting for 63 percent of domestic production in 2000) reported no production of any other stainless steel product except stainless steel wire rope.[228] All producers of stainless steel wire rope were also producers of wire.[229]

Moreover, stainless steel wire has significantly different physical characteristics and end uses than other stainless steel products. Unlike other stainless steel products, stainless steel wire is a cold-reduced and coiled long mill product. Stainless steel wire is produced by cold-finishing coiled and annealed hot rolled wire rod, which is reheated and passed several times through a wire drawing line that reduces the rod to the smaller thicknesses that distinguish wire from rod.[230] Through this cold-rolling process, the wire is reduced to the thickness necessary for its use in a variety of downstream products, such as springs, wire mesh, wire strand, wire rope, welding wire, and medical instruments, which are not end uses of stainless rod, bar, or other stainless products.[231]

Stainless wire rope production consists of stranded stainless wire (two or more wires twisted together).[232] While previous Title VII cases are persuasive that stainless steel and carbon and alloy wire rope are one like product, the staff reports in these cases have information both in support of and against combining the two product types.[233] These cases did not include strands, cordage, and other cables.[234] Stainless steel wire rope uses different feedstock than carbon and alloy wire.[235] In the current investigation, purchasers stated that they cannot substitute carbon for stainless steel wire rope for safety reasons.[236]

Finally, the record indicates that stainless steel wire and wire rope are sold in different channels of trade than other stainless steel products. Stainless steel wire and wire rope are sold primarily to end users, with nearly 80 percent of domestic shipments of wire being sold in this channel of distribution.[237] While certain of the other stainless steel products are also sold primarily to end users, most other products are sold either in equal amounts to end users or distributors or primarily to the distributor

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[227] Stainless steel wire is produced from wire rod on a wire redrawing line. It is used to make a multitude of wire products, including springs, wire mesh, wire rope, welding wire, medical instruments, and fasteners.

[228] CR and PR at Table ST-1.

[229] CR and PR at Table ST-1.

[230] *Stainless Steel Round Wire*, USITC Pub. 3194 at I-6.

[231] *Stainless Steel Round Wire*, USITC Pub. 3194 at I-6-I-7.

[232] CR and PR at ST-3.

[233] *Steel Wire Rope from China and India*, USITC Pub. No. 3406 (March 2001); *Certain Steel Wire Rope from Japan, Korea, and Mexico*, USITC Pub. No. 3259 (Dec. 1999); *Steel Wire Rope from the Republic of Korea and Mexico*, USITC Pub. No. 2615 (March 1993).

[234] *Steel Wire Rope from China and India*, USITC Pub. No. 3406 (March 2001); *Certain Steel Wire Rope from Japan, Korea, and Mexico*, USITC Pub. No. 3259 (Dec. 1999); *Steel Wire Rope from the Republic of Korea and Mexico*, USITC Pub. No. 2615 (March 1993).

[235] *Steel Wire Rope from the Republic of Korea and Mexico*, USITC Pub. No. 2615 at I-5 to 6 and note 8(March 1993).

[236] Purchaser Questionnaire Response of *** at 5. Purchaser Questionnaire Response of *** at 5.

[237] CR and PR at Table ST-21.

segment of the market.[238] [239]

Accordingly, I find that stainless steel wire and wire rope are a separate like product from the other covered stainless steel products. In this regard, I believe the record indicates that there are substantial physical, end use, and production-related differences between stainless steel wire and other stainless steel products that warrant treating stainless wire as a different like product than the other stainless steel products.

c. Stainless Steel Cloth, Seamless Tubular Products, Welded Stainless Steel Tubular Products, and Stainless Steel Fittings and Flanges

I join the majority views with regards to the like product discussion of stainless steel woven cloth, stainless steel welded tubular products, stainless steel seamless tubular products, and stainless steel fittings and flanges.

B. Domestic Industry

In past safeguard determinations, the Commission has stated that where "there is domestic production of one like or directly competitive product, it will find a single domestic industry and evaluate the impact of the pertinent imports on the facilities and workers producing that product."[240] Having found that there are six separate classes of articles similar or directly competitive with imported articles subject to investigation in this investigation with respect to the stainless steel product grouping, I find that there are six domestic stainless steel industries, consisting of (i) domestic producers of stainless steel semi-finished steel, stainless steel plate, stainless steel bar, stainless steel rod, and tool steel; (ii) stainless steel wire and rope; (iii) stainless steel woven cloth; (iv) stainless steel welded tubular products; (v) stainless steel seamless tubular products; and (vi) stainless steel fittings and flanges.

C. Stainless Steel Semi-finished Steel, Stainless Steel Plate, Stainless Steel Bar, Stainless Steel Rod, and Tool Steel

I find that stainless semi-finished steel, stainless steel plate, stainless steel bar, stainless steel rod, and tool steel ("early stage products") are being imported in such quantities as to be a substantial cause of serious injury to the domestic industries producing these early stage products.

1. *Conditions of Competition*

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported early stage products in the U.S. market.

First, demand grew steadily throughout the period of investigation except between 1997 and

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[238] E.g., CR and PR at Tables ST-16-ST-26.

[239] In addition, stainless wire is treated differently than other stainless products for customs purposes. Stainless wire is classified under heading 7223 of the HTS, which does not cover any of the other stainless products included in the scope of this investigation. Bar and rod are classified in headings 7221 and 7222 of the HTS.

[240] *Extruded Rubber Thread*, Inv. No. TA-201-72, USITC Pub. 3375 at I-8 (December 2000).

1998.[241] Apparent U.S. consumption of early stage products increased from *** in 1996 to *** tons in 1998 then jumped to *** tons in 1999 and to *** tons in 2000. This level of consumption was *** percent larger than in 1996.[242] As the overall economy declined in 2001, apparent consumption declined by *** percent between interim 2000 and interim 2001.[243]

Second, the domestic industry became more concentrated during the period of investigation. In 1997, ***, the largest domestic producer of bar and rod during the period of investigation,[244] purchased ***, the fifth largest producer of stainless steel bar and second largest producer of stainless steel rod during the period.[245] In addition, ***, the sixth largest bar producer and third largest rod producer in 2000,[246] shut down its stainless steel operations in June.[247] With the acquisition of *** in 1997 and the exit of *** from the market, Carpenter/Talley and Charter Wire are the only remaining significant wire rod producers,[248] and there are only four remaining significant domestic producers of stainless steel bar in the market: ***.

Third, the price of early stage products are directly affected by the price of nickel.[249] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their stainless steel bar products whenever the price of nickel reaches a certain level.[250] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through interim 2001.[251] The price of domestic stainless steel early stage products followed this trend somewhat during the period of investigation, with average unit values of domestic shipments and sales declining through the end of 1999, recovering in 2000, and then declining in interim 2001.[252]

2. *Increased Imports*

Finding. I find that there were increased imports of early stage products over the period of investigation.

In terms of quantity, imports of early stage products increased by 99.8 percent during the five full years of the period of investigation, growing from 354 thousand tons in 1996 to 707.2 thousand tons in 2000.[253] The largest single increase in import quantity occurred between 1998 and 1999.[254] Although the quantity of imports declined between interim 2000 and 2001, dropping from 383.4 thousand tons to

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[241] INV-Y-209 at Table STAINLESS-ALT-4.

[242] INV-Y-209 at Table STAINLESS-ALT-4.

[243] INV-Y-209 at Table STAINLESS-ALT-4.

[244] *** CR and PR at Table ST-1.

[245] *** CR and PR at Table ST-1.

[246] CR and PR at Table ST-1.

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[248] Injury Hearing Transcript at 2020 (Testimony of Mr. McElwee).

[249] CR at ST-95 to ST-96. PR at ST-70 to ST-71.

[250] CR at ST-95 to ST-96. PR at ST-70 to ST-71.

[251] CR at ST-95 to ST-96. PR at ST-70 to ST-71.

[252] CR and PR at Tables ST-21, ST-90, & ST-C-7.

[253] INV-Y-209 at Table STAINLESS-ALT-4.

[254] INV-Y-209 at Table STAINLESS-ALT-4.

313 thousand tons (18.4 percent),[255] this decline occurred during a period when there was also a substantial decline in apparent domestic consumption (*** percent).[256]

The ratio of imports of early stage products to domestic production also increased dramatically during the period, growing from *** percent in 1996 to *** percent in 2000.[257] Furthermore, the ratio of imports to domestic production increased from *** percent in interim 2000 to *** percent in interim 2001.[258]

In sum, imports of early stage products increased significantly, both in quantity terms and as a ratio to domestic production, between 1996 and 2001. Although, there was a decline in imports in terms of quantity, the ratio to domestic production between interim 2000 and interim 2001 increased. Accordingly, I find that imports are in increased quantities, and that the first statutory criterion is satisfied.

3. *Serious Injury*

Finding. I find that the domestic stainless steel early stage products industry is seriously injured; that is, I find that there has been a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is seriously injured, I have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

I first find that there has been a significant idling of productive facilities in the domestic industry during the period of investigation. Despite an overall growth in demand of *** percent during the period between 1996 and 2000, the industry's production increased only *** percent during that period, with production falling from *** tons in 1997 to *** tons in 1998, and falling again from *** tons in 1999 to *** tons in 2000.[259] The industry's production levels declined by an additional *** percent in interim 2001.[260] As a result of these production declines, the industry's capacity utilization rates declined in 1998 and again in 2000, dropping from *** percent in 1997 to *** percent in 1998, from *** percent in 1999 to *** percent in 2000, and finally to *** percent in interim 2001.[261] Following declines in production, the industry's inventory levels fell in 1998, and again in 2000.[262] I also note that, during the period of investigation, five domestic producers *** shut down some or all of their stainless steel operations.[263] On the whole, I believe this evidence indicates that the industry has experienced a significant idling of its productive facilities during the period of investigation.

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[255] INV-Y-209 at Table STAINLESS-ALT-4.

[256] INV-Y-209 at Table STAINLESS-ALT-4.

[257] INV-Y-209 at Table STAINLESS-ALT-4.

[258] INV-Y-209 at Table STAINLESS-ALT-4.

[259] INV-Y-209 at Table STAINLESS-ALT-4.

[260] INV-Y-209 at Table STAINLESS-ALT-4.

[261] INV-Y-209 at Table STAINLESS-ALT-4.

[262] INV-Y-209 at Table STAINLESS-ALT-4.

[263] *** Posthearing Bar Injury Brief of Carpenter, et al at 17. Posthearing Tool Steel Injury Brief of Latrobe Steel and Allegheny Ludlum, pp. 10-11.

I further find that a significant number of firms have been unable to carry out domestic production operations at a reasonable level of profit during the period of investigation. During the period of investigation, the domestic industry experienced a consistent and serious decline in its profitability levels with a slight recovery in 2000.[264] The industry's operating income fell consistently and significantly from 1996 to 1999, decreasing from *** in 1996 to *** in 1999. Even though there was some recovery of operating income in 2000, it only rose to ***. The industry's operating income then dropped to *** in interim 2001.[265] The industry's operating margin followed the same trend, declining from *** percent in 1996 to *** percent in 1999, *** percent in 2000 and then to its lowest point in the period of investigation, ***, in interim 2001. [266] Moreover, during the period of investigation, the number of firms reporting operating losses grew, increasing from *** firms in 1996 to *** in 1999, *** in 2000, and *** in interim 2001.[267] In light of the consistent and significant declines in the industry's operating income and the growth in the number of firms reporting operating losses over the period, I find that a significant number of firms were unable to carry out production operations at a reasonable level of profit.

I also find that the industry experienced significant unemployment and underemployment during the period of investigation. In particular, the numbers of its production-related workers declined by *** percent during the five full years of the period of investigation, dropping from *** workers in 1996 to *** workers in 1999 with a slight recovery to *** workers in 2000.[268] The number of workers declined by an additional *** percent to *** workers in interim 2001.[269] Wages paid fell by *** percent between 1996 and 2000, and by an additional *** percent between interim 2000 and 2001. Hourly wages fluctuated during the period of investigation; while hours worked fell by *** percent between 1996 and 2000 and by *** percent between interim 2000 and 2001.[270] Although both productivity and hourly wages paid increased during the period, these increases do not, in my view, offset the impact on the industry of the declines in the overall level of workers employed, wages paid, and hours worked during the period.

Finally, the other trade and financial data for the industry also indicate that the industry producing stainless early stage products was seriously injured during the period of investigation. The market share of the industry declined by *** percent during the period from 1996 to 2000, falling from *** percent in 1996 to ***percent in 2000.[271] The industry's net commercial sales declined by *** percent between 1997 and 1998 and again by *** percent between 1999 and 2000.[272] The value of its net sales declined by *** percent between 1996 and 2000.[273] The value of its shipments fell by *** percent between 1996 and 2000, even though the quantity of its shipments rose by *** percent.[274] But both the value of the domestic industry's commercial shipments and its quantity of those shipments fell by ***

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[264] INV-Y-209 at Table STAINLESS-ALT-4.

[265] INV-Y-209 at Table STAINLESS-ALT-4.

[266] INV-Y-209 at Table STAINLESS-ALT-4.

[267] CR and PR at Tables ST-28,ST-29, ST-30, ST-31, & ST-32.

[268] INV-Y-209 at Table STAINLESS-ALT-4.

[269] INV-Y-209 at Table STAINLESS-ALT-4.

[270] INV-Y-209 at Table STAINLESS-ALT-4.

[271] INV-Y-209 at Table STAINLESS-ALT-4.

[272] INV-Y-209 at Table STAINLESS-ALT-4.

[273] INV-Y-209 at Table STAINLESS-ALT-4.

[274] INV-Y-209 at Table STAINLESS-ALT-4.

percent between interim 2000 and interim 2001.[275] The industry was unable to make significant improvements in its productive facilities as capital expenditures fell from *** in 1998 to $43.4 million in 2000 with depreciation reaching *** in 2000.[276] In the interim period of 2001, capital expenditures fell to ***, while depreciation was ***.[277] The domestic industry showed significant declines in cash flow during the period of investigation.[278]

In sum, the financial and trade indicia of the stainless steel early stage products industry show an industry in serious decline. The industry lost nearly *** percentage points of market share during the period of investigation and experienced a continuing and serious decline in its profitability levels. The industry's production levels, capacity utilization rates, and employment levels all fell during the period, indicating that the industry suffered serious injury during the period. Accordingly, I find that, on the whole, the stainless steel early stage products industry is seriously injured.

4. *Causation*

Finding. I find that the increased imports of stainless steel early stage products are a substantial cause of serious injury to the domestic industry.

I find, first, that the import increases between 1996 and 2000 had a serious adverse impact on the production levels, shipments, commercial sales, and market share of the domestic industry. As I described above, both the quantity and the market share of imports increased considerably during the period of investigation, with the quantity of imports increasing by 99.8 percent during the period from 1996 to 2000 and import market share increasing by *** percentage points during that period as well.[279] Despite demand falling in the 1997 -1998 period, imports still increased. Even though demand was at its strongest in 1999, relative import increases outpaced both consumption and U.S. production increases.[280] The industry's production volumes, shipment levels and sales revenues all declined significantly as a result of increases in import volume during the period.[281] In particular, even though consumption increased by *** percent from 1996 to 2000, the industry's production levels increased by only *** during the same period,[282] its net commercial sales increased by only *** percent during that period,[283] and the value of its net commercial sales declined by *** percent during the period.[284] Despite the fact that demand was at its highest in 2000 and higher in 1998 than 1996, the industry's capacity utilization rates fell considerably in 1998 and 2000.[285] Moreover, the industry's share of the market also fell considerably, dropping from an ***percent share in 1996 to a *** percent share in 2000.[286] In sum, the import increases that occurred during the period clearly had a serious adverse impact on production

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[275] INV-Y-209 at Table STAINLESS-ALT-4.

[276] INV-Y-209 at Table STAINLESS-ALT-4. CR and PR at Tables ST-28, ST-29, ST-30, ST-31, & ST-32.

[277] INV-Y-209 at Table STAINLESS-ALT-4. CR and PR at Tables ST-28, ST-29, ST-30, ST-31, & ST-32.

[278] CR and PR at Tables ST-28, ST-29, ST-30, ST-31, & ST-32.

[279] INV-Y-209 at Table STAINLESS-ALT-4.

[280] INV-Y-209 at Table STAINLESS-ALT-4.

[281] INV-Y-209 at Table STAINLESS-ALT-4.

[282] INV-Y-209 at Table STAINLESS-ALT-4.

[283] INV-Y-209 at Table STAINLESS-ALT-4.

[284] INV-Y-209 at Table STAINLESS-ALT-4.

[285] INV-Y-209 at Table STAINLESS-ALT-4.

[286] INV-Y-209 at Table STAINLESS-ALT-4.

volumes, sales levels, sales revenues, and market share of the industry during the period.

The record also indicates that imports seriously depressed and suppressed domestic prices of stainless steel early stage products during the period of investigation. The record of this investigation indicates that price is an important part of the purchasing decision[287] and that imports consistently and significantly undersold the domestic merchandise throughout the period of investigation, with imports of the price comparison product underselling domestic merchandise in 141 of 171 possible quarterly comparisons at underselling margins of up to 51 percent.[288]

I find that this underselling depressed and suppressed domestic prices during the period of investigation. In this regard, although the price of early stage stainless steel products are expected by market participants to track the price of nickel, the record of this investigation shows that the net sales revenues of the domestic industry failed to keep pace with movements in the cost of nickel during the second half of the period of investigation, particularly during the latter half of 1999 and 2000, when the price of nickel increased substantially.[289] In this regard, although the average unit value of the industry's net commercial sales increased in 2000 and interim 2001, it was still lower than 1996 and 1998.[290] The industry's cost of goods sold rose in terms of its net sales revenues from *** percent at the beginning of the POI to *** percent in 1999 with a slight decline to *** in 2000, and was again increasing to *** percent in interim 2001.[291] As a result of these decreasing margins between the industry's cost of goods sold and its net sales values, the industry's operating income levels declined from a profit of *** percent in 1996 to *** percent in 1999, recovering slightly to a profit of *** percent in 2000, and then falling to *** percent in interim 2001.[292] Moreover, the overall declines in the industry's operating levels in the last two-and-a-half years of the period occurred when imports were at their highest market share levels during the period[293] and when imports were consistently underselling the domestic merchandise.[294] I find that consistent and significant price underselling by imports during the latter half of the period of investigation suppressed and depressed domestic prices to a serious degree, despite the fact that nickel prices spiked significantly. In addition the industry's average unit values decreased significantly during this period.

In sum, I find that increased quantities of imports during the period were a substantial cause of the declines in the industry's trade and financial condition during the period. In making this finding, I considered the argument of the respondent, Eurofer, that the adverse changes in the industry's condition during the latter half of the period were caused primarily by a downturn in demand in late 2000 and in 2001, as well as an increase in energy costs during the same period. Although I agree with Eurofer that there was a downturn in demand and an increase in energy costs during that period, the record indicates that there were substantial declines in the industry's production, sales, and profitability levels during the years prior to 2000 and 2001. In particular, I note that the industry's market share, employment levels and profitability levels all declined considerably during the period from 1996 to 2000 in the face of increasing import volumes. Given this, the declines in the industry's condition in 2000 and interim 2001 cannot simply be attributed to demand declines and energy cost increases, especially when one considers

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[287] INV-Y-212 at 93-97.

[288] CR and PR at Tables ST-97, ST-98, ST-99, ST-100, & ST-101.

[289] CR at ST-95-96. PR at ST-70-71. INV-Y-209 at Table STAINLESS-ALT-4.

[290] INV-Y-209 at Table STAINLESS-ALT-4.

[291] INV-Y-209 at Table STAINLESS-ALT-4.

[292] INV-Y-209 at Table STAINLESS-ALT-4.

[293] INV-Y-209 at Table STAINLESS-ALT-4.

[294] CR and PR at Tables ST-97, ST-98, ST-99, ST-100, & ST-101.

the fact that import volumes and market share both increased significantly in 2000. On the contrary, I find that the industry's inability to maintain its operating profits in the face of these changes is a direct result of the increasing share of the market obtained by imports and their consistent underselling of domestic merchandise during the period.

In light of the foregoing, I conclude that increased imports of stainless steel early stage products are an important cause, and a cause not less important than any other cause, of serious injury to the domestic industry producing these products. Accordingly, I find that the increased imports are a substantial cause of serious injury to the domestic industry.

5. *Findings with Respect to NAFTA Imports*

Finding. *Canada.* I find that imports from Canada did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. In this regard, I note that while Canadian imports accounted for 27 percent of total imports in 1996, they only constituted 10.6 percent of total imports in 2000.[295] Furthermore, the Canadian imports declined by 20.3 percent from 1996 to 2000.[296] Accordingly, I find that Canada did not contribute importantly to the serious injury being suffered by the industry.

Mexico. I find that imports of stainless steel early stage products from Mexico did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. In this regard, the record shows that Mexico imported less than 1 percent of total imports throughout the period of investigation.[297] In fact, Mexican imports were lower in 2000 than 1996. Accordingly, I find that Mexico did not contribute importantly to the serious injury being suffered by the industry.[298]

D. Stainless Steel Wire and Wire Rope

I find that stainless steel wire and wire rope ("wire products") are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic stainless steel wire products industry.

1. *Conditions of Competition*

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported stainless steel wire products in the U.S. market.

First, demand for wire products grew by *** percent during the period of investigation.[299] Apparent U.S. consumption of stainless steel wire products increased every year during the POI, ending up *** percent higher in 2000 then they had been in 1996.[300] As the overall economy declined in 2001, however, demand for stainless steel wire products declined by *** percent between the interim periods,

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[295] INV-Y-209 at Table STAINLESS-ALT-4.

[296] INV-Y-209 at Table STAINLESS-ALT-4.

[297] INV-Y-209 at Table STAINLESS-ALT-4.

[298] INV-Y-209 at Table STAINLESS-ALT-4.

[299] INV-Y-218 at Table STAINLESS-ALT5.

[300] INV-Y-218 at Table STAINLESS-ALT5.

dropping from *** tons in interim 2000 to *** tons in interim 2001.[301]

Second, the industry is comprised of both integrated and non-integrated producers. Integrated producers, like ***, produce internally the wire rod used to draw wire. There are a large number of non-integrated, independent wire redrawers who do not themselves produce wire rod and are forced to purchase stainless steel rod from domestic or import sources. Although the integrated wire producers produce significant amounts of wire, the non-integrated producers produce the large majority of the stainless steel wire and all the stainless steel wire rope sold in the market.[302]

Third, like many stainless steel products, the price of stainless steel wire products is directly affected by the price of nickel.[303] To account for fluctuations in the cost of nickel, producers impose a surcharge on the price of their stainless steel wire products whenever the price of nickel reaches a certain level.[304] Generally, nickel prices fell during the first three years of the period of investigation but then increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through the end of 2001.[305] The price of domestic stainless steel wire products did not follow this trend, with the average unit values of domestic wire products sales declining steadily from 1996 to 2000.[306]

2. *Increased Imports*

Finding. I find that there have been increased imports of stainless steel wire and wire rope during the period of investigation.

In quantity terms, imports of stainless steel wire products increased over the POI from 33.6 thousand tons in 1996 to 40.8 thousand tons in 2000, including 1999 when imports declined somewhat.[307] Although demand declined in interim 2001, the quantity of stainless steel wire products imports were steady between interim 2000 and 2001.[308]

Similarly, the ratio of stainless steel wire products imports to domestic production surged through two different periods. Beginning at *** percent in 1996 the ratio surged to *** percent and then surged from *** percent in 1999 to ***percent in 2000.[309] This ratio increased from *** percent in interim 2000 to *** percent in interim 2001 even though imports remained relatively stable in absolute terms.[310] The increases in this ratio from 1996 to 1998 and again from 1999 to interim 2001 show that imports increased relative to domestic production.

In sum, the record indicates that imports of stainless steel wire products increased in quantity terms and as a ratio to domestic production during the period of investigation. Accordingly, I find that there have been increased imports during the period of investigation and that the first statutory criterion is satisfied.

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[301] INV-Y-218 at Table STAINLESS-ALT5.

[302] CR and PR at Table ST-1.

[303] CR at ST-95-96. PR at ST-70-71.

[304] CR at ST-95-96. PR at ST-70-71.

[305] CR at ST-95-96. PR at ST-70-71.

[306] INV-Y-218 at Table STAINLESS-ALT5.

[307] INV-Y-218 at Table STAINLESS-ALT5.

[308] INV-Y-218 at Table STAINLESS-ALT5.

[309] INV-Y-218 at Table STAINLESS-ALT5.

[310] INV-Y-218 at Table STAINLESS-ALT5.

3. *Serious Injury*

Finding. I find that the domestic stainless steel wire products industry is seriously injured; that is, I find a "significant overall impairment in the position" of the domestic industry. In finding that the domestic stainless steel wire industry is seriously injured, I have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

I first find that there has been a significant idling of productive facilities in the domestic stainless steel wire industry during the period of investigation. While, the record indicates that the industry increased its production of stainless wire by *** percent during the period from 1996 to 2000, with domestic production levels increasing consistently from *** thousand tons in 1996 to *** thousand tons in 1998 and then to *** in 2000, the domestic industry lost market share. The domestic industry earned a *** percent share in 1997, which then fell to a *** percent share in 1998, and then the industry earned a *** percent share in 1999, only to see that figure drop to *** percent in 2000.[311] Market share further eroded from *** percent in interim 2000 to *** percent in interim 2001, and production levels fell from *** tons to *** tons.[312] While the industry increased its capacity levels by *** percent from 1996 to 2000, capacity fell to its lowest levels in 1998 even though demand had increased.[313] Between the interim periods of 2000 and 2001, capacity fell again by *** percent.[314] The industry's capacity utilization rate also increased over the five full years of the period, increasing from *** percent in 1996 to *** percent in 1998 but fell to *** percent and *** percent in 1999 and 2000, relatively.[315] Capacity utilization fell again during the interim period *** percent to *** percent.[316] Given the foregoing, the record indicates that the stainless wire products industry has not been able to steadily maintain its use of its productive facilities during the period of investigation. The decline of the industry's production and capacity utilization levels between interim 2000 and 2001 coupled with the declines between 1996 and 2000 lead me to conclude that the industry was experiencing a significant idling of its productive facilities during the period of investigation, particularly given that there were declines in capacity utilization even though demand was strong from 1996 to 2000.[317]

I also find that the record does indicate that a significant number of domestic firms have been unable to carry out their production operations at a reasonable level of profit. Even though, the industry operated profitably throughout each of the five full years of the period of investigation, operating income dropped steadily from *** in 1997 to *** in 2000, and turning into an operating loss of *** in interim 2001.[318] The operating margins fell similarly from *** percent in 1997 to *** percent in 2000, and then

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[311] INV-Y-218 at Table STAINLESS-ALT5.

[312] INV-Y-218 at Table STAINLESS-ALT5.

[313] INV-Y-218 at Table STAINLESS-ALT5.

[314] INV-Y-218 at Table STAINLESS-ALT5.

[315] INV-Y-218 at Table STAINLESS-ALT5.

[316] INV-Y-218 at Table STAINLESS-ALT5.

[317] INV-Y-218 at Table STAINLESS-ALT5.

[318] INV-Y-218 at Table STAINLESS-ALT5.

to *** percent in 2001.[319] The decline in the industry's profitability levels from 1997 to 2000 coupled with the loss in interim 2001 lead me to conclude that the industry was unable to carry out its production operations at a reasonable profit during the period of investigation.

In addition, I find that, the industry experienced declines in its employment levels during the period of investigation. The number of production-related workers employed by the industry decreased by *** percent during the period from 1996 to 2000, declining from *** workers in 1996 to *** workers in 2000, and declined again between interim 2000 and 2001 by *** percent to *** workers.[320] The industry's other employment related indicia also declined during the period of investigation with hours worked decreasing by *** percent, wages paid decreasing by *** percent, and hourly wages decreasing by *** percent between 1996 and 2000. These declines are significant enough that they warrant a finding of serious injury, especially given the decline in a number of the other trade and financial data of the industry during the same period.[321]

The industry's other trade and financial indicia indicate that it was experiencing serious injury during the period of investigation. As I discussed previously, the industry lost market share from 1997 to 1998, from 1999 to 2000, and between interim periods.[322] These market share decreases occurred even though there was steady growth in demand from 1996 to 2000.[323] Moreover, the net value of the industry's commercial sales declined during the period from 1996 to 2000 by *** percent.[324] The industry's capital expenditures declined during the period of investigation by *** percent, and fell further between interim periods.[325] In addition, depreciation outpaced capital expenditures by *** percent in 2000.[326]

In sum, an examination of the industry's trade and financial indicia during the period of investigation indicates that the industry's condition declined during the period. The industry became less profitable throughout the five full years of the period of investigation, with its operating income levels falling throughout the period. The industry's production, market share, and capacity utilization levels fluctuated during the five full years of the period of investigation. Most indicators declined between interim periods, including operating performance which turned into a loss. Consequently, I find that the record shows the type of overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury.

4. *Substantial Cause*

I also find that the record indicates that imports of stainless steel wire products have been a substantial cause of any declines in the condition of the industry during the period of investigation. In this regard, I note that the record indicates that the increases in import quantities that occurred during the five full years of the period of investigation had substantial effects on the performance of the domestic industry.

When the first surge of imports occurred from 1996 to 1998, the domestic producers at first

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[319] INV-Y-218 at Table STAINLESS-ALT5.

[320] INV-Y-218 at Table STAINLESS-ALT5.

[321] INV-Y-218 at Table STAINLESS-ALT5.

[322] INV-Y-218 at Table STAINLESS-ALT5.

[323] INV-Y-218 at Table STAINLESS-ALT5.

[324] INV-Y-218 at Table STAINLESS-ALT5.

[325] INV-Y-218 at Table STAINLESS-ALT5.

[326] CR and PR at Tables ST-33 & ST-35.

gained market share in 1997 when demand grew *** percent but lost market share in 1998, actually ending the period with a smaller share of the market then they possessed at the beginning of the POI.[327] In addition, the stainless steel wire products industry lost capacity, net sales, and operating income from 1997 to 1998.[328] Inventories held grew dramatically from *** tons in 1996 to *** tons in 1998 constituting an increase from *** percent to *** percent of total shipments.[329] These declines in the domestic industry occurred despite strong growth in demand from 1996 to 1998.[330]

The second surge of imports from 1999 to interim 2001 shows even more pronounced trends given that the domestic industry had not recovered from the first surge. Imports grew at a faster rate in the second surge increasing more in one year than imports grew in two years during the first import surge.[331] Domestic market share fell from *** percent in 1999 to *** percent in 2000, and from *** in interim 2000 to *** percent in interim 2001.[332] The value of domestic commercial sales in 2000 fell to their lowest levels throughout the period of investigation at ***, a drop of *** percent from levels in 1996.[333] Despite cost of goods sold being at the their lowest levels in 1999 and 2000, operating income continued to fall due to the decline in commercial sales.[334] Again, inventories held grew from 1999 to 2000 from *** to ***, representing an increase from *** percent to ***percent of total shipments.[335] Because of the serious injury caused by the double surge of imports, the stainless steel wire products industry was unable to sustain itself at profitable levels when demand fell in interim 2001.[336]

I also note that the record indicates that stainless steel wire imports have had a clear adverse impact on the price of domestic stainless steel wire during the period of investigation. The record indicates that there is a reasonable level of substitutability between domestic and imported wire products[337] and that imports consistently undersold domestic wire products by margins as high as *** percent.[338] While the record indicates that price movements for domestic stainless steel wire products did not always correlate with the existence or significance of underselling by imported stainless steel wire products, these periods of price increases were correlated to surges in demand.[339] For example, during the period between the third quarter of 1996 through the end of 1997, domestic prices remained stable when demand increased *** percent from 1996 to 1997.[340] Similarly, domestic prices for stainless steel wire products rose considerably in 2000 from their 1999 levels when demand surged *** percent between 1999 and 2000.[341] Given these trends, I conclude that increased imports had a serious price-suppressing or depressing effect on domestic prices during the period of investigation.

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[327] INV-Y-218 at Table STAINLESS-ALT5.

[328] INV-Y-218 at Table STAINLESS-ALT5.

[329] INV-Y-218 at Table STAINLESS-ALT5.

[330] INV-Y-218 at Table STAINLESS-ALT5.

[331] INV-Y-218 at Table STAINLESS-ALT5.

[332] INV-Y-218 at Table STAINLESS-ALT5.

[333] INV-Y-218 at Table STAINLESS-ALT5.

[334] INV-Y-218 at Table STAINLESS-ALT5.

[335] INV-Y-218 at Table STAINLESS-ALT5.

[336] INV-Y-218 at Table STAINLESS-ALT5.

[337] INV-Y-212 at 98 and 100.

[338] CR and PR at Tables ST-90 & ST-92 and Figures ST-13 & ST-15.

[339] CR and PR at Tables ST-90 & ST-92 and Figures ST-13 & ST-15. INV-Y-218 at Table STAINLESS-ALT5.

[340] CR and PR at Tables ST-90 & ST-92 and Figures ST-13 & ST-15. INV-Y-218 at Table STAINLESS-ALT5.

[341] CR and PR at Tables ST-90 & ST-92 and Figures ST-13 & ST-15. INV-Y-218 at Table STAINLESS-ALT5.

In sum, I find that the record indicates that there is a high correlation between the changes in the condition of the industry and import volumes or prices. Accordingly, I find that imports have been an important cause, and therefore a substantial cause, of the change in the condition of the industry during the period of investigation.

5. *Findings with Respect to NAFTA Imports*

Finding. *Canada.* I find that imports from Canada did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. In this regard, I note that while Canadian imports accounted for 13 percent of total imports in 1996, they only constituted 2.1 percent of total imports in 2000.[342] Furthermore, the Canadian imports declined by 80.7 percent from 1996 to 2000.[343] Accordingly, I find that Canada did not contribute importantly to the serious injury being suffered by the industry.

Mexico. I find that imports of stainless steel wire products from Mexico did not account for a substantial share of total imports and did not contribute importantly to the serious injury suffered by the domestic industry. In this regard, the record shows that Mexico had imported less than 1 percent of total imports throughout the period of investigation.[344] Accordingly, I find that Mexico did not contribute importantly to the serious injury being suffered by the industry

E. Stainless Steel Woven Cloth

I join the majority finding that stainless steel woven cloth is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless steel woven cloth industry.

F. Stainless Steel Seamless Tubular Products

I join the majority finding that stainless steel seamless tubular products ("SSSTP") are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless steel seamless tubular products industry.

G. Stainless Steel Welded Tubular Products

I join the majority finding that stainless steel welded tubular products are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic stainless steel welded tubular products industry.

H. Stainless Steel Fittings and Flanges

I find that stainless steel fittings and flanges ("fittings") are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic stainless steel fittings and flanges industry.

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[342] INV-Y-218 at Table STAINLESS-ALT5.

[343] INV-Y-218 at Table STAINLESS-ALT5.

[344] INV-Y-218 at Table STAINLESS-ALT5.

1. *Conditions of Competition*

In making my finding, I considered the following conditions of competition that affected the competitiveness of domestic and imported stainless steel fittings in the U.S. market.

First, demand for stainless steel fittings generally grew during the period of investigation.[345] Apparent U.S. consumption of fittings increased by *** percent between 1996 and 2000, growing from *** thousand tons in 1996 to *** thousand tons in 2000.[346] However, as the overall economy declined in 2001, demand for stainless steel fittings declined by *** percent between interim periods, falling from *** tons in interim 2000 to *** tons in interim 2001.[347]

Second, like many stainless steel products, the price of stainless steel fittings is directly affected by the price of nickel.[348] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their fitting products whenever the price of nickel reaches a certain level.[349] Generally, nickel prices fell during the first three years of the period of investigation but then increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through the end of 2001.[350] While the average unit values of domestic shipments corresponded with the trends for the price of nickel, the average unit value of sales did not. Sales average unit values fell throughout the period of investigation.[351]

2. *Increased Imports*

Finding. I find that there have been increased imports of stainless steel fittings during the period of investigation.

In quantity terms, imports of stainless steel fittings increased from 18.3 thousand tons in 1996 to 31.8 thousand tons in 2000.[352] The single largest increase in import quantity occurred between 1999 and 2000, when imports increased by 33.9 percent, growing from 23.7 thousand tons to 31.8 thousand tons.[353] With the general decline in the overall economy in 2001, however, the quantity of stainless steel fitting imports declined from 18.1 thousand tons in interim 2000 to 13.25 thousand tons in interim 2001.[354]

The ratio of stainless steel fittings imports to domestic production also increased during the period, growing from *** percent in 1996 to *** percent in 2000.[355] The single largest percentage increase occurred between 1999 and 2000, when the ratio increased by *** percentage points.[356] Although the ratio of imports to domestic production declined to *** percent in interim 2001, that ratio

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[345] CR and PR at Tables ST-75 and ST-C-12.

[346] CR and PR at Tables ST-75 and ST-C-12.

[347] CR and PR at Tables ST-75 and ST-C-12.

[348] CR at ST-95-96. PR at ST-70-71.

[349] CR at ST-95-96. PR at ST-70-71.

[350] CR at ST-95-96. PR at ST-70-71.

[351] CR and PR at Tables ST-26, ST-95, & ST-C-12.

[352] CR and PR at Table ST-14 & ST-C-12.

[353] CR and PR at Table ST-14 & ST-C-12.

[354] CR and PR at Table ST-14 & ST-C-12.

[355] CR and Pr at Table ST-14.

[356] CR and Pr at Table ST-14.

was higher than any annual ratio during the first four years of the period of investigation..[357]

In sum, the record indicates that imports of stainless steel fittings increased in quantity terms during the period of investigation, especially during the last full year of the period of investigation. Accordingly, I find that imports are in increased quantities and that the first statutory criterion is satisfied.

3. *Serious Injury*

Finding. I find that the domestic stainless steel fittings industry is seriously injured; that is, I find a "significant overall impairment in the position" of the domestic industry. In finding that the domestic industry is seriously injured, I have considered carefully evidence in the record relating to the enumerated statutory factors, including evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety, these factors reflect that there is a significant overall impairment in the condition of the industry which would constitute "serious injury" within the meaning of section 202 of the Trade Act.

I first find that the record indicates that there has been a significant idling of productive facilities in the domestic stainless steel fittings industry during the period of investigation. In this regard, I note that the record indicates that there have been declines in the overall capacity levels of the industry as well as its production and capacity utilization rates. The industry's aggregate capacity level declined by *** percent during the five full years of the period of investigation, falling from *** tons in 1996 to *** tons in 2000.[358] The industry's production volumes also fell during the period, decreasing from *** tons in 1996 to *** tons in 2000.[359] As a result of this decrease in its production levels, the industry's capacity utilization rates also fell slightly during the period, declining from *** percent in 1996 to *** percent in 2000.[360]

I also find that the record indicates that a significant number of domestic firms have been unable to carry out their production operations at a reasonable level of profit. While as a whole, the industry operated profitably throughout the period of investigation,[361] the industry's profitability declined by *** percentage points between 1996 to 1999, falling from a high of *** percent in 1996 to *** percent in 1999 with a weak recovery level of *** percent and *** percent in 2000 and interim 2001, respectively.[362] Given this decline of operating profit, I conclude that the industry experienced serious injury during the period.

The industry experienced significant declines in its employment levels during the period of investigation that would warrant a finding that the industry was seriously injured. In this regard, the number of production-related workers employed by the industry decreased by *** percent during the period from 1996 to 2000, declining from *** workers in 1997 to *** workers in 2000.[363] Moreover, the industry's other employment-related indicia declined during the period from 1996 to 2000, with hours

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[357] CR and PR at Table ST-14.

[358] CR and PR at Tables ST-26 & ST-C-12.

[359] CR and PR at Tables ST-26 & ST-C-12.

[360] CR and PR at Tables ST-26 & ST-C-12.

[361] CR and PR at Tables ST-38 & ST-C-12.

[362] CR and PR at Table ST-38 & ST-C-12.

[363] CR and PR at Tables ST-26 & ST-C-12.

worked decreasing by *** percent, wages paid decreasing by *** percent, and productivity decreasing by *** percent between 1996 and 2000.[364]

In general, the other trade and financial indicia of the industry were negative during the period of investigation. The industry lost more than *** percentage points of market share during the period, as its market share fell from *** percent in 1996 to *** percent in interim 2001.[365] In addition, its U.S. shipments decreased by *** percent between 1996 and 2000, the net value of its commercial U.S. sales declined by *** percent during the same period, its average unit values declined by *** percent overall during the period, its inventory levels as a percentage of shipments increased from *** percent in 1996 to *** percent in 2000, and its capital expenditures declined by *** percent between 1996 and 2000. [366] Finally, because of the decline in capital expenditures, the industry was unable to continue to make substantial investments in its operating facilities during the last three years of the period of investigation.[367]

In sum, a number of the industry's trade and financial indicia declined during the period of investigation. Even though the industry remained profitable throughout the five full years of the period of investigation, its operating margins fell dramatically from 1996 to 2000. Most of the industry's other indicators declined during the period leading me to conclude that the industry experienced serious injury during the period. Consequently, I find that the record does show overall impairment of the industry that is substantial enough in duration or magnitude to constitute serious injury.

4. *Substantial Cause*

I also find that the record indicates that imports of stainless steel fittings have been a substantial cause of any declines in the condition of the industry during the period of investigation. In particular, I note that the record evidence indicates that there is a correlation between import volume trends and changes in the condition of the industry that suggest that imports were an important cause of changes in the condition of the industry during the period of investigation.

In this regard, I note that the record indicates that the increases in import quantities that occurred during the five full years of the period of investigation had a significant impact on the financial condition and production operations of the industry during the period. For example, the largest percentage increases in import volumes occurred in 1997 and 2000, when import quantities increased by 22.3 percent and 33.9 percent respectively.[368] While imports increased in 1997, the domestic industry's output increased by only *** percent despite demand growing *** percent. Furthermore, the domestic industry's commercial shipments fell by *** percent, and its operating margins fell by *** percent. [369] When the largest single increase in import quantity occurred in 2000, the industry's operating margin increased by only *** percentage points to *** percent despite a demand surge of *** percent.[370] Even though import quantities did not exhibit any percentage increase from 1998 to 1999, the industry was so

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[364] CR and PR at Tables ST-26 & ST-C-12. Hourly wages was the only employment-related factor that increased during the five full years of the period, increasing by *** percent between 1996 and 2000. Id.

[365] CR and PR at Tables ST-75 & ST-C-12.

[366] CR and PR at Tables ST-26, ST-38 & ST-C-12.

[367] The industry's capital expenditures were *** in 1996, *** in 1997, ***, *** in 1999, *** in 2000, and *** in interim 2001. CR and PR at Tables ST-38 & ST-C-12.

[368] CR and PR at Tables ST-14 & ST-C-12.

[369] CR and PR at Tables ST-26, ST-38, & ST-C-12.

[370] CR and PR at Tables ST-26, ST-38, & ST-C-12.

seriously injured it continued to lose market share, operating income, and inventories grew .[371] The record data clearly indicates that there is a correlation between trends in import quantities and the industry's financial condition or operating results.

In this regard, I also note that the record indicates that imports of stainless steel fittings have had a serious adverse impact on the price of domestic stainless steel fittings during the period of investigation. In this regard, I note that the record indicates that there is a reasonable level of substitutability between domestic and imported products[372] and that imports consistently undersold domestic fittings products.[373] While, the record also indicates that price movements for domestic stainless steel fittings did not always correlate with the existence or significance of underselling by imported stainless steel wire, there were significant demand trends that masked the effects of import underselling.[374] For example, during the period between the first quarter of 1999 and the first quarter of 2001, the price of the domestic comparison product increased substantially due to a *** percent growth in demand from 1999 to 2000.[375]

In sum, I find that the record indicates that there is a correlation between the changes in the condition of the industry and import volumes or prices but significant demand effects have masked this correlation. Given the strong underselling coupled with other trends, I find that imports have been an important cause, and therefore a substantial cause, of the decline in the condition of the industry during the period of investigation.

5. *Findings with Respect to NAFTA Imports*

Finding. *Canada.* I find that imports from Canada accounted for a substantial share of total imports and contributed importantly to the serious injury suffered by the domestic industry. In this regard, I note that Canada became the fifth largest source imports in 2000.[376] Furthermore, Canadian imports surged by 76.5 percent from 1996 to 2000.[377] Accordingly, I find that Canada did contribute importantly to the serious injury being suffered by the industry.

Mexico. I find that imports of stainless steel fittings from Mexico accounted for a substantial share of total imports and contributed importantly to the serious injury suffered by the domestic industry. In this regard, the record shows that Mexico had become the seventh largest source of imports in 2000, surging 285.3 percent.[378] Accordingly, I find that Mexico contributed importantly to the serious injury being suffered by the industry.

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[371] CR and PR at Tables ST-14, ST-26, & ST-C-12

[372] INV-Y-212 at 103.

[373] CR and PR at Tables ST-95, ST-107 and Figure ST-18.

[374] CR and PR at Table ST-95 and Figure ST-18.

[375] CR and PR at Table ST-95 and Figure ST-18.

[376] INV-Y-180 at Table G-33

[377] INV-Y-180 at Table G-33.

[378] INV-Y-180 at Table G-33.

VIEWS ON REMEDY OF THE COMMISSION[1]

I. INTRODUCTION

Having found that increased imports are a substantial cause of serious injury or the threat of serious injury to certain domestic industries, we must now recommend to the President the action that will address the serious injury or threat of serious injury and be most effective in facilitating the efforts of each domestic industry to make a positive adjustment to import competition. In deciding what relief to recommend, we have taken into account the considerations set forth in section 202(e)(5)(B) of the Trade Act of 1974,[2] including the form and amount of action that will, in our view, remedy the serious injury we have found to exist; commitments submitted by firms in the domestic industries during the course of the investigation; information available to the Commission concerning the conditions of competition in domestic and world markets and likely developments affecting such conditions during the period for which action is being requested; whether international negotiations may be constructive to address the serious injury or to facilitate adjustment; and the arguments of the parties.

The action we recommend must conform to certain statutory limitations with respect to the amount and duration of the relief. In addition, we must state whether our recommendations include imports from Canada and Mexico and whether and to what extent our recommendations include imports from Israel, with which the United States has a free trade agreement, and from beneficiary Caribbean Basin and Andean countries.[3] We must also describe the likely short- and long-term effects of taking and not taking the recommended action on each pertinent domestic industry and its workers, other domestic industries, and consumers.

A. Form of Recommended Remedies

The statute authorizes the Commission to recommend several forms of import relief, including additional duties, quantitative restrictions, tariff-rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury being suffered by the industries in question, we have examined closely the costs and benefits of each remedy. As we discuss below, we believe that tariff-based remedies will provide each industry with the most appropriate and easily-administered form of relief for the products for which we made affirmative injury or threat of injury findings, while minimizing market disruption to that necessary to remedy injury and facilitating positive adjustment. These remedies are generally additional duties. For two products we have recommended tariff-rate quotas that include additional duties.

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[1] Unless otherwise stated, this opinion is joined by Chairman Koplan, Commissioner Miller, and Commissioner Hillman. Pursuant to section 330(d)(2) of the Tariff Act of 1930, 19 U.S.C. § 1330(d)(2), the findings and recommendations articulated in these views, to the extent they are endorsed by all three Commissioners who have joined this opinion, will be treated as the remedy findings and recommendations of the Commission for purposes of section 203 of the Trade Act, 19 U.S.C. § 2253.

[2] 19 U.S.C. § 2252(e)(5)(B).

[3] Pursuant to the President's proclamation of December 7, 2001, the U.S.-Jordan Free Trade Area Implementation Act, Pub. L. 107-43 ("Jordan FTA Act"), became effective on December 17, 2001, which was almost two months after we made our injury determination but was prior to the time the report on our findings and recommendations in this investigation were to be submitted to the President. To the extent that section 221(a) of the Jordan FTA Act applies to this investigation, we must also recommend whether imports from Jordan should be subject to any recommended remedy.

In general, the tariff-based remedies we are recommending are intended to increase domestic prices, shipment volumes, and industry profitability and therefore allow the domestic industries to make additional investments in the modernization and rationalization of their productive facilities. The recommended additional duty levels are also intended to help restore the market share of seriously injured domestic industries to the levels that existed prior to the import surges and maintain the market shares of industries threatened with serious injury. We note that the additional duties do not prohibit the importation of any products.

A number of parties have argued that we should recommend that the President impose quantitative restrictions on the imports subject to affirmative findings in this proceeding either in addition to or in lieu of tariffs. For these industries, we believe that additional duties are generally more appropriate than quotas to address the serious injury or threat of serious injury. First, simple tariff increases in general are less discriminating between foreign sources of supply, have greater flexibility in the event of shifts in demand, and are easier to administer than quantitative restrictions.[4] Second, tariffs are more likely than quotas to provide some price and revenue relief to the industries in question in the short term, a factor that is particularly important in this investigation, given the price declines experienced by all of these industries. Tariffs are thus more consistent with our mandate under the statute that requires us to recommend action that will "address the serious injury." Finally, the difficulty in predicting likely future demand for the various subject steel products makes a tariff remedy a more attractive option in this case. The recent significant change in demand conditions for many of the products, as a result of factors such as the overall downturn in the U.S. economy, has made setting an appropriate quota level particularly difficult. Should future demand increase, or decrease, there is a danger that a given quota level will provide either too much or not enough relief. By contrast, the impact of additional tariffs is less affected by changes in demand conditions. Given the foregoing, we believe that for these industries, tariffs are the most appropriate tool to provide the amount of relief necessary to remedy the serious injury or threat of serious injury.

Duration and Degressivity. For all products, we recommend that the tariffs, or tariff-rate quotas, be imposed for a four-year period. We believe that a four-year period of relief is necessary to give the domestic industries time both to generate the profits needed to complete the investments called for in their adjustment plans and the time to implement the plans themselves. We recognize that a relief action of more than three years will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to review the progress of the various industries in implementing their adjustment plans. It would also provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if relief is no longer necessary to prevent or remedy serious injury or if the industry has not made adequate efforts to make a positive adjustment to import relief.

For most products, we also recommend that the additional tariffs (including that recommended in our tariff rate quotas) be phased down by three percentage points per year during the period of relief.[5] We believe that this phase down, together with the level of tariffs we have recommended, will strike a balance between yielding positive and immediate revenue effects for the industries in the short-term while minimizing the impact on consumers and the market in the long run.

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[4] *See Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 at I-26 (March 1998).

[5] As explained in section III.D.1. below, we have recommended the phase down for rebar be two percentage points per year.

B. Requests for Product-Specific Exclusions

During the investigation, the Commission was presented with many requests to exclude from any remedy particular products for which the Commission made affirmative determinations in the injury phase of the proceeding. The parties making these requests generally contended that the products for which they were requesting exclusions were niche or specialty products either not produced by the pertinent domestic industry or produced in insufficient quantities by that industry to satisfy U.S. demand.

In recent investigations, the Commission has recommended the exclusion of particular products from its remedy, but only when the record indicated that such products are not available from the domestic industry or were unavailable in commercially significant volumes.[6] In this investigation the domestic producers have maintained, with limited exceptions, that they currently produce or are able to produce the products covered by the exclusion requests.[7] Consequently, the record does not support the conclusion that the great majority of products for which exclusions are sought are not available from the pertinent domestic industry. We therefore decline to recommend exclusion of these products from our remedies, with the exception of a limited number of products identified in the product-specific analyses below that the domestic industry has acknowledged it does not and cannot produce in commercial quantities or has no objection to exclusion. We observe that under the tariff-based remedies we are proposing, U.S. end users of specialty products that believe they cannot obtain such products from domestic sources, or do not desire to source domestically, will still be able to import these products at the pertinent tariff rate.[8]

C. Additional Recommendations

International Negotiations. We recommend that the President continue recently-initiated international negotiations to address the underlying cause of the increase in imports of the articles for which we made affirmative determinations in the injury phase of this investigation or otherwise to alleviate the injury or threat. We observe that a part of the President's multilateral steel initiative is initiation of negotiations with U.S. trading partners seeking the near-term elimination of inefficient excess capacity in the steel industry worldwide, in a manner consistent with applicable U.S. laws.[9] We agree that there is significant excess global steelmaking capacity.[10] Moreover, all parties to this investigation agreed that consolidation and rationalization is a necessary step in addressing the global overcapacity problem. Quantifying the magnitude of this capacity is a more difficult step.

Information collected in this investigation suggests that actual global production of steel has increased over the past decade, by about 15 percent, with the most significant increase, 7 percent,

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[6] *Compare Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 at I-56 & n.12 (July 1999) (views of Commissioners Miller and Koplan) (granting exclusions when domestic industry acknowledged it did not produce products) *with Certain Welded Cardon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 at I-84 (Dec. 1999) (denying exclusion when record did not indicate domestic industry could not make product in question).

[7] *See, e.g.*, Minimill 201 Coalition (Long Products) Posthearing Remedy Brief at 21-23; Dewey/Skadden Flat Products Posthearing Remedy Brief at 47-48.

[8] Additionally, USTR separately has requested and will evaluate submissions from entities that seek to exclude particular products from any remedy. We acknowledge that the President may conclude that the record developed before USTR justifies exclusions for some products. The President may also want to consider establishing an ongoing mechanism for considering product-specific exclusion requests should he impose import relief.

[9] Statement by the President Regarding a Multilateral Initiative on Steel (June 5, 2001). Such negotiations are ongoing. "Washington steels itself for push to cut output," *Financial Times* (Nov. 25, 2001).

[10] *See generally* CR and PR at OVERVIEW-15.

occurring from 1999 to 2000.[11] World production capacity is more difficult to quantify, although it is commonly considered to exceed both actual production and market demand.[12] Estimates of global annual production capacity for 2000 ranged from 1.1 to 1.2 billion tons.

We note that despite these difficulties it is clear that there is a need for all steel producing countries to address the global inefficient capacity problem. The existence of excess capacity has clearly contributed to the serious injury experienced by the domestic industry. If global capacity continues to exceed global production and demand, steel prices will continue to drop and will prevent the recovery of the domestic steel industry. It is therefore essential that international negotiations result in a significant reduction in global capacity, and we recommend that the President strive to achieve this goal, which is vital to the long-term viability of the domestic industry.

Trade Adjustment Assistance. We have also considered whether to recommend adjustment measures, such as the trade adjustment assistance programs administered by the U.S. Department of Commerce and the U.S. Department of Labor. The assistance and funding that these programs offer is limited in amount and scope. In the context of the record of this investigation, trade adjustment assistance alone would not provide the amount or type of assistance that would remedy the serious injury or threat of serious injury and facilitate adjustment. In particular, trade adjustment assistance would not limit the influx of imports that we have found is a substantial cause of serious injury or threat of serious injury to the pertinent domestic industries. However, such adjustment assistance may prove useful in conjunction with import relief, particularly insofar as it may offer retraining to workers displaced by any consolidation or rationalization the domestic industry may undertake to increase its competitiveness. Thus, pursuant to section 202(a) of the Trade Act,[13] we have notified the Secretary of Commerce and the Secretary of Labor of our affirmative determinations. Under section 202(a) of the Trade Act, applications for adjustment assistance by firms or workers in the pertinent domestic industries are to be given expedited treatment once the Commission makes an affirmative determination.

D. Other Steps to Facilitate Positive Adjustment to Import Competition[14]

The statute directs the Commission to recommend the action that would be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. The domestic steel industry faces a number of competitive conditions that are not directly related to imports, but that must be addressed on a track parallel to import relief and international negotiations in order to ensure the industries' future viability and health.[15] These problems relate to impediments to industry restructuring and consolidation. Many domestic producers and the USWA agree that there exists a need in the United States for further consolidation and restructuring.[16] While we discuss these problems

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[11] CR and PR at OVERVIEW-13.

[12] CR and PR at OVERVIEW-15.

[13] 19 U.S.C. § 2252(a).

[14] *See also* Additional Views of Chairman Stephen Koplan Regarding Other Actions to Facilitate Positive Adjustment.

[15] As we have discussed in our injury opinions, none of these factors is currently as important a cause of serious injury or threat of serious injury to any of the domestic industries as increased imports.

[16] Thomas Usher, Chairman and CEO of U.S. Steel, testified that any duties collected from increased tariffs should be distributed to the domestic industry conditioned upon steps to restructure, rationalize and consolidate. Remedy Hearing Transcript ("Remedy Tr.") at 80; *see also* Remedy Tr. at 153. Robert S. Miller, Chairman and CEO of Bethlehem Steel Corporation, testified that Bethlehem's plan to emerge from bankruptcy protection includes participating in "industry consolidation and rationalization, including the closing or replacement of

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below, we do not find that it is within the authority of the Commission to recommend what specific steps should be taken to address these obstacles to adjustment. We also recognize that not all of the sectors of the domestic steel industry examined in this investigation face any or all of these problems.

Many producers, especially integrated producers, face substantial costs for retiree benefits, in particular pension and health care costs, widely referred to as legacy costs. Data collected in this investigation show the enormity of these costs, with many of the companies funding only current expenses and leaving substantial unfunded liabilities. Post-employment benefits not guaranteed by the Pension Benefit Guaranty Corporation ("PBGC") totaled over $8.6 billion in 2000 for 23 reporting steel firms.[17] Health, medical, and life insurance benefits are important post-employment costs for steel producers. Like pension costs, the combined plans for these post-employment benefits are also widely underfunded, and importantly, are not insured by a federal trustee such as the PBGC.[18] We note that in most foreign steel-producing countries, the government, not the individual steel producer, bears the burden of such costs.[19]

Domestic steel producers also face substantial environmental liabilities under the Resource Conservation and Recovery Act ("RCRA") and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA," also known as "Superfund"). While environmental clean-up costs are substantial for facilities in operation, the costs associated with shutting down and selling a facility can be enormous, and could impede the closure of outdated facilities.[20]

These problems threaten the future viability of these industries and their ability to compete effectively with imports upon the termination of any import relief provided pursuant to this investigation. Moreover, we note that it is currently extremely difficult for firms in these industries to raise capital in the debt or equity markets.[21] Action to facilitate rationalization would increase investor confidence and help the industry obtain needed financing.

The Commission has gathered considerable information throughout this proceeding regarding these impediments and various proposals to address them have been made by a number of parties, both before the Commission and in other fora. We take no position on any specific recommendations proposed by the various parties, as they are primarily within the purview of the Administration and

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[16] (...continued)
obsolete facilities. . ." Remedy Tr. at 85-86. He further noted that "I have no doubt that Bethlehem will be part of a larger corporate entity when all of this is done which will be more efficient, which will have the opportunity to rationalize its production facilities." Remedy Tr. at 152. Finally, Leo Gerard, International President, United Steelworkers of America, testified that the USWA is not opposed to consolidation, but it does not want to see consolidation become a capacity reduction. Remedy Tr. at 150.

[17] The USWA provided information estimating that the industries' total retiree health benefit obligation at the end of 1999 amounted to $13 billion, of which about $11.9 billion is unfunded. The USWA also reported that, on an annual basis, domestic steel producers pay an estimated $965 million ($8.70 per ton of steel shipped) in retiree health benefits. USWA Posthearing Remedy Brief at Exhibit 5.

[18] CR and PR at OVERVIEW-34-35.

[19] *See* USWA Posthearing Remedy Brief, Responses to Questions of Commissioner Hillman at 7; Remedy Tr. at 397-98 (Blum).

[20] The American Iron and Steel Institute's website states that one study projected that an RCRA corrective action program would cost the steel industry $3 billion. *www.steel.org/policy/environment/rcra.asp*

[21] *See* CR and PR at OVERVIEW-36-37, Figure OVERVIEW-16 (showing sharp declines in steel producers' stock prices), and Table OVERVIEW-10 (showing poor debt ratings of representative steel producers).

Congress.[22] However, we stress that, absent effective and equitable solutions to these problems, import relief is unlikely to result in a healthy, viable U.S. steel industry.

II. CERTAIN CARBON AND ALLOY FLAT-ROLLED STEEL[23]

A. Findings and Recommendations of the Commission

For the reasons set forth below, we recommend the following actions with respect to certain carbon flat-rolled steel, which we find will address the serious injury we have found to exist and which will be the most effective in facilitating the efforts of the domestic industry producing certain carbon flat-rolled steel to make a positive adjustment to import competition:

(1) That the President impose an additional tariff, for a four-year period, on imports of certain carbon flat-rolled steel, except slab, that are the subject of this investigation. The additional tariff would be at the rate of 20 percent *ad valorem* in the first year of relief and be reduced to 17 percent *ad valorem* in the second year of relief, 14 percent *ad valorem* in the third year of relief, and 11 percent *ad valorem* in the fourth year of relief;

(2) That the President impose a tariff-rate quota, for a four-year period, on imports of slab, as follows: an additional tariff of 20 percent *ad valorem* on imports in excess of 7.0 million short tons in the first year of relief, 17 percent *ad valorem* on imports in excess of 7.5 million short tons in the second year of relief, 14 percent *ad valorem* on imports in excess of 8.0 million short tons in the third year of relief, and 11 percent *ad valorem* on imports in excess of 8.5 million short tons in the fourth year of relief, and that the President allocate shares of the tariff-rate quota based on countries' historical share of imports;

(3) That the President continue to pursue international negotiations with the governments of all the countries that supply certain carbon flat-rolled steel aimed at reducing inefficient global overcapacity to produce certain carbon flat-rolled steel;

(4) Having made a negative finding with respect to imports of certain carbon flat-rolled steel from Canada under section 311(a) of the NAFTA Implementation Act,[24] that such imports not be subject to the additional tariff and tariff-rate quota described above;

(5) Having made an affirmative finding with respect to imports of certain carbon flat-rolled steel from Mexico under section 311(a) of the NAFTA Implementation Act,[25] that such imports be subject to the additional tariff or tariff-rate quota described above, as applicable; and

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[22] We note that some of the domestic industries' proposals do not clearly anticipate the reduction in capacity and closures that, as discussed above, are necessary for the industry's improvement.

[23] Pursuant to 19 U.S.C. § 1330(d)(2), the following remedy findings and recommendations of Chairman Koplan and Commissioners Miller and Hillman regarding certain carbon flat-rolled steel in this investigation are the remedy findings and recommendations of the Commission for purposes of 19 U.S.C. § 2253.

[24] 19 U.S.C. § 3371(a).

[25] 19 U.S.C. § 3371(a).

(6) That the additional tariff and tariff-rate quota not apply to imports of certain carbon flat-rolled steel from Israel, or to any imports of certain carbon flat-rolled steel entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[26]

We find that the actions described above will not exceed the amount necessary to remedy the serious injury we find to exist. In addition, as noted above, we encourage the President to consider other appropriate action to facilitate the efforts of the domestic industry to rationalize and consolidate, and thus make a positive adjustment to import competition.[27]

B. Conditions of Competition

We considered the conditions of competition in the domestic and world markets and likely developments affecting such conditions during the next several years in evaluating the various remedy options for certain carbon flat-rolled steel on which we made an affirmative determination.

1. Demand Conditions

Demand for certain carbon flat-rolled steel is derived from the demand for end-use applications, particularly for end-use applications in the automotive and construction market sectors.[28] During the period examined, demand, as measured by apparent U.S. consumption, was strong, particularly from 1998 into 2000, but declined, beginning in the second half of 2000, in line with a general economic downturn in the United States.[29]

According to purchasers, there are few substitute products for certain carbon flat-rolled steel.[30] Domestic and imported certain carbon flat-rolled steel generally are substitutable.[31] While price is an important factor in purchasing decisions, demand for certain carbon flat-rolled steel has a low to moderate degree of sensitivity to changes in prices in part due to the lack of substitute products and the fact that steel represents a moderate cost component for most end-use products.[32]

2. Supply Conditions

The U.S. industry is composed of various segments: integrated producers, who typically produce steel at the melt stage by smelting iron ore using coke in a blast furnace; the nonintegrated producers, or

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[26] To the extent that section 211(a) of the Jordan FTA applies to this investigation, we recommend that the additional duty not apply to imports of certain carbon flat-rolled steel from Jordan.

[27] Dewey/Skadden's Adjustment Brief at 21-26.

[28] CR at FLAT-66 and Table OVERVIEW-2; PR at FLAT-51 and Table OVERVIEW-2. A significant percentage of certain carbon flat-rolled steel is consumed in the production of other downstream certain carbon flat-rolled steel. CR and PR at OVERVIEW-10 and Table OVERVIEW-2.

[29] We are cognizant of the difficulty of measuring apparent consumption for certain carbon flat-rolled steel since a significant portion of such steel is consumed in the production of further processed flat-rolled steel also included in the like product. We have considered a variety of different measurements in reaching our determination and generally found that the same conclusions were to be drawn regardless of which measurement was used. *See* CR at FLAT-57 n.14, PR at FLAT-44 n.14.

[30] CR at FLAT-67, PR at FLAT-53.

[31] CR at FLAT-68, PR at FLAT-54; EC-Y-046 at FLAT-8.

[32] CR at FLAT-65 and 70-72, PR at FLAT-51 and 56-58; EC-Y-046 at FLAT-9.

minimills, who produce molten steel by melting scrap or scrap substitutes in an electric arc furnace; and producers without melt stage capabilities.[33] This latter group of domestic producers, in addition to integrated and nonintegrated producers with excess further processing capacity, purchase either domestic or imported feedstock, especially slab, to make further processed certain carbon flat-rolled steel. Thus, any remedy recommended should not cause further injury to those segments of the domestic industry that depend on imports to a certain extent as feedstocks to make the domestic article.

The industry has invested tens of billions of dollars since the early 1980s to become more competitive and efficient by: shutting down some inefficient capacity; developing new products and technologies, improving the quality of existing products; and undergoing some consolidation.[34] While the industry overall increased its capacity to produce certain carbon flat-rolled steel during the period examined, its capacity is similar to the level of U.S. consumption, and its capacity utilization decreased over the period examined.[35]

Pensions and other post-employment benefits ("legacy costs") are significant costs for certain steel companies. For example, the net periodic cost for pension benefits for 23 U.S. steel companies ranged from a cost of $346 million to a benefit of $147 million for companies with defined benefit plans, and from a cost of $3 million to a cost of $82 million for companies with defined contribution plans between 1996 and 2000.[36] Pension benefits generally are insured by the Pension Benefit Guaranty Corporation. Other post-employment benefits, especially health care costs, are not guaranteed by the PBGC and in 2000 totaled more than $8.6 billion for the 23 reporting steel firms, more than $8 billion of which was recognized on the companies' financial statements as a non-current liability.[37]

During the period examined, 10 companies making certain carbon flat-rolled steel filed for bankruptcy.[38] Beginning in 1997, the stock prices of both the integrated and non-integrated producers declined significantly, inhibiting the companies' ability to raise money in equity markets.[39] Moreover, in the last few weeks: (1) Geneva Steel announced temporary shutdown of its hot-rolled sheet and plate operations; (2) LTV requested that the U.S. Bankruptcy Court permit it to close most of its facilities and liquidate its assets; and (3) U.S. Steel, Bethlehem Steel and other integrated steel producers announced that they are pursuing proposals to consolidate.[40]

Many countries across the globe produce and export to the United States certain carbon flat-rolled steel. These countries generally increased their capacity to produce certain carbon flat-rolled steel during the period examined and have capacity available to increase shipments. While world production capacity to produce steel is more difficult to quantify than actual production, estimates suggest that

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[33] CR and PR at OVERVIEW-7-8.

[34] CR and PR at OVERVIEW-42-47; Dewey/Skadden's Adjustment Brief at 10-25.

[35] CR and PR at OVERVIEW-25-27 and INV-Y-209 at Table FLAT-ALT7.

[36] CR and PR at OVERVIEW-31-34 and Table OVERVIEW-9. Of the 23 steel companies for which data regarding pension benefit costs were compiled, 16 were producers of certain carbon flat-rolled steel. Morever, 13 of the 18 reporting firms with defined benefit plans were producers of certain carbon flat-rolled steel and 3 of the 5 reporting firms with defined contribution plans were producers of certain carbon flat-rolled steel. *Id.* at nn. 37 and 38, and Appendix D; INV-Y-190.

[37] CR and PR at OVERVIEW-34-35 and Table OVERVIEW-9.

[38] INV-Y-181 and Tr. of 11/6/01 at 85.

[39] CR and PR at OVERVIEW-36-37, Figure OVERVIEW-16, and Table OVERVIEW-10.

[40] *See American Metal Markets*, dated Nov. 14, 2001 (Geneva Steel's announced shutdown of hot-rolled sheet and plate operations); LTV Corporation's Company News On Call, dated Nov. 20, 2001 ("LTV seeks Bankruptcy Court Approval to Cease Operations and Sell Integrated Steel Facilities"); Bethlehem Steel Corporation's Press Release, dated Dec. 4, 2001 ("Bethlehem Pursuing Possible Steel Industry Consolidation").

global steel production capacity, including certain carbon flat-rolled steel, exceeds both actual production and current market demand by a wide margin.[41] Finally, several types of certain carbon flat-rolled steel from various countries are subject to U.S. antidumping and/or countervailing duty orders.[42]

C. Industry Adjustment Plans

We carefully examined the individual domestic companies' adjustment plans. These plans consist of investments designed to improve the domestic industry's ability to meet import competition.[43] While specific objectives vary by producer, most of the adjustments fall into four general categories: restoring financial stability, investing in more efficient facilities and equipment, developing new products and markets, and pursuing market-based consolidation and rationalization. Domestic producers also propose that the domestic industry would be assisted by public policy measures such as: legacy cost relief, including expanded access to federal health programs/plans for retirees; tax incentives to spur consolidation/rationalization/liquidation of capacity; and improved unfair trade law enforcement.

In particular, several integrated steel companies (Bethlehem, LTV Steel, National Steel, and U.S. Steel) described the following types of major investments as being required over the next three years: $50-$150 million to rebuild existing coke plants and $100-$200 million to build one or two new "non-recovery" plants; $50-$150 million to reline or refit blast furnaces; $75-$125 million to modify some blast furnaces to provide for coal injection or oxygen injection; $100-$300 million to replace older furnaces with COREX units; $75-$200 million per unit for minimills to develop alternatives to scrap so they can produce higher quality steel; $10-$60 million for ladle refining and degassing equipment at some mills; $115-$230 million to rebuild or convert continuous casters at some mills; $190-$250 million to upgrade hot-rolling mills with walking beam reheat furnaces, hydraulic coilers, and coil bending equipment; $70-$170 million to upgrade cold-rolling mills with annealing furnaces and new pickle lines so they can produce higher quality steels; and $100-$300 million in environmental investments such as waste oxide treatment facilities.[44] The industry also would continue to invest in developing new products and markets, such as Ultra Light Steel Autobody for automobiles. Overall, these integrated companies estimate that the industry needs to invest $7 to $9 billion over the next three years to maintain competitiveness.[45] These domestic producers also intend to pursue steps to rationalize and consolidate within the industry, urging the above-described public policy steps to help alleviate existing barriers to such rationalization and consolidation.[46]

The Minimill 201 Coalition described investment plans of $2.3-$2.6 billion over four years to increase efficiency and productivity by, for example, upgrading existing equipment and installing new equipment; developing new product grades; expanding capacity in certain product lines; adding marketing personnel and production workers; and installing new information processing systems to

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[41] CR and PR at OVERVIEW-14-15; Jt. Respondents' Prehearing Framework Brief at Exh. 4 and Tr. of 9/20/01 at 883 and 930; Dewey/Skadden's Prehearing Injury Brief at 28-31,70-71, and Appendix A.

[42] CR and PR at Table OVERVIEW-1.

[43] Dewey/Skadden's Adjustment Brief; Minimill 201 Coalition's Commitments Regarding Actions to Facilitate Positive Adjustment to Import Competition ("Commitments"); Ispat Inland's Prehearing Remedy Briefs at 21-28.

[44] Dewey/Skadden's Adjustment Brief at 16-17 and Appendices I-VI.

[45] Dewey/Skadden's Adjustment Brief at 14-21 and 30; Dewey/Skadden's Prehearing Injury Brief at Exhibit 2 (Fruehan Report).

[46] Dewey/Skadden's Adjustment Brief at 21-26.

improve customer service.[47] Their adjustment plans also contain proposals for improving steelmaking efficiency and quality, including iron unit supply and steel manufacturing processes, as well as conducting environmental studies.[48]

Ispat Inland's adjustment plan contains a commitment to improving competitiveness through rationalization of resources, notes that it plans to undertake specific investments and improvements, and proposes that the government support legislative changes to induce consolidations (through more favorable tax treatment for acquisition of firms with operating losses and for legacy costs, and limitations on potential environmental liabilities) and promote growth after consolidations (via exemptions from the Alternative Minimum Tax and tax credits for investment in new technologies).[49]

The submission of Bethlehem, LTV, National, and U.S. Steel also summarized proposed adjustment efforts by sixteen other producers of certain carbon flat-rolled steel.[50] These proposals cover a wide variety of actions designed to improve competitiveness. The proposals are mainly directed at acquisition of new equipment and upgrades to existing equipment, but also include organizational, marketing, labor-related and other changes. The proposed expenditures by these sixteen firms would total approximately $1.9 billion.[51]

D. Recommended Relief

The above considerations lead us to recommend a two-part plan of action involving temporary tariff increases and international negotiations to achieve agreements to reduce inefficient excess global capacity. The common thread of these actions is to increase the financial resources available to the certain carbon flat-rolled steel industry in the short term (over a four-year relief period) to enable companies to begin to return to pre-import surge revenue levels and to invest in increasing long-term efficiency and competitiveness, while pursuing an international agreement to reduce global capacity, without unduly restricting imports into the U.S. market.

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quotas, tariff-rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, we have examined closely the costs and benefits of each. For the reasons discussed above, we have determined that a tariff-based remedy would provide the domestic certain carbon flat-rolled steel industry with the most appropriate form of relief; with regard to slabs, we have determined that a tariff-rate quota would be the most appropriate form of relief.

1. Nature and Duration of Remedies

a. Temporary Additional Tariff

Members of the domestic industry proposed various tariff levels and forms, in addition to other forms of assistance noted above. One group of domestic producers (Bethlehem, LTV, National, and U.S. Steel) proposed a tariff on all certain carbon flat-rolled steel, to remain in effect for four years, with tariff revenues collected to be made available for distribution to the domestic industry, contingent upon

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[47] Minimill 201 Coalition's Commitments at 1-8 and Exhibit 1.

[48] Minimill 201 Coalition's Commitments at Exhibit 2.

[49] Ispat Inland's Prehearing Remedy Brief at 21-28.

[50] Dewey/Skadden's Adjustment Brief at Appendix VI.

[51] Dewey/Skadden's Adjustment Brief at Appendix VII.

industry consolidation. These producers' proposed tariff would be an additional 40 percent *ad valorem* on all certain carbon flat-rolled steel during the first year, provided that all such imports would be subject to a minimum tariff of $100 per ton, not to exceed an additional 50 percent *ad valorem*; and would be reduced by two percentage points each year on the anniversary date of imposition of the tariff.[52] The Association of Cold-Rolled Strip Steel Producers supported a tariff of 40 percent *ad valorem* on all cold-rolled imports, as proposed by the above group of domestic producers.[53]

The Minimill 201 Coalition proposed a four-year tariff remedy at the maximum additional tariff rate of 50 percent *ad valorem* allowed by law on all certain carbon flat-rolled steel imports for the first year of relief, to decline by 2 percentage points in each successive year, to 44 percent during the final year.[54] Domestic producer Ispat Inland proposed a 35 percent *ad valorem* tariff rate increase for all certain carbon flat-rolled steel, with no more than 1 to 2 percent decreases in each successive year over a four-year period.[55]

The USWA proposed a four-year tariff remedy of an additional 50 percent *ad valorem* tariff, to be phased down by no more than 7.5 percent a year. As an alternative to the additional 50 percent tariff, the USWA proposed a stratified tariff plus a quota. The absolute quota would be based on the pre-surge volume of imports for a three-year period (July 1, 1994 through June 30, 1997) or for a two-year period (1996-97). For imports within the quota level, a stratified tariff of an additional 30 percent *ad valorem* was proposed, which would increase upwards to an additional 50 percent based on the price of the imported product. The stratified tariff plus quota would remain in effect for four years, with a phase-down in the tariff rate of 5 percent per year; the quota increases would be equal to growth above apparent consumption in the three-year base period (July 1, 1994 through June 30, 1997), plus 1 percent per year.[56]

The Respondents, representing U.S. consumers of certain carbon flat-rolled steel, foreign producers and exporters, and foreign governments, generally opposed any type of import relief, in particular a tariff remedy. Respondents generally took the position that, if the Commission recommends an import restriction as a remedy, it should recommend quotas, rather than a tariff, based on the most recent three years as the representative period (1998-2000), with country-specific allocations.[57]

We considered the quotas proposed by Respondents, but we believe that a tariff is a more appropriate remedy. As discussed in Section I above, we found that a tariff will not unduly restrict imports but will allow domestic prices to rise and revenues to increase, to the benefit of the domestic industry. We do not agree with the domestic industry, however, that an additional 35, 40, or 50 percent *ad valorem* tariff is necessary to achieve the desired result, or is otherwise appropriate. Instead, we recommend that the President increase the current tariff applied to imports by 20 percent *ad valorem* on certain carbon flat-rolled steel in the first year of relief, with a four-year phase-down period: 17 percent in year two, 14 percent in year three, and 11 percent in year four. For slab, the same rates are applied to imports above certain specified levels. We recommend the same additional tariff rate on all certain carbon flat-rolled steel so as not to give rise to product-shifting among imports of various types of certain carbon flat-rolled steel, whose production processes are closely interrelated.

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[52] Dewey/Skadden's Prehearing Remedy Brief at 5-6.

[53] Association of Cold-Rolled Strip Steel Producers' Posthearing Remedy Brief at 1-3.

[54] Minimill 201 Coalition's Prehearing Remedy Brief at 2.

[55] Ispat Inland's Prehearing Remedy Brief at 3-15.

[56] USWA's Prehearing Remedy Brief at 24-25 and 28-30. USWA also proposed the enactment of legislation that would establish a floor price on domestic sales of all covered flat rolled steel products in conjunction with the trade remedy.

[57] *See* EC-Y-046 at Table FLAT-4.

In determining the appropriate level of relief, we considered economic models traditionally employed by the Commission, as modified to take into account the market linkages among the different types of certain carbon flat-rolled steel. We examined a range of assumptions for U.S. supply and demand conditions and found the tariff rate (20 percent *ad valorem*) that would achieve our objective with the least disruption to the market.[58] [59]

Our economic analysis shows that an additional 20 percent *ad valorem* tariff will increase the domestic industry's sales revenues and sales volumes based on certain assumptions as to U.S. supply and demand.[60] This remedy is estimated to provide the domestic certain carbon flat-rolled steel industry with a significant amount of additional revenue over 2000 levels.[61] [62] Such increases in revenue will enable firms in the industry to begin to return to pre-import surge levels of profitability and to secure the necessary financial resources to invest in increasing long-term efficiency and competitiveness. Our recommended phase-down also will encourage the domestic industry to implement its adjustment plans, including rationalization and consolidation, expeditiously.

We recognize that relief of more than three years duration will require the Commission to conduct a mid-course review under 19 U.S.C. § 2254(a)(2). Such an investigation would provide the Commission with an opportunity to formally review, among other things, the certain carbon flat-rolled steel industry's progress in implementing its adjustment plans. It also would provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if the industry has not made adequate efforts to make a positive adjustment to import competition.

b. Tariff-Rate Quota for Slab Imports

Certain domestic producers urged the Commission to recommend the same tariff increase for slabs as for other types of certain carbon flat-rolled steel. They argue that it is vital to take strong measures to preserve the U.S. industry's slab-making "hot-end," as slab accounts for the vast majority of the costs of making further processed certain carbon flat-rolled steel. Other domestic producers that rely on purchases of imported slab for some or most of their domestic production of certain carbon flat-rolled steel urged the Commission not to recommend a remedy that will cause them economic hardship. They assert that a high tariff would, in effect, penalize them for their efforts to restructure by rationalizing production capacity and allocating their investment capital to the most efficient aspects of their operations.[63] These producers proposed that the Commission recommend an import remedy for slab that would permit current import levels, allow for growth, and prevent a surge in imports of slab. In

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[58] As the Commission traditionally does, we used the most recent full year for which we collected data – in this case 2000 – as the base period for assessing the likely impact of our relief. We recognize that some very recent changes in domestic capacity have occurred. We also recognize that demand has declined in 2001. However, imports have also declined in 2001. On balance, we believe that data pertaining to the year 2000 provide an appropriate base-line period for our consideration of the effects of our tariff remedy in this investigation.

[59] We also took into account existing antidumping and countervailing duty orders and suspension and other agreements applicable to various types of certain carbon flat-rolled steel. Some of these measures pre-dated our POI and did not prevent the import surge observed in this investigation. Other measures were imposed during the POI. In setting our tariff level, we considered the fact that some of these measures already provide some degree of protection to the domestic industry.

[60] EC-Y-50 at 13.

[61] EC-Y-50 at 13. To the extent that the implementation of the domestic industry's adjustment plans result in reduced domestic capacity, the remedy would provide revenues nearer to the high-end of this range.

[62] Estimates based on other ranges of assumptions show somewhat higher sales volume and revenue increases.

[63] Slab Purchasers' Posthearing Remedy Brief at 23-36.

particular, the domestic producers that rely on slab purchases suggested a tariff-rate quota set at at least two million tons above the 1999-2000 average slab import level in year one (or at the level of 9 million tons) with increases in subsequent years, a country-specific allocation for the quota, and an increased tariff rate above the quota level of not more than 15 percent in year one and reduced to 10 percent in year two, and five percent in year three.[64] While most other Respondents opposed any type of import relief on slab, Australian and New Zealand foreign producers supported the Commission recommending quotas on slab imports at the levels of recent imports.[65]

In determining the appropriate import relief for slab, we considered the fact that, historically, commercial sales of domestically produced slab have been extremely limited. Domestic producers typically internally consume nearly all the slabs they produce to make higher-value downstream products. While some slab sales do take place, the overall supply is inadequate to satisfy the needs of slab purchasers on a long-term basis. The domestic producers that are particularly dependent on slab purchases include those that have no slab-making capability and those that have significantly more rolling capacity than slab-making capacity. Some of these producers have recently restructured by closing down obsolete slab-making capacity and/or have made long-term investments in capacity to produce further processed certain carbon flat-rolled steel. We note that integrated producers also require purchased slabs during furnace re-lines or other melt shop outages.

Our recommendation of a tariff-rate quota for imports of slab is intended to avoid causing harm to domestic steel producers that have legitimate needs to continue to import slabs, while at the same time providing some protection against additional surges in slab imports.

We recommend that the President impose a tariff-rate quota, for a four-year period, on imports of slab, as follows: an additional tariff of 20 percent *ad valorem* on imports in excess of 7.0 million short tons in the first year of relief, 17 percent *ad valorem* on imports in excess of 7.5 million short tons in the second year of relief, 14 percent *ad valorem* on imports in excess of 8.0 million short tons in the third year of relief, and 11 percent *ad valorem* on imports in excess of 8.5 million short tons in the fourth year of relief.

We are recommending an import level with no tariff for the first year of relief that is set at the level of imports of slab minus imports of slab from Canada in year 2000. While lower first-half 2001 imports of slab would suggest that this tariff-rate quota would not be triggered under recent market conditions, we expect that imposition of a tariff remedy on further processed carbon flat-rolled steel will itself generate increased adjustment-related need for slab imports in the short-term, due to such factors as higher production of further processed carbon flat-rolled steel, and producers temporarily reducing slab-making capacity in order to shift to more modern slab-making equipment, or to upgrade or repair existing equipment as part of their adjustment efforts.[66] At the same time, our remedy avoids creating an additional incentive to increase slab imports.[67] Based on these considerations, we believe a tariff-rate quota on slabs is appropriate. We also are recommending a 7.1 percent increase in the import level for the second year, a 6.7 percent increase for the third year, and a 6.25 percent increase for the fourth year.

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[64] Slab Purchasers' Posthearing Remedy Brief at 3-4. Specifically, their proposed recommendation calls for a country-specific quota set at the average annual 1999-2000 or 1998-2000 import levels, and that imports used as feedstock be excluded.

[65] BHP's Posthearing Remedy Brief at 11-14 and EC-Y-046 at Table 4.

[66] Imports of slab (minus imports of slab from Canada) were 2.4 million short tons in interim 2001 (January-June) compared with 3.9 million short tons in interim 2000 (January-June). CR and PR at Table FLAT-4. In setting the level of tariff-rate quota, we also took into account the fact that the recommended additional tariffs on further processed certain carbon flat-rolled steel will provide some relief to slab producers. *See* EC-Y-50 at 13.

[67] We note that the average unit value of imported slabs were at very low levels during certain years of the period examined. CR and PR at Table FLAT-C-2.

Such increases should permit domestic producers that depend on slab imports adequate supply to meet their needs.

Finally, we recommend that the President consider the allocation of tariff-rate quota volumes by country based on historical import levels. An allocation based on historical shares will minimize market disruption by ensuring continuity of supply and preventing the possibility of a "race to the dock."

2. Country Exclusions

Having made a negative finding with respect to imports of certain carbon flat-rolled steel from Canada under section 311(a) of the NAFTA Implementation Act for the reasons set out in our injury views, we recommend that the President not include imports from Canada in any remedy action. Having made an affirmative finding with respect to such imports from Mexico, we recommend that the President include imports from Mexico within any remedy action. We also recommend that the President not include imports of certain carbon flat-rolled steel from Israel and beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act in any remedy action. The only imports of certain carbon flat-rolled steel during the period of investigation from these countries were small and sporadic.[68] [69]

3. International Negotiations

As discussed in Section I above, we recommend that the President continue recently initiated international negotiations with all countries that supply certain carbon flat-rolled steel with the goal of reducing global overcapacity to produce certain carbon flat-rolled steel.

4. Short- and Long-Term Effects of Our Recommended Remedy

The tariff increase and other actions we are recommending will provide the minimum level of relief that is necessary to address the serious injury to the domestic certain carbon flat-rolled steel industry and will be the most effective in facilitating the efforts of the domestic industry producing certain carbon flat-rolled steel to make a positive adjustment to import competition, while minimizing market and consumer disruption. The tariff-based remedy is intended to significantly increase domestic industry revenues and substantially improve the industry's profitability, as the industry undertakes necessary efforts to restructure, consolidate, and maintain competitiveness.

Respondents have argued that tariff-based import relief will have negative effects, not only on imports, but also on U.S. consumers. The import relief recommended, however, is designed to help restore revenue, and ultimately profitability, and should produce more revenue through increased volumes and have less effect on U.S. prices, which should limit any negative effects on U.S. consumers. Price effects will be limited in the short-term because there is substantial available domestic capacity to fill any supply gap resulting from lower import levels caused by the tariffs. Thus, the price and volume changes expected from the recommended tariff level do not appear to be overly restrictive either on

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[68] CR and PR at Tables E-1, E-2, and E-3.

[69] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in Investigation No. TA-201-73, *Steel*, to the President. There have been virtually no imports of certain carbon flat-rolled steel from Jordan during the period of investigation, and they are therefore not a substantial cause of serious injury or threat of serious injury. Therefore, to the extent that section 221(a) of that Act applies to this investigation, we recommend that imports from Jordan not be subject to the additional tariffs or the tariff-rate quota described above.

import levels or end-user costs. They appear to be sufficient, however, to afford the domestic industry the appropriate level of revenue, volume, and price relief.

Given the Commission's finding that low-priced imports depressed U.S. prices and contributed to the domestic industry's deteriorating financial condition, the remedy recommended should be likely to generate some price and revenue increases for the domestic industry, while at the same time not cause prices to rise so greatly that demand will be negatively affected over the longer term. In this regard, we estimate that, during the first year, the recommended tariff increase will be expected to yield higher revenues and sales volumes, and a small increase in domestic prices, which will enable the industry to earn modest profits.[70] This remedy is estimated to provide the domestic certain carbon flat-rolled steel industry with significant additional revenue over 2000 levels.[71] As the condition of the industry improves, market confidence and market stability will also be restored, and the industry will be in a better position to obtain the necessary financing for improved efficiency, technological innovations, consolidation, and restructuring. In addition, the relatively small rise in price will not have a crushing effect on consumers. In fact, the remedy is estimated to have net welfare effects that range from modestly negative to slightly positive.[72] While imports will enter at somewhat higher prices and import levels may initially be restricted somewhat, the projected impact on consumers appears to be moderate.[73]

It is not possible to predict market effects with precision following the initial year of relief. However, while the recommended tariff increases principally will have a revenue and volume effect in the first year of relief, it would be expected to have more of an effect on U.S. prices as the industry consolidates and demand increases. Therefore, over the relief period, the domestic industry would be expected to increase production levels in response to price relief and return to levels of profitability that inspire investor confidence.

Our tariff-rate quota on slab is designed to enable domestic producers to continue to meet their needs while at the same time preventing any surges in slab imports.

5. Short- and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the domestic industry's operating losses will continue and worsen. In particular, the price depression evident in the market during the period examined will remain a major adverse market factor, and imports will capture an increasing share of the domestic market. Without appropriate relief, this trend is likely to worsen in its price and revenue impact on the domestic industry. The industry's inability to raise equity or debt capital would continue. Continued operating losses will prohibit the domestic industry from implementing its proposed investments and other aspects of its adjustment plans, thereby leaving it less viable and less able to compete with imports. The industry incurred substantial losses from 1999 through the first half of 2001, and many companies are not likely to survive if such losses continue unabated.[74] Such closings and partial closings will lead to increased layoffs of workers in the industry. Closing companies will in turn affect the towns and communities where the companies are located and will have a significant impact on the local economy in each of the many communities in which these mills are located. The effect will be particularly devastating in regions

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[70] EC-Y-050 at 13.

[71] EC-Y-050 at 13.

[72] EC-Y-050 at 13.

[73] EC-Y-050 at 13.

[74] INV-Y-209 at Table FLAT-ALT7 and INV-Y-212 at STL201FT.WK4. As discussed above, during the period examined, 10 companies making certain carbon flat-rolled steel already have filed for bankruptcy protection. INV-Y-181.

with a significant concentration of certain carbon flat-rolled steel producers, such as Northwest Indiana, the Pittsburgh/Youngstown area, the Cleveland/Lake Erie area, and others.

E. Other Steps To Facilitate Industry's Positive Adjustment to Import Competition

While not recommendations, as discussed in Section I above, we note that there are other steps that should be considered in order to facilitate the industry's positive adjustment to import competition. According to the domestic certain carbon flat-rolled steel industry, relief that provides the industry access to capital by allowing profits to rise and capital market confidence to improve would enable companies to carry out their adjustment plans. The industry, however, faces several impediments to making a positive adjustment. Many companies carry huge legacy costs (both pension and health care costs for retired workers) that are not only an immediate financial burden but also inhibit their ability to consolidate and restructure. Other barriers to closure of inefficient facilities, including closure-related environmental liabilities, also exist.

Several producers of certain carbon flat-rolled steel discussed in their presentations to the Commission various forms of government assistance that would provide them relief from legacy costs and enable them to gain access to capital. The integrated producers of certain carbon flat-rolled steel proposed that any tariff revenues collected be distributed to the industry. The USWA requested legislation that would authorize the payment of funds to the industry to cover its legacy costs and legislation that would establish a floor price on domestic sales of all flat-rolled steel products. Domestic producers also proposed tax incentives to encourage consolidation and to ease liquidation and selling of productive capacity, and refundable tax credits or interest-free loans to provide relief from legacy costs.

These proposals would require legislation to be implemented, since the President does not currently have such authorization. While the Section 201 statute authorizes the President to, *inter alia*, "submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition," the Commission may only recommend to the President actions currently authorized under law.[75] We therefore make no recommendation to the President with respect to these legislative proposals. We stress, however, that actions to address these issues are vital to ensuring the future viability of the domestic certain carbon flat-rolled steel industry and its ability to compete effectively with imports once any import relief provided pursuant to this investigation is terminated.

[75] 19 U.S.C. § 2253(a)(3)(H).

III. CERTAIN CARBON AND ALLOY LONG PRODUCTS

A. Findings and Recommendations of the Commission

For the reasons set forth below, we recommend the following actions with respect to hot-rolled bar and light shapes ("hot-rolled bar"), cold-finished bar, and rebar. We find these actions will address the serious injury we have found to exist and will be the most effective in facilitating the efforts of the pertinent domestic industries to make a positive adjustment to import competition.

For hot-rolled bar we recommend:

(1) That the President impose an additional duty on imports of hot-rolled bar for a four-year period. The additional duty would amount to 20 percent *ad valorem* in the first year of relief and be reduced to 17 percent *ad valorem* in the second year of relief, 14 percent *ad valorem* in the third year of relief, and 11 percent *ad valorem* in the fourth year of relief;

(2) That the President continue to pursue international negotiations with the governments of all the countries that supply hot-rolled bar aimed at reducing inefficient global overcapacity to produce hot-rolled bar;

(3) Having made an affirmative finding with respect to imports of hot-rolled bar from Canada under section 311(a) of the NAFTA Implementation Act, that such imports be subject to the additional duty described above;[76]

(4) That the additional duty not apply to imports of hot-rolled bar from Israel, or to any imports of hot-rolled bar entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[77]

For cold-finished bar we recommend:

(1) That the President impose an additional duty on imports of cold-finished bar for a four-year period. The additional duty would amount to 20 percent *ad valorem* in the first year of relief and be reduced to 17 percent *ad valorem* in the second year of relief, 14 percent *ad valorem* in the third year of relief, and 11 percent *ad valorem* in the fourth year of relief;

(2) That the President continue to pursue international negotiations with the governments of all the countries that supply cold-finished bar aimed at reducing inefficient global overcapacity to produce cold-finished bar;

(3) Having made an affirmative finding with respect to imports of cold-finished bar from Canada under section 311(a) of the NAFTA Implementation Act, that such imports be subject to the additional duty described above;

(4) Having made a negative finding with respect to imports of cold-finished bar from Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty described above;

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[76] Having made an affirmative finding with respect to imports of hot-rolled bar from Mexico under section 311(a) of the NAFTA Implementation Act, Chairman Koplan and Commissioner Miller recommend that such imports be subject to the additional duty described above. Commissioner Hillman made a negative determination under section 311(a) of the NAFTA Implementation Act with respect to imports of hot-rolled bar from Mexico. Accordingly, she recommends that imports of hot-rolled bar from Mexico not be subject to the additional duty.

[77] To the extent that section 211(a) of the Jordan FTA Act applies to this investigation, we recommend that the additional duty not apply to imports of hot-rolled bar from Jordan.

(5) That the additional duty not apply to imports of cold-finished bar from Israel, or to any imports of cold-finished bar entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[78]

For rebar we recommend:

(1) That the President impose an additional duty on imports of rebar for a four-year period. The additional duty would amount to 10 percent *ad valorem* in the first year of relief and be reduced to 8 percent *ad valorem* in the second year of relief, 6 percent *ad valorem* in the third year of relief, and 4 percent *ad valorem* in the fourth year of relief;

(2) That the President continue to pursue international negotiations with the governments of all the countries that supply rebar aimed at reducing inefficient global overcapacity to produce rebar;

(3) Having made negative findings with respect to imports of rebar from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty described above;

(4) That the additional duty not apply to imports of rebar from Israel, or to any imports of rebar entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[79]

We find that the actions described above would not exceed the amount necessary to remedy the serious injury we find to exist. In addition, as discussed in section I above, we encourage the President to consider other appropriate action to facilitate the efforts of the domestic industry to rationalize and consolidate, and thus make a positive adjustment to import competition.

B. Conditions of Competition

We considered the conditions of competition in the domestic and world markets and likely developments affecting such conditions during the next several years in evaluating the various remedy options for each of the domestic industries on which we made an affirmative determination.

We observe generally that the great bulk of domestic producers of carbon and alloy bar products are minimills. This is in contrast to flat products, where both integrated producers and minimills operate significant production facilities.[80]

1. Hot-Rolled Bar

Demand Conditions. Demand was strong during the five full years of the period examined. Despite a decline of 5.2 percent from 1998 to 1999, U.S. apparent consumption rose 11.7 percent from 1996 to 2000. However, demand weakened sharply after 2000; apparent consumption was 19.0 percent

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[78] To the extent that section 211(a) of the Jordan FTA Act applies to this investigation, we recommend that the additional duty not apply to imports of cold-finished bar from Jordan.

[79] To the extent that section 211(a) of the Jordan FTA Act applies to this investigation, we recommend that the additional duty not apply to imports of rebar from Jordan.

[80] Also in contrast to flat products, the vast majority of producers of hot-rolled bar, cold-finished bar and rebar do not have legacy costs. *See* Minimill 201 Coalition Posthearing Remedy Brief, ex. 1 at 8. *But cf. id.* at 9 (listing two bar producers that have legacy costs or unfunded employee benefit obligations); Ispat Inland Posthearing Remedy Brief at 2.

lower in interim 2001 than it was in interim 2000.[81] The domestic producers project that demand for hot-rolled bar will be higher in 2002 than in 2001 and higher in 2003 than in 2002.[82] Economic projections submitted by respondents indicate that demand for most types of construction equipment and for automobiles should be higher in 2002 than in 2001.[83]

A majority of market participants indicate that there are no known substitutes for steel bar products, including hot-rolled bar.[84] As discussed in section V.A.1. of the injury opinion, hot-rolled bar is used in construction, automotive equipment, and industrial applications. Hot-rolled bar encompasses a wide range of products including merchant bar, special bar quality steel bars, and light shapes.[85]

Price is a moderately important factor in purchasing decisions for hot-rolled bar. Based on available information, overall consumption of hot-rolled bar is relatively insensitive to price changes.[86]

Domestic Supply Conditions. There were 32 U.S. hot-rolled bar producers that responded to the Commission questionnaire. As discussed in section V.B.2 of the injury opinion, capacity reported in the questionnaires increased slightly from 1996 to 2000, but overall capacity likely declined during this period due to closures by bankrupt producers that did not respond to the Commission questionnaire. Capacity reported in questionnaires was lower in interim 2001 than in interim 2000. Capacity utilization reported in questionnaires fluctuated during the period examined, ranging from 67.2 percent in 1996 to 74.3 percent in 1998. Reported capacity utilization was 70.0 percent in 2000, 75.1 percent in interim 2000, and 60.3 percent in interim 2001.[87] Thus, U.S. hot-rolled bar producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

Import Supply Conditions. During the period examined, there were hot-rolled bar imports from over 40 different countries, although not every country exported product to the United States in every year.[88] Imports of hot-rolled bar increased by 52.5 percent from 1996 to 2000 and were 28.9 percent lower in interim 2001 than interim 2000.[89] As discussed in section V.B.3. of the injury opinion, purchasers generally perceived domestically-produced and imported hot-rolled bar to be comparable products.

Both capacity and production of hot-rolled bar from sources outside the United States increased irregularly during the period examined. The record data indicate that capacity utilization of foreign

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[81] CR and PR, Table LONG-C-3.

[82] Minimill 201 Coalition Posthearing Remedy Brief at 15. *See also* Ispat Inland Posthearing Remedy Brief at 1 (projection of demand for that company's products).

[83] Turkish Respondents Posthearing Remedy Brief, ex. 5.

[84] EC-Y-046 at LONG-13.

[85] *See* CR and PR at LONG-1.

[86] EC-Y-046 at LONG-13-14.

[87] CR and PR, Table LONG-C-3.

[88] INV-Y-180, Hot-Rolled Bar data.

[89] CR and PR, Table LONG-C-3. Commissioner Hillman notes that imports of hot-rolled bar from sources other than Mexico increased by 55.4 percent from 1996 to 2000 and were 29.0 percent lower in interim 2001 than interim 2000. *Id.*

producers also increased irregularly from 74.7 percent in 1996 to 79.4 percent in 2000. Capacity utilization was 77.2 percent in interim 2000 and 74.4 percent in interim 2001.[90] [91]

2. Cold-Finished Bar

Demand Conditions. Demand was strong during 1996-2000, but weakened sharply in 2001. Apparent consumption rose by 16.6 percent from 1996 to 2000 despite a small decrease of 3.6 percent from 1998 to 1999. Apparent consumption was 22.6 percent lower in interim 2001 than it was in interim 2000.[92] The domestic producers project that demand for cold-finished bar will be higher in 2002 than in 2001 and higher in 2003 than in 2002.[93]

A majority of market participants indicate that there are no known substitutes for steel bar products, including cold-finished bar.[94] As discussed in section V.A.2. of the injury opinion, the principal use of cold-finished bar is in automotive applications. Cold-finished bar, like hot-rolled bar, encompasses a variety of products.[95]

Price is an important factor in purchasing decisions for cold-finished bar. Based on available information, overall consumption of cold-finished bar is somewhat insensitive to price changes.[96]

Domestic Supply Conditions. There were 18 U.S. cold-finished bar producers that responded to the Commission's questionnaire. Capacity fluctuated over the period examined, increasing 5.7 percent from 1996 to 2000. Capacity was 6.0 percent lower in interim 2001 than in interim 2000. Reported capacity utilization was below 50 percent throughout the period examined.[97] As discussed in section V.C.2 of the injury opinion, the capacity utilization data reported in the questionnaires tend to understate actual capacity utilization. Notwithstanding this, it is clear that U.S. cold-finished bar producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

Import Supply Conditions. During the period examined, there were cold-finished bar imports from over 30 different countries, although not every country exported product to the United States in

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[90] CR and PR, Tables LONG-42, LONG-44. We note that not every foreign producer responded to our questionnaire. Domestic producers asserted that foreign capacity and excess capacity are substantially greater than the questionnaire data indicate. *See, e.g.*, Minimill 201 Coalition Prehearing Injury Brief, vol. 1 at 80-85.

[91] Commissioner Hillman notes that both capacity and production of hot-rolled bar from sources outside the United States other than Mexico increased during the period examined. Capacity utilization of producers outside the United States and Mexico increased irregularly from 74.3 percent in 1996 to 79.5 percent in 2000. Capacity utilization was 77.1 percent in interim 2000 and 75.3 percent in interim 2001. CR and PR, Tables LONG 42, LONG-44.

[92] CR and PR, Table LONG-C-4.

[93] Minimill 201 Coalition Posthearing Remedy Brief at 15. Respondents did not provide any projections of overall demand levels for cold-finished bar.

[94] EC-Y-046 at LONG-13.

[95] Additionally, hot-rolled bar is the principal input in the production of cold-finished bar. As we stated in section V.A.2. of the injury opinion, however, the cross-price effects between hot-rolled and cold-finished bar are limited because the bulk of hot-rolled bar production is not cold-finished.

[96] EC-Y-046 at LONG-13-14.

[97] CR and PR, Table LONG-C-4.

every year.[98] Imports of cold-finished bar from sources other than Mexico increased by 53.3 percent from 1996 to 2000 and were 20.5 percent lower in interim 2001 than in interim 2000.[99] As discussed in section V.C.3. of the injury opinion, purchasers generally perceived domestically-produced and imported cold-finished bar to be comparable products.

Both capacity and production of cold-finished bar from sources outside the United States other than Mexico increased during the period examined. The record data indicate that capacity utilization of producers outside the United States and Mexico increased irregularly from 83.0 percent in 1996 to 86.7 percent in 2000. Capacity utilization was 84.2 percent in both interim 2000 and interim 2001.[100]

3. Rebar

Demand Conditions. Demand was strong throughout the period examined. Apparent consumption increased during each full year during the period examined, rising 48.1 percent from 1996 to 2000. Apparent consumption was 2.0 percent higher in interim 2001 than in interim 2000.[101] The domestic producers presented two diverging projections of demand for rebar. One projection showed increases in demand for every year between 2001 and 2006. The second projection showed demand declining from 2001 to 2002, and then increasing in 2003 to a level below that of 2001.[102] Respondents submitted projections showing residential construction stagnant to declining from 2001 to 2002 and rising from 2002 to 2003.[103]

A majority of market participants indicate that there are no known substitutes for steel bar products, including rebar.[104] The sole use of rebar is structural reinforcement of cast concrete structures.[105]

Price is a very important factor in purchasing decisions for rebar. Based on available information, overall consumption of rebar is highly insensitive to price changes.[106]

Domestic Supply Conditions. There were 17 U.S. rebar producers that responded to the Commission's questionnaire. Capacity rose during each year of the period examined, increasing 26.6 percent from 1996 to 2000. Capacity was 2.5 percent higher in interim 2001 than in interim 2000. Capacity utilization rose irregularly during the period examined, increasing from its full-year low of 64.9 percent in 1996 to its full-year high of 68.5 percent in 2000. Reported capacity utilization was 68.1 percent in interim 2000 and 73.2 percent in interim 2001.[107] Thus, U.S. rebar producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

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[98] INV-Y-180, Cold-Finished Bar data.

[99] CR and PR, Table LONG-C-4.

[100] CR and PR, Tables LONG-45, LONG-47. We note that not every foreign producer responded to our questionnaire. Domestic producers asserted that foreign capacity and excess capacity are substantially greater than the questionnaire data indicate. *See, e.g.*, Minimill 201 Coalition Prehearing Injury Brief, vol. 1 at 80-85.

[101] CR and PR, Table LONG-C-5.

[102] Minimill 201 Coalition Posthearing Remedy Brief at 15.

[103] Turkish Respondents Posthearing Remedy Brief, ex. 5.

[104] EC-Y-046 at LONG-13.

[105] EC-Y-046 at LONG-14.

[106] EC-Y-046 at LONG-13-14.

[107] CR and PR, Table LONG-C-5.

Import Supply Conditions. During the period examined, there were rebar imports from over 30 different countries, although not every country exported product to the United States in every year.[108] Imports of rebar from sources other than Canada and Mexico increased by 434.8 percent from 1996 to 2000 and were 18.9 percent lower in interim 2001 than in interim 2000.[109] Rebar imports from Turkey became subject to provisional antidumping duties in October 1996 and have been the subject of an antidumping order since April 1997. Rebar imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine became subject to provisional antidumping duties in January 2001 and have been the subject of antidumping orders since September 2001. As discussed in section V.D.3. of the injury opinion, rebar is a commodity product sold largely on the basis of price.

Both capacity and production of rebar from sources outside the United States other than Canada and Mexico increased during the period examined, although capacity did not increase during every year of the period. The record data indicate that capacity utilization of producers outside the United States, Mexico, and Canada increased irregularly from 82.9 percent in 1996 to 91.7 percent in 2000. Capacity utilization was 82.5 percent in interim 2000 and 85.3 percent in interim 2001.[110]

C. Industry Adjustment Plans

We carefully considered the adjustment plans submitted by the individual producers of hot-rolled bar, cold-finished bar, and rebar. These plans include capital expenses intended to enhance efficiency and reduce costs. Such projects would include modifying, refurbishing, or replacing furnaces and installing new transformers, control systems, and other productive equipment. Several producers propose to resume a more normal scope and pace of operations by increasing productive shifts, rehiring laid off workers, or paying down debt. Another element of the adjustment plans is the installation of equipment designed to permit producers to offer new product lines, such as special bar quality bar and high-strength joint bar (hot-rolled bar), specialty types of cold-finished bar, and stainless or corrosion-resistant rebar.

D. Recommended Relief

1. Nature and Duration of Remedy

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quotas, tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, we have examined closely the costs and benefits of each. We have determined that tariffs would provide the domestic hot-rolled bar, cold-finished bar, and rebar industries with the most appropriate form of relief.

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[108] INV-Y-180, Rebar data.

[109] CR and PR, Table LONG-C-5.

[110] CR and PR, Tables LONG-48-50. We note that not every foreign producer responded to our questionnaire. Domestic producers asserted that foreign capacity and excess capacity are substantially greater than the questionnaire data indicate. *See, e.g.*, Minimill 201 Coalition Prehearing Injury Brief, vol. 1 at 80-85.

Most domestic producers have requested that the Commission recommend imposition of a tariff of 50 percent for each bar product for a four-year period.[111] The USWA has proposed two remedies for long products, one of which involves a combination of a fixed tariff of 50 percent and an absolute quota, based on average import volumes between July 1994 and June 1996 (or alternatively calendar years 1996 and 1997), and the other of which involves a combination of a stratified tariff ranging from 30 percent to 50 percent and an absolute quota based on average import volumes between July 1994 and June 1996 (or alternatively calendar years 1996 and 1997). Respondents have generally argued that any recommended relief be limited to trade adjustment assistance and not include restrictions on imports. Respondents have generally indicated that if the Commission is inclined to recommend import restrictions, they should be in the form of quotas based on recent import levels.

We recommend that the President increase the current duties applied to hot-rolled bar, cold-finished bar, and rebar for a four-year period. For hot-rolled bar and cold-finished bar, imports would be subject to an additional duty of 20 percent for the first year, 17 percent for the second year, 14 percent for the third year, and 11 percent for the fourth year. For rebar, imports would be subject to an additional duty of 10 percent for the first year, 8 percent for the second year, 6 percent for the third year, and 4 percent for the fourth year. As discussed below, we find that these levels will effectively address the serious injury and facilitate adjustment. We find that higher tariff rates, including those recommended by domestic producers and the USWA, would exceed the amount necessary to remedy the serious injury.

Our general rationale for choosing a remedy in the form of additional duties of four years duration was articulated in section I.A. of this remedy opinion. Several conditions of competition applicable to the specific long products at issue make such a remedy particularly appropriate. First, as stated above, U.S. apparent consumption of hot-rolled bar and cold-finished bar was lower in interim 2001 than in interim 2000, yet demand for these products is projected to increase in 2002 from 2001 levels. For rebar, U.S. producers have furnished divergent demand projections for the next few years. We believe that the recent and projected fluctuations in demand for the bar products at issue, as well as the uncertainties inherent in projecting future demand in light of current economic conditions, make establishment of quotas problematic.

In these circumstances, we believe that tariffs are more likely to provide effective relief to the domestic industries. Additionally, both hot-rolled bar and cold-finished bar encompass a range of products, including both commodity and specialty products. Establishment of a single quota for hot-rolled or cold-finished bar could result in the quota being filled entirely by imports of commodity products. This could result in short supplies of specialty products which may not necessarily be readily obtained domestically. By contrast, use of tariffs would avoid supply disruptions.

Our recommendation of a lower duty rate for rebar than for hot-rolled bar or cold-finished bar reflects the different condition of the rebar industry in interim 2001 and differing results of economic models.[112] In turn, because the initial duty rate for rebar is lower than those for the other two bar products, the year-to-year reductions in that rate are also lower in magnitude.

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[111] The Minimill 201 Coalition advocated an initial duty rate for hot-rolled bar, cold-finished bar, and rebar of 50 percent. Ispat Inland advocated an initial duty rate of 40 percent for hot-rolled bar.

[112] We also took into account the existing antidumping duty orders on rebar. As described in our injury opinion, while these orders reduced imports from covered sources, imports from other sources took their place to a significant degree. However, in setting our tariff level, we recognize that these measures are now in place.

2. Country Exclusions

As stated in our injury views, we have made affirmative findings under section 311(a) of the NAFTA Implementation Act on hot-rolled bar and cold-finished bar from Canada.[113] We consequently recommend that the President include these imports in any remedy.[114] Additionally, we made negative findings on rebar from Canada and on cold-finished bar and rebar from Mexico.[115] We consequently recommend that the President not include these imports in any remedy.[116]

We also recommend that the President not include in any remedy imports of all three products from Israel and beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act (ATPA). While there were imports of hot-finished bar from Israel, ATPA countries and CBERA countries, imports of cold-finished bar from ATPA countries, and imports of rebar from CBERA countries, the imports were all at very low levels.[117]

3. International Negotiations

As discussed in Section I.C. above, we recommend that the President continue recently initiated international negotiations with all countries that supply hot-rolled bar, cold-finished bar, and rebar with the goal of reducing global overcapacity to produce these articles.

4. Short and Long-Term Effects of Our Recommended Remedy

We believe that the duty rate increases we are recommending would address the serious injury to the domestic hot-rolled bar, cold-finished bar, and rebar industries and would be the most effective actions in facilitating the efforts of these industries to make a positive adjustment to import competition.[118] The duty rate increases also would not exceed the amount necessary to remedy serious injury.

These tariff-based remedies are intended to reduce the market share of imported hot-rolled bar, cold-finished bar, and rebar to levels existing before the recent import surges. The remedies would also increase the domestic industries' shipment volumes and, to a lesser extent, prices. These increases would result in greater revenues and operating income for each domestic industry. We observe that while the hot-rolled bar and rebar industries experienced operating losses during 2000, and the cold-finished bar industry earned only minimal operating profits, each of these industries showed satisfactory operating

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[113] *See* injury opinion sections V.B.4.a. (hot-rolled bar), V.C.4.a. (cold-finished bar).

[114] Chairman Koplan and Commissioner Miller also made affirmative findings on hot-rolled bar from Mexico. They consequently recommend that the President also include these imports in any remedy.

[115] *See* injury opinion sections V.C.4.b. (cold-finished bar), V.D.4. (rebar).

[116] Commissioner Hillman also made a negative finding on hot-rolled bar from Mexico. She consequently recommends that the President not include these imports in any remedy.

[117] CR and PR, Tables E-1-3. The Jordan FTA Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in Investigation No. TA-201-73, *Steel*, to the President. There were no imports of hot-rolled bar, cold-finished bar, or rebar from Jordan during the period examined. Imports from Jordan are therefore not a substantial cause of serious injury or threat of serious injury. Therefore, to the extent that section 221(a) of the Jordan FTA Act applies to this investigation, we recommend that imports from Jordan not be subject to the additional duties described above.

[118] *See generally* EC-Y-051 (Dec. 7, 2001).

margins during earlier portions of the period examined before being seriously injured by the import surges. We acknowledge that the price increases will increase costs to consumers, but our record and economic model indicates that these price increases will be modest. Thus, they are unlikely to have substantial adverse effects on consumers.

On a longer-term basis, the restored profitability of the domestic industries would permit the investment necessary to implement the changes outlined in the producers' adjustment plans and to enable the industries to adjust to future import competition. Increased profitability would also raise investor confidence, facilitating such investment.

4. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the negative performance trends experienced by the domestic hot-rolled bar, cold-finished bar, and rebar industries during the latter portions of the period examined would likely continue. In particular, imports would maintain or further increase their share of the pertinent U.S. markets. The continued competition would force domestic producers either to lose market share, cut prices, or both.

As a result, domestic producers would face further declines in their revenues and worsening financial performance. The operating losses witnessed in the hot-rolled bar and rebar industries in 2000 would continue at increased levels, and the cold-finished bar industry, which was barely profitable in 2000, would experience industry-wide operating losses as well. Continued operating losses, in turn, would accelerate the rate of bankruptcies and plant closures in these industries. Indeed, since 1999, there have been four bankruptcies among hot-rolled bar producers, three of which resulted in full or partial closures of productive facilities, one bankruptcy among cold-finished bar producers, and one bankruptcy among rebar producers.[119] Such bankruptcies and plant closures would lead to layoffs of workers in the industries, and adverse impacts on the communities in which the production facilities are located.

[119] CR, PR, Table OVERVIEW-11.

IV. CARBON AND ALLOY WELDED PIPE AND FITTINGS, FLANGES, AND TOOL JOINTS[120]

A. Findings and Recommendations of the Commission

Having found that the domestic industry producing welded pipe (other than OCTG) is threatened with serious injury and that the domestic industry producing fittings, flanges, and tool joints is seriously injured, we recommend that the President take the following actions to address the threat of serious injury or serious injury and facilitate a positive adjustment to import competition:

For welded pipe (other than OCTG):

(1) We recommend that the President impose a tariff-rate quota on imports of welded pipe for a four-year period, with an over-quota duty of 20 percent *ad valorem* in the first year, 17 percent *ad valorem* in the second year, 14 percent *ad valorem* in the third year, and 11 percent *ad valorem* in the fourth year,[121] with no change in duty for in-quota imports. Chairman Koplan and Commissioner Miller recommend that the tariff-rate quota amount be 2.60 million short tons in the first year, 2.68 million short tons in the second year, 2.76 million short tons in the third year, and 2.84 million short tons in the fourth year. Vice Chairman Okun and Commissioner Hillman recommend that the tariff-rate quota amount be 1,400,443 short tons in the first year, with the quota amounts to be increased by an additional 3 percent per year in each of the second, third, and, in the case of Commissioner Hillman, the fourth year;

(2) We recommend that the President continue to pursue international negotiations with the governments of all the countries that supply welded pipe aimed at reducing inefficient overcapacity to produce welded pipe;

(3) Chairman Koplan and Commissioner Miller, having made an affirmative finding with respect to imports of welded pipe from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, recommend that imports from Canada and Mexico be subject to the action described above; Vice Chairman Okun and Commissioner Hillman, having made a negative finding with respect to such imports from Canada and Mexico, recommend that such imports not be subject to the action described above;

(4) We recommend that the over-quota tariff not apply to imports of welded pipe from Israel or to any imports of welded pipe entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act;[122] and

(5) We recommend that the remedy not apply to imports of certain large diameter welded line pipe products.[123] [124]

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[120] Unless otherwise stated, this section of the opinion is joined by Chairman Koplan, Vice Chairman Okun, and Commissioners Miller and Hillman.

[121] Vice Chairman Okun recommends that the tariff-rate quota be imposed for a 3-year period.

[122] To the extent that section 211(a) of the Jordan FTA applies to this investigation, we recommend that the additional duty not apply to imports of welded pipe (other than OCTG) from Jordan.

[123] We specifically exclude the following products from our recommended remedy in this investigation:

Certain large diameter line pipe: Carbon and alloy welded line pipe –

- Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inches or greater, regardless of grade.

For fittings, flanges, and tool joints, we recommend:

(1) That the President impose a duty, in addition to the existing rates of duty, on imports of fittings, flanges, and tool joints for a four-year period, as follows: 13 percent *ad valorem* in the first year, 10 percent *ad valorem* in the second year, 7 percent *ad valorem* in the third year, and 4 percent *ad valorem* in the fourth year;[125]

(2) That the President continue to pursue international negotiations with the governments of all the countries that supply fittings, flanges, and tool joints aimed at reducing inefficient overcapacity to produce fittings, flanges, and tool joints;

(3) Having made affirmative findings[126] with respect to imports of fittings, flanges, and tool joints from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be subject to the action described above; and

(4) That the additional duty not apply to imports of fittings, flanges, and tool joints from Israel or to any imports of fittings, flanges, and tool joints entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[127]

- Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
- Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X-80 or greater.
- Having an outside diameter of 64 inches or greater.

We recommend that these large diameter line pipe products be excluded from our remedy as the primary domestic producers of the products and Respondents do not object to such exclusion.

[124] Vice Chairman Okun recommends that imports of the large diameter line pipe described in footnote 4 not be subject to the over-quota rate of duty, but that such imports be counted towards the quota for the purpose of determining when the quota is filled.

[125] Vice Chairman Okun recommends that the increased duty be imposed for a 3-year period, with the same reduction of 3 percentage points in each year that the action is in effect. She also recommends the exclusion of tool joints from her proposed remedy.

[126] Chairman Koplan made a negative finding with respect to imports of fittings, flanges, and tool joints from Canada under section 311(a), and recommends that such imports be excluded from the increased duty. Commissioner Hillman made a negative finding with respect to imports of fittings, flanges, and tool joints from Mexico under section 311(a), and recommends that such imports be excluded from the increased duty.

[127] To the extent that section 211(a) of the Jordan FTA applies to this investigation, we recommend that the additional duty not apply to imports of fittings, flanges, and tool joints from Jordan.

We find that the actions described above will not exceed the amount necessary to remedy the serious injury we find to exist. In addition, as noted above, we encourage the President to consider other appropriate action to facilitate the efforts of the domestic industry to rationalize and consolidate, and thus make a positive adjustment to import competition.[128]

B. Welded Pipe (Other than OCTG)

1. Conditions of Competition

We considered the conditions of competition in the domestic and world markets and likely developments affecting such conditions during the next several years in evaluating the various remedy options for welded pipe.

a. Demand Conditions

As discussed in section VI.A.2.b of the injury determination, welded pipe (other than OCTG)[129] is used primarily in the movement of liquids and gases and in construction applications. While demand for welded pipe rose early in the period of investigation, demand has been flat since 1998. Apparent consumption rose by 8.1 percent from 1996 to 1997 and by 10.0 percent from 1997 to 1998. It then fell by 0.4 percent from 1998 to 1999 and rose 0.8 percent from 1999 to 2000. Apparent consumption was 0.2 percent higher in interim 2001 than it was in interim 2000.[130]

Domestic producers estimate that demand in the second half of 2001 fell about 20 percent, that 2002 demand will likely be about 15 to 20 percent below 2000 levels, and that demand will not return to healthy levels approaching the 2000 level until 2003 or 2004.[131] The Korean Respondents noted domestic industry predictions of a decline in demand, but did not offer their own projections.[132] Japanese Respondents did not offer an overall projection either, but projected that U.S. demand for welded large diameter line pipe would continue to grow by about 3 percent per year for the foreseeable future.[133]

A majority of market participants indicate that there are no known substitutes for welded pipe products.[134] To the extent necessary, both imported and domestic welded pipe are produced to defined American Petroleum Institute (API) and American Society for Testing and Materials (ASTM) industry standards, and imported and domestic welded pipe are largely interchangeable.[135]

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[128] Vice Chairman Okun concurs with the following presentation of facts. Her complete analysis is contained in the Views of Vice Chairman Deanna Tanner Okun on Remedy.

[129] Unless otherwise indicated, all references in this section to welded pipe are to welded pipe other than OCTG.

[130] CR and PR, Table TUBULAR-C-4.

[131] Committee on Pipe and Tube Imports Posthearing Remedy Brief at 4-5.

[132] Korea Iron and Steel Association Posthearing Remedy Brief at 8.

[133] Kawasaki Steel Corporation et al. Posthearing Remedy Brief at 23.

[134] EC-Y-046 at TUBULAR-9.

[135] CR and PR at TUBULAR-68-70.

b. Domestic Supply Conditions

Capacity expanded over the period of investigation, as reported by 32 U.S. welded pipe producers that responded to the Commission questionnaire.[136] U.S. welded pipe capacity increased by 22 percent from 1996 to 2000. Capacity was 0.5 percent higher in interim 2001 than in interim 2000. Capacity utilization reached a high of 71.9 percent in 1997 and steadily decreased over the remainder of the period of investigation, reaching 53.2 percent in interim 2001.[137] Thus, U.S. welded pipe producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

c. Import Supply Conditions

During the period of investigation imports of welded pipe from all sources increased by 67.0 percent during 1996-2000 and were 1.7 percent lower in interim 2001 than in interim 2000. Imports of welded pipe from non-NAFTA countries increased 80.7 percent during 1996-2000, and were 20.2 percent higher in interim 2001 than in interim 2000. The record indicates that domestic and imported welded pipe are comparable products.

Foreign capacity to produce welded pipe increased irregularly during the period of investigation, was higher in interim 2001 than in interim 2000, and was projected to increase in both full year 2001 and 2002.[138] [139] While foreign capacity utilization declined a small amount over the period of investigation, foreign capacity utilization is projected to increase significantly in 2001, and to remain in 2002 at a level greater than any year during the period of investigation.[140] Foreign production declined irregularly during the period of investigation, but was higher in interim 2001 than in interim 2000, and is projected to increase in full year 2001 and 2002 to levels higher than in any year of the period of investigation.[141] Foreign producers' reported exports to the U.S. market rose irregularly during the period of investigation, reaching their highest level of the period in 2000 at 1.91 million tons. Reported exports to the U.S. market were 1.06 million tons in interim 2001 as compared to 1.09 million tons in the same period of 2000. Projected exports to the U.S. market in full year 2001 are 1.88 million tons and 1.78 million tons in 2002, slightly less than the reported actual exports in 2000.[142] Moreover, foreign

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[136] There were 31 producers that responded for 1996 and 1997.

[137] CR and PR, Table TUBULAR-C-4.

[138] The Commission's data on foreign producers is limited to questionnaire responses. The domestic producers contend that these data are understated, citing other official sources.

[139] Foreign capacity rose through 1998, peaking that year at 21.3 million tons, and fell to 21.0 million tons in 1999 and 20.8 million tons in 2000. Foreign capacity was 10.9 million tons in interim 2001 as compared to 10.7 million tons in the same period of 2000. Foreign capacity is projected to increase to 21.1 million tons in full year 2001 and 21.3 million tons in 2002. CR and PR, Table TUBULAR-30.

[140] CR and PR at TUBULAR-40.

[141] Foreign production rose through 1998, peaking at 16.6 million tons that year, and then fell to 15.6 million tons in 1999 and 15.1 million tons in 2000. Foreign production was 8.0 million tons in interim 2001 as compared to 7.9 million tons in the same period of 2000. It is projected to rise to 17.6 million tons in full year 2001 and then decline to 17.3 million tons in 2002. Foreign capacity utilization decreased irregularly from 73.2 percent in 1996 to 70.0 percent in 2000. Foreign capacity utilization was 69.1 percent in interim 2001 as compared to 69.0 percent in the same period of 2000, and was projected to increase to 80.0 percent full in year 2001 and then decline to 76.8 percent in 2002. CR and PR, Table TUBULAR-30.

[142] CR and PR, Table TUBULAR-30.

production became increasingly export-oriented over the period of investigation,[143] and an increasing share of foreign production was exported to the United States. In 2000, 12.6 percent of foreign production was exported to the United States, up from 8.9 percent in 1999.[144] Thus, foreign capacity and production are projected to rise in the near term, and there appears to be more than sufficient foreign capacity, used and unused, to sustain a high level of exports to the U.S. market.

Imports of certain welded pipe are subject to antidumping duty and countervailing duty orders. The orders cover only a limited number of welded pipe products and, of those, only imports from a limited number of countries. These orders cover welded standard pipe from 11 countries,[145] and certain welded large diameter line pipe from Japan.[146] The orders on welded standard pipe were issued between 1984 and 1989, and the order on welded large diameter line pipe from Japan was issued in November 2001. While these orders were intended to offset dumping margins on sales of these imports, they did not preclude the surge in imports in 2000 and continued high level of imports in 2001, nor do they address the threat of serious injury caused by increased imports that we have found in this investigation.

2. Industry Adjustment Plans

We carefully considered the adjustment plans submitted by the Committee on Pipe and Tube Imports ("the Committee") and by Bethlehem Steel. The Committee stated that the plans put forth by 16 individual member companies collectively intend to invest about $159 million over a four-year period. It said that the investments would be spent on modernization of equipment and application of technological innovations to increase efficiency and productivity. Some companies proposed upgrading and expanding their facilities and installing new equipment, while others planned to relocate or close some of their facilities. Companies also planned to invest in employee training and new information systems.

3. Recommended Relief

a. Nature and Duration of Recommended Remedy

The statute authorizes the Commission to recommend several forms of import relief, including increased duties, tariff-rate quotas, quantitative restrictions (quotas), and adjustment measures such as trade adjustment assistance, as well as a combination of these remedies. In determining which of these forms of remedy would address the threat of serious injury we have found to exist for the welded pipe

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[143] The share of production exported by foreign producers was 33.1 percent in 1996, rose to 34.0 percent in 1997 and to 40.0 percent in 1998, fell to 38.2 percent in 1999, and rose to 38.7 percent in 2000. In interim 2001, foreign producers exported 43.2 percent of production as compared to 40.0 percent in interim 2000. CR and PR, Table TUBULAR-30.

[144] The share of foreign production exported to the U.S. market was 7.5 percent in 1996, fell to 6.2 percent in 1997, and then rose to 8.7 percent in 1998, to 8.9 percent in 1999, and to 12.6 percent in 2000. The share exported to the U.S. market was 13.0 percent in interim 2001 as compared to 14.0 percent in interim 2000. CR and PR, Table TUBULAR-30.

[145] *Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 (July 2000), at 8-10.

[146] The order was issued by the U.S. Department of Commerce in November 2001 following receipt of an affirmative Commission injury determination. *Certain Welded Large Diameter Line Pipe From Japan*, Inv. No. 731-TA-919 (Final), USITC Pub. 3464 (Nov. 2001).

industry and be most effective in facilitating positive adjustment to import competition, we have closely examined the costs and benefits of each.

Domestic producers of welded pipe requested that the Commission recommend an increase in duties of 50 percent *ad valorem* and that the Commission not recommend a separate remedy for welded large diameter line pipe.[147] The USWA requested that the Commission recommend a combination of tariffs (up to 50 percent *ad valorem*) and quotas (based on average imports during 1994-1997).[148] Respondents in general either opposed relief because they believe the domestic industry is not sufficiently injured or requested exclusion of certain products of interest from any action. Japanese Respondents, however, requested that any remedy be in the form of a quota, with separate country allocations, based on 2000 imports.[149] Korean importers requested that any remedy action differentiate between welded large diameter line pipe and other welded pipe.[150]

We have determined that a tariff-rate quota will best address the threat of serious injury to the welded pipe industry and be most effective in facilitating positive adjustment of that industry to import competition. We believe that the 50 percent tariff requested by the domestic producers exceeds the amount necessary to prevent serious injury and would cause undue hardship to importers. We believe that the tariff-rate quota that we are recommending is at a level that will allow imports continued access to the U.S. market, thereby minimizing market disruption and consumer costs.

Given that we have found threat of serious injury, the intent of our recommended remedy is to prevent imports from rising to a level that would cause serious injury. A straight tariff would affect all imports, even those at levels we have found did not cause serious injury. In light of the diversity of welded pipe imports, we seek to avoid creating supply shortfalls during the period of relief. Moreover, in order to discourage product shifting, the above-quota tariff-rate we recommend on welded pipe mirrors the tariff level we recommend be imposed for flat-rolled carbon steel products.

We believe that the establishment of quotas as requested by respondents is problematic because of the projected fluctuations in demand for the welded pipe products at issues, as well as the uncertainties inherent in projecting future demand in light of current economic conditions. In these circumstances, we believe that the imposition of tariffs on imports over the initial level of 2000 imports is more likely to provide effective relief to the domestic industries. Additionally, welded pipe encompasses a range of products, including both commodity and specialty products. Establishment of a single quota for welded pipe could result in the quota being filled entirely by imports of commodity products. This could result in short supplies of specialty products which may not necessarily be readily obtained domestically. By contrast, use of an over-quota tariff would avoid supply disruptions.

We recommend that the over-quota tariff on imports of welded pipe be set at 20 percent *ad valorem* in the first year, and that it be reduced by 3 percentage points per year during the period the remedy is in place. We recommend that the quota be set at the level of 2000 imports in the first year,[151] and that it be increased by 3 percent in each of the following three years.

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[147] Committee on Pipe and Tube Imports et al. Posthearing Remedy Brief at 1, 14; *see also* Bethlehem Steel Posthearing Remedy Brief at 1, requesting a remedy in the form of increased duties for a 4-year period, with an increase in the duty of 40 to 50 percent *ad valorem* in the first year, to be phased down no more than a few percentage points per year.

[148] United Steelworkers of America Posthearing Remedy Brief at 1.

[149] Kawasaki Steel et al. Posthearing Remedy Brief at 1.

[150] Korea Iron and Steel Association Posthearing Remedy Brief at 9.

[151] As discussed above, the quota levels recommended by Chairman Koplan and Commissioner Miller differ from those recommended by Vice Chairman Okun and Commissioner Hillman due to their different findings with respect to imports from Canada and Mexico.

Specifically, Chairman Koplan and Commissioner Miller recommend that the tariff-rate quotas be set as follows: an additional tariff of 20 percent *ad valorem* on imports in excess of 2.60 million short tons in the first year of relief, 17 percent *ad valorem* on imports in excess of 2.68 million short tons in the second year of relief, 14 percent *ad valorem* on imports in excess of 2.76 million short tons in the third year of relief, and 11 percent *ad valorem* on imports in excess of 2.84 million short tons in the fourth year of relief.

Vice Chairman Okun and Commissioner Hillman recommend an additional tariff of 20 percent *ad valorem* on imports in excess of 1,400,443 short tons in the first year of relief, 17 percent *ad valorem* on imports in excess of 1,442,456 short tons in the second year of relief, 14 percent *ad valorem* on imports in excess of 1,485,730 short tons in the third year of relief, and (Commissioner Hillman only[152]) 11 percent *ad valorem* on imports in excess of 1,530,302 short tons in the fourth year of relief.

The quota amounts recommended by Chairman Koplan and Commissioner Miller include imports from Canada and Mexico, which they recommend be subject to the remedy, while the quota amounts recommended by Vice Chairman Okun and Commissioner Hillman do not include imports from Canada or Mexico. Vice Chairman Okun's and Commissioner Hillman's quota amounts, but not those of Chairman Koplan and Commissioner Miller, also have been adjusted so as to take into account our recommendation that the remedy action not apply to imports from Israel, and the beneficiary countries of ATPA and CBERA.

The tariff-rate quota at the levels we recommend will benefit the domestic industry without imposing undue hardship on foreign producers. The 20 percent above-quota tariff-rate will halt the increase of imports at the level of imports in 2000 and prevent future import surges which would injure the industry. The 20 percent above-quota tariff-rate also was chosen, in part, because that is the tariff level that we recommend be imposed on flat-rolled carbon steel products. We recognize that hot-rolled coil and plate are the primary inputs for welded pipe products and that imposing significantly different remedies on the two products could result in market disruption by encouraging product shifting.

Having found that the domestic industry is threatened with serious injury, we find it is important to restrain but not preclude growth in imports that have progressively displaced domestically produced welded pipe in the U.S. market. We recommend that the quota component of the remedy action be increased and the over-quota additional tariff be phased down at one-year intervals. This recommendation meets the requirement of the statute that the remedy action be progressively liberalized and encourages the domestic industry to implement its adjustment plan quickly in order to adjust to import competition in a timely manner.

We recommend that the remedy action be imposed for a four-year period.[153] The adjustment measures proposed by the domestic industry are capital intensive in nature. The modernization of plants and equipment is a multi-year process, and will likely require time to complete plant and equipment design work, secure financing, manufacture the equipment, and once installed, make the new equipment operational. We believe four years is a reasonable time to implement these adjustments.

b. Country and Product Exclusions

As stated in their injury views, Chairman Koplan and Commissioner Miller have made an affirmative finding with respect to imports of welded pipe from Canada and Mexico under section 311(a) of the NAFTA Implementation Act and recommend that imports from Canada and Mexico be subject to the remedy action described above. As stated in their injury views, Vice Chairman Okun and

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[152] Vice Chairman Okun recommends that the relief be imposed for a three-year period.

[153] Vice Chairman Okun recommends that the relief be imposed for a three-year period.

Commissioner Hillman have made a negative finding with respect to such imports from Canada and Mexico and recommend that such imports not be subject to the remedy action described above.

We recommend that the remedy not apply to imports from Israel and countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preferences Act (ATPA). There have been no reported imports from Israel since 1999, and imports from Israel were significantly less than 1 percent of total imports during 1996-1999. Imports from CBERA and ATPA countries likewise were very small or nil, and none of these countries was a consistent supplier throughout the period of investigation.[154] [155]

We also recommend that the remedy action not apply to certain large diameter welded line pipe products listed above.[156] These products have been the subject of numerous exclusion requests. These products appear to be produced in the United States in very limited quantities, if at all, and have been excluded from recent antidumping proceedings.[157] Furthermore, the primary U.S. producers of welded large diameter line pipe do not object to the exclusion of these products in this recommendation.[158] For these reasons, we recommend that the remedy not be applied to certain large diameter welded line pipe products on the basis that such products are not available from the domestic industry or are unavailable in commercially significant volumes.

c. International Negotiations

As discussed in Section I above, we recommend that the President continue recently initiated international negotiations with all countries that supply welded pipe products with the goal of reducing global overcapacity to produce welded pipe products.

d. Short and Long-Term Effects of Our Recommended Remedy

We believe that the tariff-rate quota that we are recommending will address the threat of serious injury to the domestic welded pipe industry. We believe these remedies will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. This remedy also does not exceed the amount necessary to prevent serious injury, and minimizes disruption to the market and consumer costs.

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[154] CR, TUBULAR-13.

[155] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in Investigation No. TA-201-73, Steel, to the President. There have been no imports of welded pipe (other than OCTG) from Jordan during the period examined. Imports from Jordan are therefore not a substantial cause of serious injury or threat of serious injury. Therefore, to the extent that section 221(a) of that Act applies to this investigation, we recommend that imports from Jordan not be subject to the additional tariffs or the tariff-rate quota described above.

[156] See footnote 4, *supra*. The record indicates that the import volumes of these excluded products, based on data submitted in this investigation, are as follows: ***. *See* Japanese Respondents' Posthearing Injury Brief at exh. 5 and ESTA's Posthearing Injury Brief at exh. 1.

[157] After initiating its antidumping investigation, Commerce amended the scope of the investigation to exclude these line pipe products, with the consent of the domestic producers. *See Certain Welded Large Diameter Line Pipe From Japan*, Inv. No. 731-TA-919 (Final), USITC Pub. 3464 (Nov. 2001) at 4-5.

[158] *See, e.g.*, Committee on Pipe and Tubes Imports et. al. Posthearing Remedy Brief at 14 (American Steel Pipe and Stupp Corp.); ESTA Posthearing Remedy Brief at 20 (Berg); telephone interviews by investigator with *** of December 5, 2001 (***).

Our remedy is intended to halt deterioration of revenues, market share, and profitability, as the industry continues its investment efforts to modernize production facilities and add new product lines, as well as to help the industry gain access to credit. The remedy gives the industry the time needed to make positive adjustment efforts while not excluding imports from the domestic market.

We estimate that the recommended tariff-rate quota on welded pipe products will initially leave the market share, sales revenue, and profitability of the domestic industry unchanged. If import volumes increase beyond 2000 levels, then the tariff-rate quota will begin to take effect, stabilizing prices without preventing the entry of products at current levels. The tariff-rate quota should limit import growth, thereby preventing or restricting the negative impact of such growth on industry profitability.

At the same time, our proposal would maintain substantial competition in the U.S. market for welded pipe products and pose little likelihood of supply problems for domestic consumers. First, our proposed remedy for welded pipe products would still permit the same quantity of imports as in 2000 at the current low rate of duty. This amount exceeds the amount that entered in any previous year of the period of investigation . Second, there is sufficient unused domestic capacity to meet any increases in demand. Finally, to the extent that any specialty grades of welded pipe products not specifically excluded are in short domestic supply, purchasers would still be able to obtain their products even after the quota is filled, albeit at the over-quota rates of duty.

We believe the effect of this remedy on end users will be limited even if demand continues to increase. The stabilized or increased price of welded pipe products will not significantly affect the natural gas, crude oil, construction, industrial, or transportation industries or consumers since welded pipe products make up only a moderate to low percentage of the ultimate end use cost.[159] This remedy should also provide a modest protection or benefit to domestic industries that supply raw materials to the welded pipe industry, particularly hot rolled steel, as a result of the expected stability of domestic welded pipe production.

It is not possible to predict market effects with precision following the initial year of relief. In general, we would expect that as prices stabilize for welded pipe products, the domestic industry will be able to respond better to new market demands and to increase production as necessary. In addition, we would expect the domestic industry to be able to increase its ability to compete with imported welded pipe products as it modernizes and upgrades its production facilities.

e. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, we are convinced that the recent deterioration of the domestic welded pipe producers' market share, revenue, and profitability will continue. In particular, the recent surges in import volumes will continue to erode domestic prices and market share, particularly if non-U.S. consumption remains sluggish and volumes continue to be diverted to the United States in an environment of little or no net demand growth. Without appropriate relief, serious injury to the welded pipe industry appears imminent. Serious injury would likely result in operating losses for welded pipe producers and prevent the domestic industry from implementing its proposed investments, thereby leaving it less viable and less able to compete with imports. Over the longer term, a significant portion of the industry would be forced to shut down. Our assessment is based on the recent surge in volume of imported welded pipe products, a surge which has reduced U.S. market share even during a period of increasing demand. This

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[159] CR and PR at TUBULAR-59-61 and 64, and EC-Y-046 at TUBULAR-10. While the report notes that some end uses have large cost shares, these end uses are not "ultimate" end uses in the sense of being a larger industry category.

surge has already led to several plant closings, which, in turn, have increased layoffs of workers in the industry. Moreover, the continued reduction in the number of U.S. producers will adversely impact their customers through the loss of alternative sources for welded pipe in the U.S. market.

C. Fittings, Flanges, and Tool Joints

1. Conditions of Competition

We considered the conditions of competition in the domestic market and likely developments affecting such conditions during the next several years in evaluating the various remedy options for fittings, flanges, and tool joints.

a. Demand Conditions

The fittings, flanges, and tool joints covered by our affirmative injury determination include a range of products used to join pipe and tube. As indicated in section VI of our injury views, they are sold to a large group of purchasers in a wide range of applications. For this reason, demand for fittings, flanges, and tool joints, as reflected in consumption data, is influenced by demand for pipe products. Apparent consumption rose throughout the period of investigation with the exception of 1998-1999. The increase between 1996 and 2000 was 9.7 percent, with an additional increase of 10.4 percent between the interim periods.[160]

A majority of market participants indicate that there are no known substitutes for carbon and alloy steel fittings, flanges, and tool joints.[161] At the same time, it is clear that the imported and domestic products are highly substitutable. Although some purchasers will buy only from producers on approved lists of manufacturers, the record shows that the approved lists include producers in numerous foreign countries as well as many domestic producers.[162]

b. Domestic Supply Conditions

Domestic capacity rose overall during the period of investigation, by 7.4 percent, but most of that increase took place early in the period of investigation, and domestic capacity has declined since 1999. Domestic capacity declined by 5.2 percent in 2000, and was 4.6 percent lower in interim 2001 than in interim 2000.[163] Domestic capacity did not keep pace with domestic consumption, which rose by 9.7 percent over the period of investigation. Moreover, domestic consumption increased by 4.3 percent in 2000, and was 10.4 percent higher in interim 2001 than in interim 2000, at the same time that domestic capacity was falling.[164] Thus, it is clear that U.S. producers of fittings, flanges, and tool joints have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

During the period of investigation, fittings, flanges, and tool joints were imported from over 65

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[160] CR and PR, Table TUBULAR-C-6.

[161] EC-Y-046 at TUBULAR-C-10.

[162] CR and PR, TUBULAR-68, n.19; Tr. of injury hearing at 2516-17 (Zidell), at 2522-23 (Bernovich).

[163] CR and PR, Table TUBULAR-C-6.

[164] CR and PR, Table TUBULAR-C-6.

different countries, although not every country exported product to the United States in every year.[165] Imports of fittings, flanges, and tool joints increased by 30.8 percent from 1996 to 2000 and by an additional 32.1 percent between the interim periods.[166] As discussed in section VI of the injury opinion, purchasers generally perceived domestically-produced and imported fittings, flanges, and tool joints to be generally substitutable products.

c. Import Supply Conditions

During the period of investigation, imports of fittings, flanges, and tool joints from all sources increased by 30.8 percent during 1996-2000 and were 32.1 percent higher in interim 2001 than in interim 2000. Imports of fittings, flanges, and tool joints from non-NAFTA countries increased 32.2 percent during 1996-2000, and were 38.8 percent higher in interim 2001 than in interim 2000. The record indicates that domestic and imported fittings, flanges, and tool joints are generally substitutable products.

Foreign capacity to produce fittings, flanges, and tool joints increased throughout the period of investigation, and was projected to increase further in full year 2001 and 2002.[167] Foreign production fluctuated during the period of investigation, but was higher in interim 2001 than in interim 2000 and was projected to increase in full year 2001 and 2002 to levels higher than in any year during the period of investigation.[168] Foreign capacity utilization fell irregularly from 64.8 percent in 1996 to 58.4 percent in 2000. Capacity utilization was 70.4 percent in interim 2001 as compared to 61.1 percent in interim 2000, and was projected to be 66.6 percent in full year 2001 and 66.7 percent in 2002. Foreign producers' exports to the U.S. market rose irregularly during 1996-2000, reaching a peak of 37,460 tons in 2000. These exports continued to increase between interim periods, and are projected to increase to 42,057 tons in full year 2001 and then decline to 40,443 tons in 2002.[169] Foreign producers were heavily export-oriented throughout the period of investigation , exporting more than 50 percent of their production each year. Moreover, they were more export-oriented at the end of the period than at the beginning, and they also exported an increasing share of their production to the United States. The share of foreign producers' production exported to the United States was at its highest level at the end of the period, in 2000, and higher in interim 2001 than in interim 2000.[170] Thus, foreign producers' capacity, production, and exports

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[165] INV-Y-180, fittings, flanges, and tool joints data.

[166] CR and PR, Table TUBULAR-C-6.

[167] Foreign capacity increased from 260,796 tons in 1996 to 311,770 tons in 2000, was 158,059 tons in interim 2001 as compared to 152,505 tons in 2000, and is projected to be 309,895 tons in full year 2001 and 320,991 tons in 2002. CR and PR, Table TUBULAR-36.

[168] Foreign production rose through 1998, peaking at 206,077 tons in that year, fell to 162,028 tons in 1999, and then increased to 181,937 tons in 2000. Foreign production was 111,315 tons in interim 2001 as compared to 93,173 tons in the same period of 2000, and is projected to be 213,071 tons in full year 2001 and 213,960 tons in 2002. CR and PR, Table TUBULAR-36.

[169] CR and PR, Table TUBULAR-46.

[170] The share of fittings, flanges, and tool joints production exported by foreign producers during the period of investigation fluctuated but was higher at the end of the period of investigation than at the beginning. The share exported was 58.9 percent in 1996, fell to 53.1 percent in 1997 (the low for the period), and then increased to 55.3 percent in 1998, 62.1 percent in 1999, and then declined to 60.5 percent in 2000. The share exported in interim 2001was 60.6 percent as compared to 56.9 percent in interim 2000. The share of foreign producers' fittings, flanges, and tool joints production exported to the United States was 17.8 percent in 1996, fell to 14.2 percent in 1997, and then rose to 15.2 percent in 1998, 16.9 percent in 1999, and 19.0 percent in 2000. The share was 19.2 percent in interim 2001 as compared to 16.2 percent in interim 2000. CR and PR, Table TUBULAR-46.

to the U.S. market all increased in 2000 and were all higher in interim 2001 than in interim 2000, and all three indicators are projected to be higher in full-year 2001 and 2002 than in 2000. There appears to be more than sufficient foreign capacity, both used and unused, to sustain and increase the current high levels of exports to the U.S. market.

Antidumping duty orders were in place against imports of butt-weld fittings from Brazil, China, Japan, Taiwan, and Thailand when this investigation was initiated. While these orders were intended to offset dumping margins on sales of these imports, they did not preclude the increase in imports that caused serious injury.

2. Industry Adjustment Plans

We carefully considered the adjustment plans submitted by domestic producers of fittings, flanges, and tool joints. The Committee on Pipe and Tube Imports submitted a list of commitments on behalf of four firms that intend to invest a combined $12.8 million to $14.8 million to increase competitiveness over a four-year period. Certain companies planned to upgrade their facilities by purchasing new production equipment and developing new manufacturing technologies. Others planned to invest in additional worker training and retirement plans.

3. Recommended Relief

a. Nature and Duration of Recommended Duties

The statute authorizes the Commission to recommend several forms of import relief, including increased duties, tariff-rate quotas, quantitative restrictions (quotas), and adjustment measures such as trade adjustment assistance, as well as a combination of these remedies. In determining which of these forms would address the serious injury or threat of serious injury and be most effective in facilitating positive adjustment to import competition, we have closely examined the costs and benefits of each.

Three domestic producers of fittings, flanges, and tool joints requested that the Commission recommend a remedy in the form of a tariff-rate quota for a four-year period, with an in-quota tariff of 23 percent *ad valorem* and an over-quota tariff of 50 percent *ad valorem* in the first year, with the quota amount based on average imports during 1993-1995.[171] Three domestic producers of butt-weld pipe fittings requested that the Commission recommend a combination of a quantitative restriction and a tariff on imports of butt-weld pipe fittings for a four-year period, with the quota based on average imports during 1993-1995 and a tariff of 37 percent *ad valorem* in the first year, to be phased down during the remedy period.[172] The Committee on Pipe and Tube Imports, which represented four firms that produce carbon and alloy pipe fittings, including nipples and couplings, but not butt-weld pipe fittings, requested that the Commission recommend that the President impose a tariff of 50 percent *ad valorem* on imports of pipe fittings (other than butt-weld pipe fittings), including nipples and couplings.[173] A domestic producer of tool joints requested that the Commission recommend a duty of at least 35-40 percent on imports of tool joints.[174] Respondents generally opposed relief. One importer asserted that withdrawal of Generalized System of Preferences (GSP) benefits would provide an appropriate remedy,[175] and another

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[171] Boltex Manufacturing Co. et al. Posthearing Remedy Brief at 2-3.

[172] Mills Iron Works, Inc. et al. Posthearing Remedy Brief at 2-4.

[173] Committee on Pipe and Tube Imports Posthearing Remedy Brief at 15-16.

[174] Chamberlain Manufacturing Corporation Posthearing Remedy Brief at 9.

[175] Flanschenwerk Bebitz GmbH, et al. Posthearing Remedy Brief at 5.

suggested adjustment assistance measures.[176] An importer of tool joints requested that they be excluded from any remedy.[177]

We have determined that a tariff increase will best address the serious injury to the industry producing fittings, flanges, and tool joints, and be most effective in facilitating the positive adjustment of that industry to import competition. We believe that a tariff is particularly appropriate here because the domestic industry produces a range of products. We believe that the effects of a tariff are likely to be more predictable than the effects of a tariff-rate quota or quota in view of the possibility that the mix of covered products imported may change during the remedy period. For example, a quota based on quantity may be impacted by a shift in product mix from lower weight to higher weight fittings, flanges, and tool joints, or a quota based on value may be impacted by a shift from lower value to higher value products.

We find that a tariff remedy of an additional duty of 13 percent *ad valorem* on imports of fittings, flanges, and tool joints, to be phased down by three percentage points each year, will help the industry recapture some of its lost market share, increase production, and return to profitability. The phase down of the tariff both allows for growth in imports and encourages the firms in the domestic industry to take prompt action to implement their commitments and prepare themselves to be competitive with imports when the remedy action terminates.

We recommend that the remedy action for fittings, flanges, and tool joints be imposed for a four-year period.[178] The adjustment measures proposed by the domestic industry are capital intensive in nature. The modernization of plants and equipment is a multi-year process, and will likely require time to complete plant and equipment design work, secure financing, manufacture the equipment, and once installed, make the new equipment operational. We believe four years is a reasonable time to implement these adjustments.

b. Country Exclusions

As stated in our injury views, we have made affirmative findings under section 311(a) of the NAFTA Implementation Act on fittings, flanges, and tool joints from Canada and Mexico.[179] We consequently recommend that the President include these imports in any remedy.

We recommend that the remedy not apply to imports from Israel and countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preferences Act. Imports from Israel were significantly less than 1 percent of total imports in each year of the period of investigation , and were lower at the end of the period than at the beginning. Imports totaled only 326 short tons in 2000. Imports from CBERA and ATPA countries likewise were very small. None of those countries was a consistent supplier throughout the period of investigation.[180]

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[176] Awaji Sangyo (Thailand) Posthearing Remedy Brief at 6.

[177] Grant Prideco Posthearing Remedy Brief at 1.

[178] Vice Chairman Okun recommends that the relief be imposed for a three-year period.

[179] Chairman Koplan made a negative finding with respect to imports of fittings, flanges, and tool joints from Canada. He consequently recommends that the President not include these imports in any remedy. Commissioner Hillman made a negative finding with respect to imports of fittings, flanges, and tool joints from Mexico. She consequently recommends that the President not include these imports in any remedy.

[180] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in Investigation No. TA-201-73, Steel, to the President. There have been virtually no imports of fittings, flanges, and tool joints from Jordan during the period examined. Imports from Jordan are therefore not a substantial cause of serious injury or threat of serious injury. Therefore, to the extent that section 221(a) of that Act applies to this investigation, we recommend that imports

c. International Negotiations

As discussed in Section I above, we recommend that the President continue recently initiated international negotiations with all countries that supply fittings, flanges, and tool joints with the goal of reducing global overcapacity to produce fittings, flanges, and tool joints.

d. Short and Long-Term Effects of Our Recommended Remedy

We believe that the additional duties that we are recommending will address the serious injury to the domestic fittings, flanges, and tool joints industry. We believe this remedy will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. This remedy also does not exceed the amount necessary to remedy such serious injury, and should minimize the disruption to the market for fittings, flanges, and tool joints and consumer costs.

Based on 2000 data, we estimate that the recommended tariff on fittings, flanges, and tool joints will initially raise the price of the domestic product and the sales volumes and revenues of the domestic industry.[181] At the same time, our proposal would ensure a substantial amount of competition in the U.S. market for fittings, flanges, and tool joints and pose little likelihood of supply problems for domestic consumers. Our remedy will provide immediate relief in the form of increased production levels and improved market share and, to a lesser extent, increased domestic prices. Our remedy will still permit imports of fittings, flanges, and tool joints, albeit at the recommended duty levels that are successively lowered. We estimate that this remedy will reduce import market share to levels in 1996-1999. In addition, there is sufficient unused domestic capacity to offset the projected reduction in imports. Finally, to the extent that any specialty grades of fittings, flanges, and tool joints are in short domestic supply, purchasers would still be able to obtain their products, albeit at the higher rates of duty.

While this remedy may result in some initial negative impact on end users of fittings, flanges, and tool joints primarily in the form of some restrictions in import volumes and modestly increased prices in the domestic market, we believe this effect will be limited. The stabilized or increased prices of fittings, flanges, and tool joints will not significantly affect the natural gas, crude oil, construction, industrial, or transportation industries or consumers since fittings, flanges, and tool joints make up only a moderate to low percentage of the ultimate end use cost.[182] This remedy should also provide a modest protection or benefit to domestic industries that supply raw materials to the fittings, flanges, and tool joints industry, particularly seamless and welded pipe products for fittings, flanges, and tool joints, as a result of the expected increase in domestic fittings, flanges, and tool joints production.

It is not possible to predict market effects with precision following the initial year of relief. In general, we would expect that as prices increase, the domestic industry will be able to respond better to new market demands and to increase production as necessary. In addition, we would expect the domestic industry to be able to increase its ability to compete with imported fittings, flanges, and tool joints as it modernizes and upgrades its production facilities. After the initial year of relief, we expect imports to stay in a stable market share range closer to their average levels over 1996-2000.

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from Jordan not be subject to the additional tariffs or the tariff-rate quota described above.

[181] EC-Y-046 at TUBULAR-23.

[182] Report at TUBULAR-59-61 and 64, and Remedy memorandum at TUBULAR-10. While the report notes that some end uses have large cost shares, these end uses are not "ultimate" end uses in the sense of being a larger industry category.

e. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the recent operating loss experienced by the domestic fittings, flanges, and tool joints industry will likely continue. In particular, the surge in import volumes and underselling is likely to continue, thereby depressing and suppressing domestic prices and further diminishing market share. This negative impact will be particularly severe if non-U.S. consumption remains sluggish and volumes continue to be diverted to the United States even in an environment of slowing domestic demand growth. Thus, without appropriate relief, the domestic industry remains vulnerable to continued price underselling and revenue losses. If operating losses continue, the domestic industry will not be able to implement its proposed investments, thereby leaving it less viable and less able to compete with imports. Over the longer term, a significant portion of the industry would be forced to shut down. Our assessment is based on the recent surge in imports of fittings, flanges, and tool joints, a surge which has captured significant market share from U.S. production even during a period of increasing demand. Such closings and partial closings will lead to increased layoffs of workers in the industry. Moreover, the continued reduction in the number of U.S. producers will adversely impact their customers through the loss of alternative sources for fittings, flanges, and tool joints in the U.S. market.

V. STAINLESS AND TOOL STEEL PRODUCTS

A. Findings and Recommendations of the Commission

For the reasons set forth below, we recommend the following actions with respect to stainless steel bar and light shapes ("stainless bar") and stainless steel rod. We find these actions would address the serious injury we have found to exist and would be most effective in facilitating the efforts of the domestic industries producing these products to make a positive adjustment to import competition.

For stainless steel bar, we recommend:

(1) That the President impose an additional duty on imports of stainless steel bar for a four-year period. The additional duty would amount to 15 percent *ad valorem* in the first year of relief and be reduced to 12 percent *ad valorem* in the second year of relief, 9 percent *ad valorem* in the third year of relief, and 6 percent *ad valorem* in the fourth year of relief;

(2) Having made an affirmative finding with respect to imports of stainless steel bar from Canada under section 311(a) of the NAFTA Implementation Act, that such imports be subject to the additional duty described above;

(3) Having made a negative finding with respect to imports of stainless steel bar from Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty;

(4) That the additional duty not apply to imports of stainless steel bar from Israel, or to any imports of stainless steel bar entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act;[183] and

(5) That the President continue to pursue international negotiations with the governments of all countries that supply stainless steel bar aimed at reducing inefficient global overcapacity to produce stainless steel bar.

For stainless steel rod, we recommend:

(1) That the President impose an additional duty on imports of stainless steel rod for a four-year period. The additional duty would amount to 20 percent *ad valorem* in the first year of relief and be reduced to 17 percent *ad valorem* in the second year of relief, 14 percent *ad valorem* in the third year of relief, and 11 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of stainless steel rod from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duties described above; and

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[183] To the extent that section 211(a) of the Jordan FTA applies to this investigation, we recommend that the additional duty not apply to imports of stainless bar from Jordan.

(3) That the additional duties not apply to imports of stainless steel rod from Israel, or to any imports of stainless steel rod entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act;[184] and

(4) That the President continue to pursue international negotiations with the governments of all countries that supply stainless steel rod aimed at reducing inefficient global overcapacity to produce stainless steel rod.

We find that the actions described above will not exceed the amount necessary to remedy the serious injury we find to exist. In addition, as discussed in section I above, we encourage the President to consider other appropriate action to facilitate the efforts of the domestic industry to rationalize and consolidate, and thus make a positive adjustment to import competition. We discuss our analysis for the two products below.

B. Stainless Steel Bar

1. Conditions of Competition

We considered the following conditions of competition in the domestic market, and likely developments affecting such conditions during the next several years, when evaluating the various remedy options for stainless steel bar.

a. Demand Conditions

Demand for stainless bar fluctuated somewhat but grew overall during the five full years of the period of investigation. Apparent consumption of stainless bar increased from 276.6 thousand short tons in 1996 to 294.4 thousand short tons in 1997 but declined to 280.3 thousand short tons in 1998 and 265.5 thousand short tons in 1999. In 2000, however, apparent consumption of stainless bar increased by 22.1 percent, growing to 324.2 thousand short tons.[185] This level of consumption was 17.2 percent higher than in 1996.[186] As the overall economy declined in 2001, apparent consumption of stainless bar declined by 13 percent between interim 2000 and interim 2001.[187]

Stainless steel bar is used in the aerospace, automotive, chemical processing, dairy, food processing, pharmaceutical equipment, marine application, and other fluid handling industries.[188] The large majority of market participants indicate that there are no known substitutes for stainless bar.[189]

The price of stainless bar is directly affected by the price of nickel.[190] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their

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[184] To the extent that section 211(a) of the Jordan FTA applies to this investigation, we recommend that the additional duty not apply to imports of stainless bar from Jordan.

[185] CR and PR at Tables STAINLESS-67 and STAINLESS-C-4.

[186] CR and PR at Tables STAINLESS-67 and STAINLESS-C-4.

[187] CR and PR at Tables STAINLESS-67 and STAINLESS-C-4.

[188] CR at STAINLESS-2, PR at STAINLESS-2.

[189] EC-Y-046 at Table STAINLESS-6.

[190] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

stainless bar products whenever the price of nickel reaches a certain level.[191] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through interim 2001.[192] The price of domestic stainless bar followed this trend somewhat during the period of investigation, with average unit values of domestic bar shipments and sales declining through the end of 1999, and recovering in 2000 and interim 2001.[193]

b. Domestic Supply Conditions

Although fourteen domestic firms reported producing stainless steel bar in 2000,[194] four firms accounted for the large majority of domestic production of stainless bar in 2000: Carpenter/Talley, Crucible Specialty Metals, AvestaPolarit, and Slater Steels Corp.[195] The domestic stainless bar industry became more concentrated during the period of investigation. In 1997, Carpenter Technology, the *** domestic producer of bar in 2000,[196] acquired Talley, the *** largest producer in 2000.[197] In addition, Empire Specialty Steel, the *** largest bar producer in 2000, shut down its stainless operations in June 2001.[198]

The industry's aggregate capacity level increased during the period of investigation, growing by 5.5 percent from 1996 to 2000.[199] Capacity was 2.2 percent higher in interim 2001 than in interim 2000.[200] Capacity utilization declined from 63.0 percent in 1996 to 52.1 percent in 1999 but increased to 55.8 percent in 2000.[201] Industry capacity utilization then declined from 59.5 percent to 49.6 percent between interim 2000 and 2001.[202] In light of these capacity utilization levels, we find that domestic stainless bar producers have substantial unused capacity that can be used to increase production in the event of price changes or increased domestic demand.

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[191] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[192] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[193] CR and PR at Tables STAINLESS-18, STAINLESS-87, & STAINLESS-C-4.

[194] CR and PR at Table STAINLESS-1.

[195] In 2000, these four firms accounted for *** percent of reported domestic production of stainless bar. CR and PR at Table STAINLESS-1.

[196] Carpenter accounted for *** percent of reported domestic production of stainless bar in 2000. CR and PR at Table STAINLESS-1.

[197] Talley accounted for *** percent of reported domestic production of stainless bar in 2000. CR and PR at Table STAINLESS-1.

[198] Domestic Industry Prehearing Injury Brief at 20.

[199] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[200] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[201] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

[202] CR and PR at Tables STAINLESS-18 & STAINLESS-C-4.

c. Import Supply Conditions

During the period of investigation, there were imports of stainless bar from over 40 countries, although not every country exported stainless bar to the United States in every year.[203] The quantity of imports of stainless bar from sources other than Mexico increased by 54 percent from 1996 to 2000 but fell by 17 percent between interim 2000 and interim 2001.[204] The record indicates that domestic and imported stainless bar are comparable in most respects.[205] We therefore find that there is a reasonably high degree of substitutability between domestic and imported stainless steel bar.

The aggregate capacity of foreign producers of stainless bar in countries other than Mexico increased by 10.5 percent during the period examined. The capacity utilization of these producers increased from 74.2 percent in 1996 to 82.3 percent in 1998, declined to 77.2 percent in 1999, and then increased to 87.1 percent in 2000. Aggregate foreign capacity utilization increased from 89.2 percent to 90 percent in interim 2001.[206]

Antidumping duty orders were imposed against imports of stainless bar from Brazil, India, Japan, and Spain in 1995.[207] Antidumping duty orders were imposed against imports of stainless steel angle from Japan, Korea, and Spain in May 2001.[208] While these orders are intended to offset dumping margins on sales of these imports, they did not limit the surge of imports that occurred during the latter part of the period of investigation.

2. Industry Adjustment Plans

We carefully considered the adjustment plans submitted by the stainless steel bar industry. The domestic stainless bar industry states that it plans to make substantial investments in its productive facilities in order to improve its innovation, efficiency, product quality, and overall cost competitiveness.[209] The industry asserts that these improvements will further strengthen its ability to compete with stainless bar producers across the world.[210] The industry also states that it intends to develop new products and applications so as to increase demand for stainless steel bar in a number of end use applications.[211] As part of its adjustment plan, the industry notes that it supports, and will participate in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[212]

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[203] INV-Y-180 at Table G25.

[204] CR and PR at Tables STAINLESS-6 & STAINLESS-C-4.

[205] EC-Y-046 at Table STAINLESS-24; *see generally* EC-Y-046 at 14-28.

[206] CR and PR at Table STAINLESS-45.

[207] CR and PR at Table OVERVIEW-1.

[208] CR and PR at Table OVERVIEW-1.

[209] Domestic Industry Prehearing Remedy Brief Exh. 1 at 2, 6-12.

[210] Domestic Industry Prehearing Remedy Brief Exh. 1 at 6-12.

[211] Domestic Industry Prehearing Remedy Brief Exh. 1 at 5-6.

[212] Domestic Industry Prehearing Remedy Brief Exh. 1 at 2-5.

3. Recommended Relief

a. Nature and Duration of Remedy

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quantitative restrictions (quotas), tariff-rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, we have examined closely the costs and benefits of each. We have determined that tariffs would provide the domestic stainless bar industry with the most appropriate form of relief but would also minimize costs to consumers and disruption of stainless bar supply.

The domestic stainless bar producers request that the Commission recommend that the President impose a three-year quota and a one-year tariff on imports of stainless steel bar from non-NAFTA countries.[213] They argue that the period from 1993 to 1995 should be used as the representative period for the quota calculation[214] and propose that the quota for the first year of the remedy period be 69,512 short tons.[215] They also propose that the quota be increased to 71,597 short tons in the second year of the remedy period and 73,745 short tons in the third year of the remedy period.[216] They also suggest that the Commission recommend an additional tariff of 15 percent on imports during the first year of the period in order to allow the industry to raise prices immediately. Finally, the industry requests that the Commission recommend that the quota be administered on a quarterly basis[217] and that the first quarters' quota be adjusted downward to reflect possible import surges before imposition of the remedy.[218]

The USWA proposes that the Commission recommend a combination of a tariff and a quota on stainless bar imports. They recommend an increased tariff of 30 percent *ad valorem* on imports of stainless bar and that the Commission recommend a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[219] They propose that the remedy extend for four years, that their proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[220]

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[221] Respondents contend that, if the Commission is inclined to recommend import restrictions, the Commission should reject tariffs and

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[213] Domestic Industry Prehearing Remedy Brief at 3 & 4-6. They recommend that Canada and Mexico be excluded from the quota program.

[214] Domestic Industry Prehearing Remedy Brief at 6-7.

[215] Domestic Industry Prehearing Remedy Brief at 3.

[216] Domestic Industry Prehearing Remedy Brief at 3.

[217] Domestic Industry Prehearing Remedy Brief at 3.

[218] Domestic Industry Prehearing Remedy Brief at 10.

[219] USWA Prehearing Remedy Brief at 27-29. In the alternative, they argue that the Commission use the two-year period 1996 to 1997 as the representative period. USWA Prehearing Remedy Brief at 29. With respect to this proposed period, we note that the statute provides that a quota should generally be calculated on the basis of a representative period of three years. 19 U.S.C. §2253(e)(4).

[220] USWA Prehearing Remedy Brief at 30.

[221] Usinor Prehearing Remedy Brief at 8-9; Eurofer Prehearing Remedy Brief at 19-20.

adopt quotas as a remedy.[222] They argue that the quotas should be calculated based on the three most recent years of the period of investigation and should be country-specific.[223]

We find that the remedies proposed by the domestic stainless bar industry and the USWA would exceed the amount necessary to prevent or remedy serious injury. First, both quota proposals would significantly limit the volume of stainless bar imports that could enter the country if imposed. The domestic stainless bar industry's proposed quota would limit imports during the first year of relief to a level nearly thirty percent lower than the level in 1996, which was the year in which imports were at their lowest levels of the period of investigation. The USWA's proposed quota would limit the volume of imports during the first year of the period of relief to a level six percent lower than that in 1996. In addition, our economic analysis indicates that the industry's quota proposal would have a much more substantial negative effect on both consumer costs and on net welfare benefits than the tariff remedy we have chosen.[224] Finally, these proposed quotas have significant drawbacks in terms of the predictability of their impact during periods of demand changes, their administrability, and their flexibility in the face of short supply situations.

We also do not agree with respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. During the period of investigation, the industry's profitability levels, production levels, capacity utilization rates and market share have declined substantially. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy these declines. Given this, we believe that some form of tariff-based relief is necessary to provide the industry with substantial improvements in its production, sales, price and profitability levels during the period of relief. As we discuss in more detail below, these actions will provide needed volume and price relief to the industry, thus allowing it to make the capital improvements necessary to help it regain its footing in this marketplace. Accordingly, we do not find that trade adjustment assistance is the only form of remedy warranted for this industry.

We recommend that the President increase the current tariff applied to imports of stainless steel bar for a four-year period. In the first year of relief, imports would be subject to an additional dutiable rate of 15 percent *ad valorem*. The additional duty would decrease to 12 percent *ad valorem* in the second year of relief, 9 percent *ad valorem* in the third year of relief, and 6 percent *ad valorem* in the fourth year of relief. In our view, these levels of relief will help stabilize prices and volumes in the stainless bar market, provide the industry with the requisite volume and price relief, and increase industry profitability levels but at the same time avoid the creation of supply shortfalls during the period of relief.

Although the industry has taken steps in the planning of its adjustment efforts, it is clear that it will take some time for the industry to modernize and update its current facilities, bring new equipment and capacity fully on line, and develop new products. We recognize that relief of more than three years duration will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to formally review, among other things, the stainless bar industry's progress in implementing the plan. It would also provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if the industry has not made adequate efforts to make a positive adjustment to import competition.

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[222] Usinor Prehearing Remedy Brief at 12; Eurofer Posthearing Remedy Brief at 11-13.

[223] Usinor Prehearing Remedy Brief at 12-14; Eurofer Posthearing Remedy Brief at 13.

[224] Compare EC-Y-046 at Table STAINLESS-33 with EC-Y-048 at Table STAINLESS-36.

b. Country Exclusions

As stated in our injury views, we have made an affirmative finding under section 311(a) of the NAFTA Implementation Act with respect to imports of stainless bar from Canada. Accordingly, we recommend that the President include these imports in any remedy. Additionally, we made a negative finding under section 311(a) of the NAFTA Implementation Act with respect to imports of stainless bar from Mexico. Accordingly, we recommend that the President not include these imports in any remedy.

We also recommend that the President exclude from any remedy imports of stainless bar from Israel and beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Imports from these countries all accounted for a small or non-existent percentage of total imports and had a minimal market share during the period of investigation.[225]

c. International Negotiations

As discussed in section I above, we recommend that the President continue recently initiated international negotiations with all countries that supply stainless steel bar with the goal of reducing global overcapacity to produce stainless steel bar.

d. Short and Long-Term Effects of Our Recommended Remedy

The tariff increase that we are recommending will address the serious injury to the domestic stainless bar industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

Our tariff-based remedy is intended to reduce import volumes to non-injurious levels and to limit the effects of underselling by imports during the period of relief. By doing so, our remedy will restore the production levels, prices, and profitability of the industry to a reasonable level so that the industry will be able to continue modernizing its productive facilities and significantly increase capacity utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. In this regard, we estimate that, during the first year of relief, our recommended tariff would result in a small to moderate increase in domestic prices, a much more significant increase in domestic sales volumes, and a substantial increase in the industry's overall sales.[226] We also note that the tariff would have a much more significant effect on import prices than domestic prices and a substantial impact on import volumes as well.[227] Accordingly, we believe that the significant declines in import volumes resulting from the tariff will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period of relief.

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[225] The U.S.-Jordan Free Trade Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in Investigation No. TA-201-73, *Steel*, to the President. Imports of stainless steel bar from Jordan are not a substantial cause of serious injury or threat of serious injury because there have been no imports of stainless steel bar from Jordan during the period of investigation. Therefore, to the extent that section 221(a) of that Act applies to this investigation, we recommend that imports from Jordan not be subject to the additional duties.

[226] EC-Y-048 at Table STAINLESS-36.

[227] EC-Y-048 at Table STAINLESS-36.

Moreover, as we have previously discussed, our recommended tariff would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. In this regard, more than forty percent of stainless bar purchasers noted that they had difficulty obtaining supply of certain stainless bar products from domestic producers during the period of examination.[228] The use of a tariff would allow these purchasers to obtain such products from import sources in the event of short supply.

We recognize that our recommended tariff would result in an initial negative impact on end users of stainless bar, primarily in the form of reduced import volumes and increased prices in the domestic market. However, this effect will be limited somewhat by the small expected increase in domestic stainless bar prices, which will minimize the impact of the tariff on purchasers of domestic stainless steel bar. The largest price impact will be felt by end users who purchase imports since we estimate that import prices will increase much more significantly than domestic prices during the period of relief. Although we estimate that the tariff will increase overall consumer costs during the first year of the period of relief, this cost is offset by the benefits to the industry from increased prices and volumes of sales.[229]

e. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of relief, the domestic industry's condition will continue to deteriorate seriously. Imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of additional domestic stainless bar facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue depressing the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

In the absence of relief, the declines in the industry's sales revenues and profitability levels would also make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive. Moreover, any prolonged decline in the competitiveness of domestic stainless bar producers would also impact adversely their principal customers due to an ensuing reduction in the number of alternative sources for stainless steel bar in the U.S. market.

C. Stainless Steel Rod

1. Conditions of Competition

We considered the following conditions of competition in the domestic market, and likely developments affecting such conditions during the next several years, when evaluating the various remedy options for stainless steel rod.

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[228] EC-Y-046 at STAINLESS-8-9 & Table STAINLESS–18.

[229] EC-Y-048 at Table STAINLESS-36.

a. Demand Conditions

Demand for stainless steel rod remained essentially stable during the period of investigation. Apparent consumption of stainless rod was *** tons in 1996, *** tons in 1997, *** tons in 1998 and 1999, and *** tons in 2000.[230] As the overall economy declined in interim 2001, apparent consumption of stainless rod also declined, falling by *** percent between interim 2000 and interim 2001.[231]

Stainless steel rod is primarily used in the production of stainless steel wire but may also be fabricated into various downstream products, like industrial fasteners, springs, medical and dental instruments, automotive parts, and welding electrodes.[232] The large majority of market participants indicate that there are no known substitutes for stainless steel rod.[233]

The price of stainless rod is directly affected by the price of nickel.[234] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their stainless rod products whenever the price of nickel reaches a certain level.[235] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first few quarters of 2000. Nickel prices fell thereafter, declining through interim 2001.[236] The price of domestic stainless rod generally followed this trend during the period of investigation, with the average unit values of domestic rod shipments and sales declining through the end of 1999, recovering in 2000, and then declining again in interim 2001.[237]

b. Domestic Supply Conditions

The domestic stainless rod industry is concentrated. Only four domestic firms reported producing stainless steel rod in 2000.[238] Moreover, in 1997, Carpenter Technology, the dominant domestic producer of stainless rod during the period of investigation,[239] purchased Talley, the *** largest producer of stainless rod during the period.[240] In addition, Empire Specialty Steel, the *** largest rod producer in 2000, shut down its stainless rod operations in June 2001.[241] With the acquisition of Talley by Carpenter in 1997 and the exit of Empire from the market, Carpenter/Talley remains the only significant domestic producer of stainless rod in the market.

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[230] CR and PR at Tables STAINLESS-68 and STAINLESS-C-5.

[231] CR and PR at Tables STAINLESS-68 and STAINLESS-C-5.

[232] CR and PR at STAINLESS-3.

[233] EC-Y-046 at Table STAINLESS-6.

[234] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[235] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[236] CR at STAINLESS-95-96, PR at STAINLESS-70-71.

[237] CR and PR at Tables STAINLESS-19, STAINLESS-88 & STAINLESS-C-5.

[238] CR and PR at Table STAINLESS-1.

[239] Carpenter accounted for *** percent of reported domestic production of stainless rod in 2000. CR and PR at Table STAINLESS-1.

[240] Talley accounted for *** percent of reported domestic production of stainless rod in 2000. CR and PR at Table STAINLESS-1.

[241] Carpenter Prehearing Injury Brief at 14.

The industry's aggregate capacity level increased during the period of investigation, growing by *** percent from 1996 to 2000.[242] Domestic capacity was *** percent higher in interim 2001 than in interim 2000.[243] The industry's capacity utilization rate declined from *** percent in 1996 to *** percent in 1999, and then to *** percent in 2000. Capacity utilization also declined between interim periods, dropping from *** percent to *** percent between interim periods.[244] In light of these capacity utilization levels, we find that domestic stainless rod producers have *** unused capacity that can be used to increase production in the event of price changes or increased domestic demand.

c. Import Supply Conditions

During the period of investigation, there were imports of stainless rod from over 30 countries, although not every country exported stainless rod in every year.[245] The quantity of imports of stainless steel rod from sources other than Canada and Mexico increased by 36 percent from 1996 to 2000, but fell by 31 percent between interim 2000 and interim 2001.[246] The record indicates that purchasers generally perceive domestically-produced and imported stainless rod to comparable in most respects, which indicates that they are substitutable.[247] The level of substitutability is reduced somewhat by the significant degree of captive consumption of stainless rod by the domestic industry.[248]

The aggregate capacity of foreign producers of stainless steel rod from all non-U.S. sources increased by 16.5 percent during the period of investigation. The capacity utilization rates of these producers increased from 70.8 percent in 1996 to 83.7 percent in 1997 and remained essentially stable thereafter during the period, with capacity utilization being 84.3 percent in 2000 and 82.2 percent in interim 2001.[249]

Antidumping and countervailing duty orders were imposed against imports of stainless steel rod from India in 1993, Brazil and France in 1994, and Italy, Japan, Korea, Spain, Sweden, and Taiwan in 1998.[250] While these orders are intended to offset subsidies or dumping margins on sales of these imports, they did not limit the surge of imports that occurred during the latter part of the period of investigation.

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[242] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[243] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[244] CR and PR at Tables STAINLESS-19 & STAINLESS-C-5.

[245] INV-Y-180 at Table G26.

[246] CR and PR at Tables STAINLESS-7 & STAINLESS-C-5.

[247] EC-Y-046 at Table STAINLESS-25; *see generally* EC-Y-046 at STAINLESS 14-28.

[248] EC-Y-046 at STAINLESS-31

[249] CR and PR at Table STAINLESS-47.

[250] CR and PR at Table OVERVIEW-1.

2. Industry Adjustment Plans

We carefully considered the adjustment plans submitted by Carpenter, the dominant domestic producer of stainless rod.[251] Carpenter states that ***.[252] Carpenter asserts that these improvements will further strengthen its ability to compete with stainless rod producers across the world.[253] It also states that it intends to ***.[254] As part of its adjustment plan, Carpenter notes that it supports, and will participate in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[255] By improving efficiency, lowering costs, and expanding product lines, we believe that the industry's proposed investments should strengthen the domestic industry and make it better able to withstand import competition in the future.

3. Recommended Relief

a. Nature and Duration of Remedy

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quantitative restrictions (quotas), tariff-rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, we have examined closely the costs and benefits of each. We have determined that tariffs will provide the domestic stainless rod industry with the most appropriate form of relief.

Carpenter requests that the Commission recommend that the President impose a three-year quota and a one-year tariff on imports of stainless steel rod from non-NAFTA countries.[256] It contends that the period from 1993 to 1995 should be used as the representative period for its quota calculation[257] and proposes that the quota for the first year of the period of relief be 50,210 short tons.[258] It also proposes that the quota be increased to 51,716 short tons in the second year of the remedy period and 53,268 in the third year of the remedy period.[259] It also suggests that the Commission recommend an additional tariff of 15 percent on imports of stainless rod during the first year of the period in order to allow the industry to raise prices immediately.[260] Finally, Carpenter requests that the Commission recommend that the quota be administered on a quarterly basis and that the first quarter's quota be adjusted downward to reflect any possible import surges before imposition of the remedy.[261]

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[251] Carpenter is the only rod producer that filed an adjustment plan.

[252] Carpenter Prehearing Remedy Brief Exh. 1 at 6-7.

[253] Carpenter Prehearing Remedy Brief Exh. 1 at 6-8.

[254] Carpenter Prehearing Remedy Brief Exh. 1 at 5-7.

[255] Carpenter Prehearing Remedy Brief Exh. 1 at 2-5.

[256] Carpenter Prehearing Remedy Brief at 2-4.

[257] Carpenter Prehearing Remedy Brief at 6-7.

[258] Carpenter Prehearing Remedy Brief at 3.

[259] Carpenter Prehearing Remedy Brief at 3.

[260] Carpenter Prehearing Remedy Brief at 8-9.

[261] Carpenter Prehearing Remedy Brief at 9-10.

The USWA also proposes that the Commission recommend a combination of a tariff and a quota on imports of stainless steel rod. They recommend an increased tariff of 30 percent *ad valorem* on imports of stainless rod and a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[262] They propose that the remedy extend for four years, that their proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[263]

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[264] If the Commission is inclined to recommend import restrictions, they assert, the Commission should reject tariffs and adopt quotas as a remedy.[265] They argue that the quotas should be calculated based on the three most recent years of the period of investigation and should be country-specific.[266]

We find that the remedies proposed by the domestic stainless rod industry and the USWA would exceed the amount necessary to prevent or remedy serious injury. First, both quota proposals would significantly limit the volume of stainless rod imports if imposed. The domestic stainless rod industry's proposed quota would limit imports during the first year of relief to a level that would be nearly twenty percent lower than the volume of imports in 1996, which was the year in which imports were at their lowest levels during the period of investigation. The USWA's proposed quota would limit the volume of imports during the first year of the period of relief to a level below that of any year of the period of investigation. In addition, our economic analysis indicates that the industry's remedy proposal would have a substantial negative effect on both consumer costs and on net welfare benefits during the first year of the period of relief.[267] Finally, these proposed quotas have significant drawbacks in terms of the predictability of their impact during periods of demand changes, their administrability, and their flexibility in the face of short supply situations.

We also do not agree with respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. During the period of investigation, the industry has seen its profitability levels, production levels, capacity utilization rates and market share decline dramatically. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy these declines. Given this, we believe that some form of tariff-based relief is necessary to provide the industry with substantial improvements in its pricing, market share and profitability levels. As we discuss in more detail below, these actions will provide needed volume and price relief to the industry, thus allowing it to make the capital improvements necessary to help it regain its footing in this marketplace. Accordingly, we do not find that trade adjustment assistance is the only form of remedy warranted for this industry.

We recommend that the President increase the current tariff applied to imports of stainless steel rod for a four-year period. In the first year of relief, we recommend that imports be subject to an additional dutiable rate of 20 percent *ad valorem*. The additional duty would decrease to 17 percent *ad*

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[262] USWA Prehearing Remedy Brief at 27-29. In the alternative, they argue that the Commission use the two-year period 1996 to 1997 as the representative period. USWA Prehearing Remedy Brief at 29. With respect to this proposed period, we note that the statute provides that a quota should generally be calculated on the basis of a representative period of three years. 19 U.S.C. §2253(e)(4).

[263] USWA Prehearing Remedy Brief at 30.

[264] Usinor Prehearing Remedy Brief at 8-11; Eurofer Prehearing Remedy Brief at 20.

[265] Usinor Prehearing Remedy Brief at 12; Eurofer Posthearing Remedy Brief at 13-16.

[266] Usinor Prehearing Brief on Remedy at 12-14; Eurofer Posthearing Remedy Brief at 14-16.

[267] Compare EC-Y-046 at Table STAINLESS-33 with EC-Y-048 at Table STAINLESS-37.

valorem in the second year of relief, 14 percent *ad valorem* in the third year of relief, and 11 percent *ad valorem* in the fourth year of relief. In our view, these levels of relief will help stabilize prices and volumes in the stainless rod market, provide the industry with the requisite volume and price relief, and increase industry profitability levels but will at the same time avoid the creation of supply shortfalls during the period of relief.

Although the industry has taken steps in the planning of its adjustment efforts, it is clear that it will take some time for the industry to modernize and update its current facilities, bring new equipment and capacity fully on line, and develop new product lines. We recognize that relief of more than three years duration will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to formally review, among other things, the progress of the stainless rod industry in implementing its plan. It would also provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if it is no longer warranted or if the industry has not made adequate efforts to make a positive adjustment to import competition.

b. Country Exclusions

As stated in our injury views, we have made negative findings under section 311(a) of the NAFTA Implementation Act with respect to imports of stainless steel rod from Canada and Mexico. Accordingly, we recommend that the President not include these imports in any remedy.

We also recommend that the President exclude from any remedy imports of stainless rod from Israel and beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Imports from these countries accounted for a small or non-existent percentage of total imports and had a minimal share of the domestic rod market during the period of investigation.[268]

c. International Negotiations

As discussed in section I above, we recommend that the President continue recently initiated international negotiations with all countries that supply stainless steel bar with the goal of reducing global overcapacity to produce stainless steel bar.

d. Short and Long-Term Effects of Our Recommended Remedy

The tariff increase that we are recommending will address the serious injury to the domestic stainless rod industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

Our tariff-based remedy is intended to reduce import volumes to non-injurious levels and to limit the effects of underselling by imports during the period of relief. By doing so, our remedy will restore the production levels and prices of the industry to a reasonable level during the period of relief so that the industry will be able to continue modernizing its productive facilities, adding new product lines, and

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[268] The U.S.-Jordan Free Trade Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in Investigation No. TA-201-73, *Steel*, to the President. Imports of stainless steel rod from Jordan are not a substantial cause of serious injury or threat of serious injury because there have been no imports of stainless steel rod from Jordan during the period of investigation. Therefore, to the extent that section 221(a) of that Act applies to this investigation, we recommend that imports from Jordan not be subject to the additional duties.

bringing recent capacity increases to full utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. We estimate that, during the first year of relief, our recommended tariff would result in a small to moderate increase in domestic prices, a much more significant increase in domestic sales volumes, and a substantial increase in the industry's overall sales.[269] We also estimate that the tariff would have a more significant effect on import prices than domestic prices and that it would have a more significant impact on import volumes as well.[270] Accordingly, we believe that the significant declines in import volumes resulting from the tariff will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period of relief.

Moreover, as we have previously discussed, our recommended remedy would provide the industry with significant positive benefits but would not result in the exclusion of imports from the domestic market. Thirty-six percent of purchasers noted that they had difficulty obtaining supply of certain stainless rod products from domestic producers during the period of examination.[271] Furthermore, Carpenter/Talley is the sole significant domestic producer of stainless rod. In light of this, we believe that the use of a tariff would allow these purchasers to obtain such products from import sources during periods of short supply.

We recognize that our recommended tariff would result in an initial negative impact on end users of stainless rod, primarily in the form of reduced import volumes and increased prices in the domestic market. However, this effect will be limited somewhat by the small expected increase in domestic stainless rod prices, which will minimize the effect of the tariff on the purchasers of the domestic product. The largest price impact will be felt by end users of imports since we estimate that import prices will increase significantly over 2000 levels. Although we estimate that tariff will increase the aggregate cost to consumers, this cost will be offset by the benefits to the industry from increased prices and volumes of sales.

e. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of relief, the domestic industry's condition will continue to deteriorate seriously. Imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of additional domestic stainless rod facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue depressing the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

In the absence of relief, the declines in the industry's sales revenues and profitability levels would also make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive. Moreover, any prolonged decline in the competitiveness of domestic stainless rod producers would also impact adversely their principal customers due to an ensuing reduction in the number of alternative sources for stainless steel rod in the U.S. market.

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[269] EC-Y-048 at Table STAINLESS-37.

[270] EC-Y-048 at Table STAINLESS-37.

[271] EC-Y-046 at STAINLESS-8-9 & Table STAINLESS–18.

ADDITIONAL VIEWS OF CHAIRMAN STEPHEN KOPLAN REGARDING OTHER ACTIONS TO FACILITATE POSITIVE ADJUSTMENT

I emphasize that the tariff relief I recommend is of primary importance in facilitating the domestic steel industry's positive adjustment to import competition. I also recognize that it is not within the authority of the Commission to recommend what specific steps should be taken to effect equitable restructuring. Nevertheless, I acknowledge, as do the steelworkers, that restructuring can make the U.S. steel industry stronger as a whole.

However, any restructuring will mean further job losses in an already retrenched industry.[1] It will also affect the interests of retirees dependent on pensions and health and life insurance. I am deeply concerned with the effects consolidation and restructuring would have on the lives of those current and former steelworkers and their families. It is one thing to speak of these matters in the abstract. However, it must also be recognized that difficult decisions must be made that directly impact the lives of thousands of men and women currently working in steel mills across the country, as well as those who have given many productive years to this industry. Accordingly, it is extremely important that the steelworkers play an active role in any such restructuring. The United Steelworkers of America, AFL-CIO, the Independent Steelworkers Union, and other representatives of those workers affected must have equal standing in any decisions affecting the rationalization of the industry.

As to retirees, many of whom dedicated their entire working years to the industry, they entered into an agreement , a central part of which was the provision of income and health care in their retirement years. I stress that this was a bargained-for entitlement that must be respected in any decisions regarding the restructuring of the industry. The record in this investigation evidences that in most foreign steel producing countries, the government, not the individual steel producer, bears the burden of "legacy costs" such as retirees' benefits, in particular pension and health care costs.

As to those currently employed in this industry, all reasonable means should be pursued to preserve jobs and to provide adequate resources to facilitate the adjustment to other meaningful pursuits by those workers for whom restructuring may mean the loss of a job. Accordingly, I strongly recommend that the President pursue all available means to bolster training programs for affected workers. For example, 14 steel companies and their steelworkers have, through their collective efforts, created the Institute for Career Development (ICD).[2] Through the ICD, steelworkers "have gained tremendous skills in computerized operations and have developed skills and knowledge that translate directly into their jobs, making them the most efficient and productive in the world."[3] It is vital that the strengthening of such programs be included as an integral part of the transition to a more rational production base if that transition is to be carried out equitably.

In this regard, I also note that legislation introduced in the Congress July 19, 2001 (S. 1209) would re-authorize the Trade Adjustment Assistance Act program to make significant revisions in response to criticisms of the current program. It would expand eligibility to cover more trade-impacted workers, expand certain benefits, and create additional programs to benefit trade-impacted communities.

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[1] Tr. at 2883 (Louise Zimmerman, United Steelworkers of America, AFL, CIO).

[2] Tr. at 2849 (Tom Conway, Secretary, Basic Steel Industrial Conference).

[3] Tr. at 2849, 2923.

ADDITIONAL VIEWS OF CHAIRMAN STEPHEN KOPLAN ON REMEDY

For the reasons set forth below, I recommend the following actions with respect to stainless steel wire ("stainless wire"), tool steel, all forms and stainless steel fittings and flanges ("stainless fittings and flanges"). I find these actions would address the threat of serious injury I have found to exist and would be most effective in facilitating the efforts of the domestic industries producing these products to make a positive adjustment to import competition:

For stainless steel wire, I recommend:

(2) That the President impose an additional duty on imports for a four-year period. The additional duty would amount to 8 percent *ad valorem* in the first year of relief and be reduced to 7 percent *ad valorem* in the second year of relief, 6 percent *ad valorem* in the third year of relief, and 5 percent *ad valorem* in the fourth year of relief;

(3) Having made negative findings with respect to imports of stainless steel wire from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty described above;

(4) That the additional duty not apply to imports of stainless steel wire from Israel or to any imports of stainless steel wire entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[1]

For tool steel, all forms, I recommend:

(1) That the President impose an additional duty on imports of tool steel for a four-year period. The additional duty would amount to 10 percent *ad valorem* in the first year of relief and be reduced to 8 percent *ad valorem* in the second year of relief, 6 percent *ad valorem* in the third year of relief, and 4 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of tool steel from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duties described above; and

(3) That the additional duties not apply to imports of tool steel from Israel or to any imports of tool steel entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[2]

For stainless fittings and flanges, I recommend:

(1) That the President impose an additional duty on imports for a four-year period. The additional duty would amount to 15 percent *ad valorem* in the first year of relief and be

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[1] To the extent that section 211(a) of the Jordan FTA applies to this investigation, I recommend that the additional duty not apply to imports of stainless wire from Jordan.

[2] To the extent that section 211(a) of the Jordan FTA applies to this investigation, I recommend that the additional duty not apply to imports of tool steel from Jordan.

reduced to 12 percent *ad valorem* in the second year of relief, 9 percent *ad valorem* in the third year of relief, and 6 percent *ad valorem* in the fourth year of relief;

(2) Having made negative findings with respect to imports of stainless fittings and flanges from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty described above;

(3) That the additional duty not apply to imports of stainless fittings and flanges from Israel or to any imports of stainless steel fittings and flanges entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[3]

I find that the actions described above will not exceed the amount necessary to remedy the serious injury or the threat of serious injury I find to exist.[4] I discuss my analysis for the three products below.

A. Stainless Steel Wire

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions during the next several years, when evaluating the various remedy options for stainless steel wire.

a. Demand Conditions

Demand for stainless wire grew overall during the five full years of the period of investigation. Apparent consumption of stainless wire increased from 111,152 short tons in 1996, to 124,167 short tons in 1997, 125,177 short tons in 1998, 126,977 short tons in 1999, and 136,092 short tons in 2000. This level of consumption was 22.4 percent higher than in 1996.[5] As the overall economy declined in 2001, apparent consumption of stainless wire declined by 16.1 percent between interim 2000 and interim 2001.[6]

Although there is some disagreement about the extent of demand changes in the market during the next three years between the parties, they appear to agree generally that demand will continue to be depressed through the middle of 2002 but will then recover in 2003 and 2004. An economic consultant for the domestic producers projects that demand for stainless wire will be lower in 2002 than in 2001.[7]

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[3] To the extent that section 211(a) of the Jordan FTA applies to this investigation, I recommend that the additional duty not apply to imports of stainless fittings and flanges from Jordan.

[4] I also recommend that the President continue the recently initiated international negotiations to address the underlying causes of the increases in imports.

[5] CR and PR at Tables STAINLESS-C-7.

[6] CR and PR at Tables STAINLESS-C-7.

[7] Domestic Stainless and Tool Steel Industry Posthearing Remedy Brief at Att. 1.

The consultant also predicts that demand will then grow in 2003 to the same general levels as 2001 and will grow further in 2004, but not to the levels seen in 2000.[8]

Stainless steel wire is used in the chemical, petroleum, medical instruments, paper-pulp, and food processing industries as well as in the production of household appliances, nails, and staples.[9] The large majority of market participants indicate that there are no known substitutes for stainless steel wire.[10]

The price of stainless wire is directly affected by the price of nickel.[11] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their stainless wire products whenever the price of nickel reaches a certain level.[12] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through interim 2001.[13] The price of domestic stainless wire followed this trend somewhat during the period of investigation, with average unit values of domestic wire shipments and sales declining through the end 1999, and then recovering in 2000 and interim 2001.[14]

b. Domestic Supply Conditions

The industry's aggregate capacity level increased during the period of investigation, growing by 12.7 percent from 1996 to 2000.[15] Capacity was 1.6 percent lower in interim 2001 than in interim 2000.[16] Capacity utilization increased from 61.3 percent in 1996 to 67.2 percent in 2000.[17] Industry capacity utilization then declined from 71.4 percent to 55.4 percent between interim 2000 and interim 2001.[18] In light of these capacity utilization levels, I find that domestic stainless wire producers have substantial unused capacity that can be used to increase production in the event of price changes or increased domestic demand.

c. Import Supply Conditions

During the period of investigation, there were imports of stainless wire from over 40 countries, although not every country exported stainless wire to the United States in every year.[19] The quantity of imports of stainless wire from sources other than Canada and Mexico increased by 34.6 percent from

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[8] Domestic Stainless and Tool Steel Industry Posthearing Remedy Brief at Att. 1.

[9] CR at STAINLESS-3; PR at STAINLESS-3..

[10] EC-Y-046 at Table STAINLESS-6.

[11] CR at STAINLESS-95-96; PR at STAINLESS-70-71.

[12] CR at STAINLESS-95-96; PR at STAINLESS-70-71.

[13] CR at STAINLESS-95-96; PR at STAINLESS-70-71.

[14] CR and PR at Tables STAINLESS-90, & STAINLESS-C-7.

[15] CR and PR at Table STAINLESS-C-7.

[16] CR and PR at Table STAINLESS-C-7.

[17] CR and PR at Table STAINLESS-C-7.

[18] CR and PR at Table STAINLESS-C-7.

[19] INV-Y-180, Table G28.

1996 to 2000 and by 2.7 percent between interim 2000 and interim 2001.[20] The record indicates that domestic and imported stainless wire are comparable in most respects.[21] I therefore find that there is a reasonably high degree of substitutability between domestic and imported stainless steel wire.

The aggregate capacity of foreign producers of stainless increased by 27.5 percent during the period examined. The capacity utilization of these producers increased from 85.7 percent in 1996 to 93.8 percent in 2000. Aggregate foreign capacity utilization decreased from 89.8 percent in interim 2000 to 85.7 percent in interim 2001.[22]

2. Industry Adjustment Plans

I carefully considered the adjustment plans submitted by the stainless steel wire industry. The domestic stainless wire industry states that it plans to make substantial investments in its productive facilities in order to improve its innovation, efficiency, product quality, and overall cost competitiveness.[23] The industry asserts that these improvements will further strengthen its ability to compete with stainless wire producers across the world.[24] The industry also states that it intends to develop new products and applications so as to increase demand for stainless steel wire in a number of new products and applications.[25] As part of its adjustment plan, the industry notes that it supports, and will participate in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[26] By improving efficiency, lowering costs, and expanding product lines, the industry's proposed investments should strengthen the domestic industry and make it better able to withstand import competition in the future.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quotas, tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the threat of serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. I have determined that tariffs would provide the domestic stainless wire industry with the most appropriate form of relief and would also minimize costs to consumers and disruption of stainless wire supply.

Proposals of the Parties. The domestic stainless wire producers' request that the Commission recommend that the President impose a three-year quota and a one-year tariff on imports of stainless steel wire from non-NAFTA countries.[27] They argue that the period from 1993 to 1995 should be used

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[20] CR and PR at Table STAINLESS-C-7.

[21] EC-Y-046 at STAINLESS-14-STAINLESS-31.

[22] CR and PR at Table STAINLESS-50.

[23] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at Att. 2, pp. 2, 6-10.

[24] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at Att. 2, p 10.

[25] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at Att. 2, pp. 5-6.

[26] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at Att. 2, p. 2.

[27] Domestic Stainless Steel Wire Industry Prehearing (Remedy) at 3-4.

as the representative period for the quota calculation[28] and propose that the quota for the first year of the remedy period be 21,858 short tons.[29] They also propose that the quota be increased to 22,514 short tons in the second year of the remedy period and 23,189 short tons in the third year of the remedy period.[30] They further propose that the Commission recommend an additional tariff of 15 percent on imports during the first year of the period in order to allow the industry to raise prices immediately. Finally, the industry requests that the Commission recommend that the quota be administered on a quarterly basis[31] and that the first quarter's quota be adjusted downward to reflect possible imports surges before imposition of the remedy.[32]

The United Steelworkers of America proposes that the Commission recommend a combination of a tariff and a quota on stainless wire imports. They recommend an increased tariff of 30 percent *ad valorem* on imports of stainless wire and that the Commission recommend a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[33] They propose that the remedy extend for four years, that their proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[34]

Respondents argue that the Commission should not recommend any restrictive remedies against imports.[35] Respondents contend that, if the Commission is inclined to recommend import restrictions, the Commission should reject tariffs and adopt quotas as a remedy.[36] They argue that the quotas should be calculated based on 1998-2000 import levels.[37]

I find that the remedies proposed by the domestic stainless wire industry and the USWA would exceed the amount necessary to prevent or remedy the threat of serious injury. Both quota proposals would severely limit the volume of stainless wire imports that could enter the country if imposed. The domestic stainless wire industry's proposed quota would limit imports during the first year of relief to a level thirty percent lower than the level in 2000. In addition, our economic analysis indicates that the industry's quota proposal would have a far greater negative effect on both consumer costs and on net welfare benefits than the tariff remedy I have recommended.[38] Finally, these proposed remedies have significant drawbacks in terms of the predictability of their impact during periods of demand changes, their transparency and administrability, and their flexibility in the face of short supply situations.

I disagree with Respondents' contention that it would not be appropriate to recommend a trade restrictive remedy. At the end of the period of investigation, the industry's profitability levels, production levels, capacity utilization rates and market share declined significantly. Given this, I

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[28] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at 6-7.

[29] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at 3.

[30] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at 3.

[31] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at 3.

[32] Domestic Stainless Steel Wire Industry Prehearing Brief (Remedy) at 9-10.

[33] USWA Prehearing Brief on Remedy at pp. 27-29. In the alternative, they argue that the Commission use the two-year period 1996 to 1997 as the representative period. USWA Prehearing Brief on Remedy at p. 29. With respect to this proposed period, I note that the statute provides that a quota should generally be calculated on the basis of a representative period of three years. 19 U.S.C. §2253(e)(4).

[34] USWA Prehearing Brief on Remedy at 30.

[35] Korean Iron and Steel Association Prehearing Brief on Remedy at 1; Eurofer Prehearing Brief on Remedy at 22.

[36] Korean Iron and Steel Association Prehearing Brief on Remedy at 1, 5-8.

[37] Korean Iron and Steel Association Prehearing Brief on Remedy at 1, 5-8.

[38] Compare EC-Y-046 at Table ST-33 with EC-Y-051 at STAINLESS-2.

believe that some form of tariff-based relief is necessary to provide the industry with improvements in its production, sales, price and profitability levels during the period of relief. These improvements are necessary to allow the industry to make the capital improvements necessary to remedy the threat of serious injury it faces.

Recommended Relief. I recommend that the President increase the current tariff applied to imports of stainless steel wire for a four-year period. In the first year of relief, imports would be subject to an additional dutiable rate of 8 percent *ad valorem*. The additional duty would decrease to 7 percent *ad valorem* in the second year of relief, 6 percent *ad valorem* in the third year of relief, and 5 percent *ad valorem* in the fourth year of relief. These levels of relief will help stabilize prices and volumes in the stainless wire market, provide the industry with the requisite volume and price relief, and increase industry profitability levels and at the same time avoid the creation of supply shortfalls during the period of relief.

Although the industry has taken steps in the planning of its adjustment efforts, it is clear that it will take some time for the industry to modernize and update its current facilities, bring new equipment and capacity fully on line, and develop new product lines. I recognize that relief of more than three years duration will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to formally review, among other things, the stainless wire industry's progress in implementing the plan. It would also provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if the industry has not made adequate efforts to make a positive adjustment to import competition.

Having made negative findings under section 311(a) of the NAFTA Implementation Act with respect to imports of stainless wire from Canada and Mexico, I recommend that the President not subject imports from Canada or Mexico to any relief action.

I also recommend that the President exclude from any remedy imports of stainless wire from Israel and the beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Imports from these countries all accounted for a small or non-existent percentage of total imports and had a minimal market share during the period of investigation.[39]

Short and Long-Term Effects of My Recommended Remedy. The tariff increase that I am recommending will address the threat of serious injury to the domestic stainless wire industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such threat of serious injury.

My tariff-based remedy is intended to maintain import volumes at non-injurious levels and to limit the effects of underselling by imports during the period of relief. By doing so, my remedy will restore the production levels, prices, and profitability of the industry to the levels in 1996-2000 in order to remedy the threat of serious injury. This will allow the industry to be able to continue modernizing its productive facilities, adding new product lines, and bringing recent capacity increases to full utilization. The remedy will provide relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. In this regard, based on estimates of the COMPAS model, during the first year of relief, my recommended tariff would result in a small increase in domestic prices, and larger increases in

[39] To the extent that section 211(a) of the Jordan FTA applies to this investigation, I recommend that the additional duty not apply to imports of stainless wire from Jordan. There were virtually no imports of stainless steel wire from Jordan during the period of investigation.

domestic sales volumes and in the industry's revenue.[40] I note that the tariff will have a much more significant effect on import prices than domestic prices and a significant impact on import volumes as well.[41] Accordingly, the declines in import volumes resulting from the tariff will remedy the threat of serious injury and allow the domestic industry to make adjustments to import competition during the period of relief.

Moreover, my recommended tariff would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. In this regard, I note that more than forty percent of stainless wire purchasers who responded to the Commission's questionnaire noted that they had difficulty obtaining supply of certain stainless wire products from domestic producers during the period of investigation.[42] The use of a tariff would allow these purchasers to obtain such products from import sources in the event of short supply.

I recognize that my recommended tariff would result in an initial negative impact on end users of stainless wire, primarily in the form of reduced import volumes and increased prices in the domestic market. However, this effect will be limited by the small expected increase in domestic stainless wire prices, which will minimize the impact of the tariff on purchasers of domestic stainless steel wire. The largest price impact will be felt by end users who purchase imports since import prices will increase more significantly than domestic prices during the period of relief. Although the tariff will increase overall consumer costs during the first year of the period of relief, this cost is offset by the benefits to the industry from increased prices and volumes of sales.

Short and Long-Term Effects of Not Taking the Recommended Action. In the absence of relief, the domestic industry's condition will continue to deteriorate seriously. Imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of domestic stainless wire facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue depressing the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

In the absence of relief, the declines in the industry's sales revenues and profitability levels would also make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive.

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[40] The COMPAS model estimates that in the first year of relief, the price of the domestic product would increase by 0.4 to 0.8 percent, the quantity of the domestic industry's shipments would increase by 2.1 to 5.2 percent, and the domestic industry's revenue would increase by 2.6 to 5.9 percent. EC-Y-051 at STAINLESS-2.

[41] The COMPAS model estimates that in the first year of relief, the prices of covered imports would increase by 3.9 to 5.8 percent and the covered imports market share would be 19.2 to 20.7 percent. EC-Y-051 at STAINLESS-2.

[42] EC-Y-046 at ST-8-9 & Table STAINLESS–18.

B. Tool Steel

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions during the next several years, when evaluating the various remedy options for tool steel.

a. Demand Conditions

Demand for tool steel increased during the period of investigation. Apparent consumption of tool steel was 115,463 short tons in 1996, 126,512 short tons in 1997, 129,410 short tons in 1998, 139,033 short tons in 1999, and 140,197 short tons in 2000.[43] As the overall economy declined in interim 2001, apparent consumption of tool steel also declined, falling by 8.4 percent between interim 2000 and interim 2001.[44]

Although there is some disagreement about the extent of demand changes in the market during the next three years between the parties, they appear to agree generally that demand will continue to be depressed through the middle or end of 2002. An economic consultant for the domestic industry projects that demand for tool steel will increase in 2002, 2003, and 2004 but that these levels will all be lower than 2000.[45]

Tool steel is used to produce cutting and forming tools such as dies, molds, blades, punches, and surface areas of machinery.[46] The large majority of market participants indicate that there are no known substitutes for tool steel.[47]

b. Domestic Supply Conditions

The domestic tool steel industry is concentrated. Although 11 firms reported production of tool steel to the Commission, the three largest producers accounted for 72.7 percent of production in 2000.[48]

The industry's aggregate capacity level increased during the period of investigation, growing by 21.4 percent from 1996 to 2000.[49] Domestic capacity was 1.8 percent higher in interim 2001 than in interim 2000.[50] The industry's capacity utilization rate fluctuated over the period of investigation, but it declined overall from 63.8 percent in 1996 to 54.5 percent in 2000. Capacity utilization declined between the interim periods, dropping from 63.9 percent to 42.5 percent.[51] In light of these capacity utilization levels, I find that domestic tool steel producers have substantial unused capacity that can be used to increase production in the event of price changes or increased domestic demand.

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[43] CR and PR at Table STAINLESS-C-6.

[44] CR and PR at Table STAINLESS-C-6.

[45] Domestic Stainless and Tool Steel Industry Posthearing Remedy Brief at Att. 1.

[46] CR and PR at STAINLESS-3.

[47] EC-Y-046 at Table STAINLESS-6.

[48] CR and PR at Table STAINLESS-1.

[49] CR and PR at Table STAINLESS-C-6.

[50] CR and PR at Table STAINLESS-C-6.

[51] CR and PR at Table STAINLESS-C-6.

c. Import Supply Conditions

During the period of investigation, there were imports of tool steel from over 35 countries, although not every country exported tool steel in every year.[52] The quantity of imports of tool steel from sources other than Canada and Mexico increased by 46.5 percent from 1996 to 2000, and by 15.5 percent between interim 2000 and interim 2001.[53] The record indicates that purchasers generally perceive domestically produced and imported tool steel to be comparable in most respects, which indicates that they are reasonably substitutable.[54]

The aggregate capacity of foreign producers of tool steel increased by 63.3 percent during the period of investigation. The capacity utilization rates of these producers were relatively stable between 1996 and 1999, ranging between 82.4 percent (in 1996) and 87.6 percent (in 1998). Capacity utilization fell from 83.2 percent in 1999 to 56.5 percent in 2000.[55]

2. Industry Adjustment Plans

I carefully considered the adjustment plans submitted by the tool steel industry. The domestic tool steel industry states that it plans to make substantial investments in its productive facilities in order to improve its innovation, efficiency, product quality, and overall cost competitiveness.[56] The industry asserts that these improvements will further strengthen its ability to compete with tool steel producers across the world.[57] The industry also states that it intends to develop new products and applications so as to increase demand for tool steel in a number of new products and applications.[58] As part of its adjustment plan, the industry notes that it supports, and will participate in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[59] By improving efficiency, lowering costs, and expanding product lines, the industry's proposed investments should strengthen the domestic industry and make it better able to withstand import competition in the future.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quotas, tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the threat of serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. I have determined that tariffs will provide the domestic tool steel industry with the most appropriate form of relief.

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[52] INV-Y-180 at Table G27.

[53] CR and PR at Table STAINLESS-C-6.

[54] EC-Y-046 at Tables STAINLESS-21 and STAINLESS-26.

[55] CR and PR at Table STAINLESS-48.

[56] Domestic Tool Steel Industry Prehearing Brief (Remedy) at Att. 1, pp. 2, 5-9.

[57] Domestic Tool Steel Industry Prehearing Brief (Remedy) at Att. 1, p. 8.

[58] Domestic Tool Steel Industry Prehearing Brief (Remedy) at Att. 1, p. 2 .

[59] Domestic Tool Steel Industry Prehearing Brief (Remedy) at Att. 1, p. 2.

Proposals of the Parties. The domestic tool steel producers request that the Commission recommend that the President impose a three- year quota and a one-year tariff on imports of tool steel from non-NAFTA countries.[60] They contend that the period from 1993 to 1995 should be used as the representative period for the quota calculation[61] and propose that the quota for the first year of the period of relief be 53,540 short tons.[62] They also propose that the quota be increased to 55,146 short tons in the second year of the remedy period and 56,801 short tons in the third year of the remedy period.[63] They further propose that the Commission recommend an additional tariff of 15 percent on imports of tool steel during the first year of the period in order to allow the industry to raise prices immediately.[64] Finally, the tool steel industry requests that the Commission recommend that the quota be administered on a quarterly basis and that the first quarter's quota be adjusted downward to reflect any possible imports surges before imposition of the remedy.[65]

The United Steelworkers of America also proposes that the Commission recommend a combination of a tariff and a quota on imports of tool steel. They recommend an increased tariff of 30 percent *ad valorem* on imports of tool steel and a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[66] They propose that the remedy extend for four years, that their proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[67]

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[68] They further argue that "whatever problems that the Tool Steel industry claims to suffer should be solved through the closure of uneconomic capacities, consolidation and specialization of production, and an equitable solution to the problem of unfunded legacy costs."[69]

I find that the remedies proposed by the domestic tool steel industry and the USWA would exceed the amount necessary to prevent or remedy the threat of serious injury. Both quota proposals would severely limit the volume of tool steel imports if imposed. The domestic tool steel industry's proposed quota would limit imports during the first year of relief to a level that would be nearly thirty percent lower than the volume of imports in 2000. In addition, the industry's remedy proposal would have a substantial negative effect on both consumer costs and on net welfare benefits during the first year of the period of relief. Finally, these proposed remedies have significant drawbacks in terms of the predictability of their impact during periods of demand changes, their transparency and administrability, and their flexibility in the face of short supply situations.

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[60] Domestic Tool Steel Industry Prehearing Brief on Remedy at 3-6.

[61] Domestic Tool Steel Industry Prehearing Brief on Remedy at 6-7.

[62] Domestic Tool Steel Industry Prehearing Brief on Remedy at 4-6.

[63] Domestic Tool Steel Industry Prehearing Brief on Remedy at 4-6.

[64] Domestic Tool Steel Industry Prehearing Brief on Remedy at 8-10.

[65] Domestic Tool Steel Industry Prehearing Brief on Remedy at 10.

[66] USWA Prehearing Brief on Remedy at pp. 27-29. In the alternative, they argue that the Commission use the two-year period 1996 to 1997 as the representative period. USWA Prehearing Brief on Remedy at p. 29. With respect to this proposed period, I note that the statute provides that a quota should generally be calculated on the basis of a representative period of three years. 19 U.S.C. §2253(e)(4).

[67] USWA Prehearing Brief on Remedy at 30.

[68] Respondents' Counsel for Tool Steel Prehearing Brief on Remedy at 3-6.

[69] Respondents' Counsel for Tool Steel Prehearing Brief on Remedy at 3.

I do not agree with Respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. At the end of the period of investigation, the industry's profitability levels, production levels, capacity utilization rates and market share declined dramatically. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy these declines and prevent the threat of serious injury. Given this, I believe that some form of tariff-based relief is necessary to provide the industry with improvements in its pricing, market share and profitability levels. These improvements are necessary to allow the industry to make the capital improvements necessary to remedy the threat of serious injury the industry faces. Accordingly, I do not find that trade adjustment assistance is the only form of remedy warranted for this industry. I note that both the Department of Labor (for workers) and the Department of Commerce (for firms) are required to give expedited consideration to applications for trade adjustment assistance as a result of the action taken by the Commission in this section 201 investigation.[70]

Recommended Relief. I recommend that the President increase the current tariff applied to imports of tool steel for a four-year period. In the first year of relief, I recommend that imports be subject to an additional dutiable rate of 10 percent *ad valorem*. The additional duty would decrease to 8 percent *ad valorem* in the second year of relief, 6 percent *ad valorem* in the third year of relief, and 4 percent *ad valorem* in the fourth year of relief. These levels of relief will help stabilize prices and volumes in the tool steel market, provide the industry with the requisite volume and price relief, and increase industry profitability levels and will at the same time avoid the creation of supply shortfalls during the period of relief.

Although the industry has taken steps in the planning of its adjustment efforts, it is clear that it will take some time for the industry to modernize and update its current facilities, bring new equipment and capacity fully on line, and develop new product lines. I recognize that relief of more than three years duration will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to formally review, among other things, the progress of the tool steel industry in implementing its plan. It would also provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if it is no longer warranted or if the industry has not made adequate efforts to make a positive adjustment to import competition.

Having made negative findings under section 311(a) of the NAFTA Implementation Act with respect to imports of tool steel from Canada and Mexico, I recommend that the President not subject imports from Canada and Mexico to any relief action.

I also recommend that the President exclude from any remedy imports of tool steel from Israel and the beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Imports from these countries accounted for a small or non-existent percentage of total imports and had a minimal share of the domestic tool steel market during the period of investigation.[71]

Short and Long-Term Effects of My Recommended Remedy. The tariff increase that I am recommending will address the threat of serious injury to the domestic tool steel industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such threat of serious injury.

My tariff-based remedy is intended to maintain import volumes at non-injurious levels and to limit the effects of underselling by imports during the period of relief. By doing so, my remedy will

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[70] 19 U.S.C. § 2252(g).

[71] To the extent that section 211(a) of the Jordan FTA applies to this investigation, I recommend that the additional duty not apply to imports of tool steel from Jordan. There were no imports of tool steel wire from Jordan during the period of investigation.

restore the production levels and prices of the industry to 1998-2000 levels in order to remedy the threat of serious injury. This will allow the industry to be able to continue modernizing its productive facilities, adding new product lines, and bringing recent capacity increases to full utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. Based in the estimates of the COMPAS model, during the first year of relief, my recommended tariff would result in a small increase in domestic prices, a much more significant increase in domestic sales volumes, and an increase in the industry's revenue.[72] I also estimate that the tariff would have a more significant effect on import prices than domestic prices and that it would also have a more significant impact on import volumes.[73] Accordingly, the declines in import volumes resulting from the tariff will remedy the threat of serious injury to this industry and allow it to make significant adjustments to import competition during the period of relief.

Moreover, my recommended remedy would provide the industry with significant positive benefits but would not result in the exclusion of imports from the domestic market. In this regard, I note that thirty-one percent of purchasers who responded to the Commission's questionnaire noted that they had difficulty obtaining supply of certain tool steel products from domestic producers during the period of examination.[74] In light of this, the use of a tariff will allow these purchasers to obtain such products from import sources during periods of short supply.

I recognize that my recommended tariff would result in an initial negative impact on end users of tool steel, primarily in the form of reduced import volumes and increased prices in the domestic market. However, this effect will be limited by the small expected increase in domestic tool steel prices, which will minimize the effect of the tariff on the purchasers of the domestic product. The largest price impact will be felt by end users of imports since import prices will increase over 2000 levels. Although I estimate that this tariff will increase the aggregate cost to consumers, this cost will be offset by the benefits to the industry from increased prices and volumes of sales.

Short and Long-Term Effects of Not Taking the Recommended Action. In the absence of relief, the domestic industry's condition will continue to deteriorate seriously. Imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of domestic tool steel facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue depressing the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

In the absence of relief, the declines in the industry's sales revenues and profitability levels would also make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive. Moreover, any prolonged decline in the competitiveness of domestic

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[72] The COMPAS model estimates that in the first year of relief, the price of the domestic product would increase by 0.7 to 1.5 percent, the quantity of the domestic industry's shipments would increase by 4.3 to 10.1 percent, and the domestic industry's revenue would increase by 5.2 to 11.7 percent. EC-Y-048 at Table STAINLESS-35.

[73] The COMPAS model estimates that in the first year of relief, the prices of covered imports would increase by 5.8 to 7.7 percent and the covered imports market share would be 47.5 to 50.4 percent. EC-Y-048 at Table STAINLESS-35.

[74] EC-Y-046 at STAINLESS-8-9 & Table STAINLESS–18.

tool steel producers would also likely impact adversely their principal customers due to an ensuing reduction in the number of alternative sources for tool steel in the U.S. market.

C. Stainless Steel Fittings and Flanges

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions during the next several years, when evaluating the various remedy options for stainless fittings and flanges.

a. Demand Conditions

Demand for stainless fittings and flanges increased during the period of investigation. Apparent consumption of stainless fittings and flanges was *** short tons in 1996, *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, and *** short tons in 2000.[75] As the overall economy declined in interim 2001, apparent consumption of stainless fittings and flanges also declined, falling by *** percent between interim 2000 and interim 2001.[76]

Stainless fittings and flanges are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. As with other stainless tubular products, the presence of chromium and, generally, other alloying elements in the steel allows these products greater tolerance to temperature, pressure, and corrosiveness than tubular products manufactured with carbon steel.[77] The large majority of market participants indicate that there are no known substitutes for tool steel.[78]

b. Domestic Supply Conditions

The industry's aggregate capacity level decreased during the period of investigation, declining by *** percent from 1996 to 2000.[79] Domestic capacity was *** percent lower in interim 2001 than in interim 2000.[80] The industry's capacity utilization rate fluctuated over the period of investigation, but it declined overall from *** percent in 1996 to *** percent in 2000. Capacity utilization declined between the interim periods, dropping from *** percent to *** percent.[81] In light of these capacity utilization levels, I find that domestic stainless fittings and flanges producers have substantial unused capacity that can be used to increase production in the event of price changes or increased domestic demand.

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[75] CR and PR at Table STAINLESS-C-12.

[76] CR and PR at Table STAINLESS-C-12.

[77] CR and PR at STAINLESS-4.

[78] EC-Y-046 at Table STAINLESS-6.

[79] CR and PR at Table STAINLESS-C-12.

[80] CR and PR at Table STAINLESS-C-12.

[81] CR and PR at Table STAINLESS-C12.

c. Import Supply Conditions

During the period of investigation, there were imports of stainless fittings and flanges from over 50 countries, although not every country exported stainless fittings and flanges in every year.[82] The quantity of imports of stainless fittings and flanges from sources other than Canada and Mexico increased by 67.0 percent from 1996 to 2000; the quantity of imports decreased by 27.4 percent between interim 2000 and interim 2001.[83] The record indicates that purchasers generally perceive domestically produced and imported stainless fittings and flanges to be comparable in most respects, which indicates that they are reasonably substitutable.[84]

The aggregate capacity of foreign producers of stainless fittings and flanges from all sources increased by *** percent during the period of investigation. The capacity utilization rates of these producers were relatively stable over the period of investigation, ranging between *** percent (in 1996) and *** percent (in 1997). Capacity utilization decreased between the interim periods, falling from *** percent in interim 2000 to *** percent in interim 2001.[85]

2. Industry Adjustment Plans

I carefully considered the adjustment plans submitted by the stainless fittings and flanges industry. The domestic stainless fittings and flanges industry states that it plans to make substantial investments in its productive facilities in order to improve its innovation, efficiency, product quality, and overall cost competitiveness.[86] The industry asserts that these improvements will further strengthen its ability to compete with stainless fittings and flanges imports.[87] By improving efficiency, lowering costs, and expanding product lines, the industry's proposed investments should strengthen the domestic industry and make it better able to withstand import competition in the future.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quotas, tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the threat of serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. I have determined that tariffs will provide the domestic stainless fittings and flanges industry with the most appropriate form of relief.

Proposals of the Parties. The domestic stainless fittings and flanges producers Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. request that the Commission recommend that the President impose a three- year quota and

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[82] INV-Y-180, Table G33.

[83] CR and PR at Table STAINLESS-C-12.

[84] EC-Y-046 at Table STAINLESS-21.

[85] CR and PR at Table STAINLESS-61.

[86] Georgetown Economic Services Prehearing Brief on Remedy at Att. 1, pp. A-1-A-2; Schagrin Associates Brief on Adjustment Measures at 17-19.

[87] Georgetown Economic Services Prehearing Brief on Remedy at Att. 1, pp. A-1-A-2.

a one-year tariff on imports of stainless fittings and flanges.[88] They contend that the period from 1993 to 1995 should be used as the representative period for the quota calculation.[89] They propose that the quota be increased by three percent in the second year, and by an additional three percent in the third year of the remedy period.[90] They further propose that the Commission recommend an additional tariff of 15 percent on imports of stainless fittings and flanges during the first year of the period in order to allow the industry to raise prices immediately.[91] Finally, these stainless fittings and flanges producers request that the Commission recommend that the quota be administered on a quarterly basis, that the quota be allocated by HTS number and source country and that the first quarter's quota be adjusted downward to reflect any possible imports surges before imposition of the remedy.[92]

Gerlin, a domestic manufacturer of stainless steel flanges urges the imposition of a tariff rate quota for a four year period on imports of stainless steel from all countries. They propose that the quota level should be based on the average annual imports during 1993-1995, and that the over quota tariff should be 50 percent.[93]

Several other domestic producers propose that the Commission recommend a quota for a four year period on imports of stainless steel fittings and flanges. They propose that 1996-1998 should be used as the base period for the quota. They further recommend that the quota level should be increased by 2 percent in the second, third, and fourth years of the remedy. They also propose that the Commission recommend that Canada and Mexico be subject to a less restrictive quota; they propose separate quotas for Canada and Mexico based on the average annual level of imports from Canada and Mexico in 1998-2000. Finally, they propose that the quota be allocated by HTS number.[94]

The United Steelworkers of America also proposes that the Commission recommend a combination of a tariff and a quota on imports of stainless fittings and flanges. They recommend an increased tariff of 30 percent *ad valorem* on imports of stainless fittings and flanges and a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[95] They propose that the remedy extend for four years, that their proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[96]

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[97]

I find that the remedies proposed by the domestic stainless fittings and flanges industry and the USWA would exceed the amount necessary to prevent or remedy the threat of serious injury. For

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[88] Georgetown Economic Services Prehearing Brief on Remedy at 3-7.

[89] Georgetown Economic Services Prehearing Brief on Remedy at 7-9.

[90] Georgetown Economic Services Prehearing Brief on Remedy at 9-10.

[91] Georgetown Economic Services Prehearing Brief on Remedy at 8-10.

[92] Georgetown Economic Services Prehearing Brief on Remedy at 4 and 10-14.

[93] Mayer, Brown, and Platt on behalf of Gerlin Prehearing Brief on Remedy at 2-6.

[94] Schagrin Associates Prehearing Brief on Remedy (Carbon and Alloy Tubular Products and Stainless and Tool Steel Products) at 16-20.

[95] USWA Prehearing Brief on Remedy at pp. 27-29. In the alternative, they argue that the Commission use the two-year period 1996 to 1997 as the representative period. USWA Prehearing Brief on Remedy at p. 29. With respect to this proposed period, I note that the statute provides that a quota should generally be calculated on the basis of a representative period of three years. 19 U.S.C. §2253(e)(4).

[96] USWA Prehearing Brief on Remedy at 30.

[97] Steptoe and Johnson on behalf of AvestaPolarit Prehearing Brief on Remedy (Stainless steel flanges and fittings) at 10-13; Hogan & Hartson Prehearing Brief on Remedy (Stainless Steel Flanges and Fittings) at 23-24.

example, the quota proposed by Georgetown Economic Services would reduce the share of domestic consumption accounted for by imports during the first year of relief to a level 5 to 10 percentage points less than they accounted for in 1996. In addition, this remedy proposal would have a substantial negative effect on both consumer costs and on net welfare benefits during the first year of the period of relief.[98] Moreover, these remedy proposals have significant drawbacks in terms of the predictability of their impact during periods of demand changes, their transparency and administrability, and their flexibility in the face of short supply situations.

I do not agree with Respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. During the period of investigation, the industry's profitability levels, production levels, and market share declined dramatically. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy the serious injury that has occurred. Given this, I believe that some form of tariff-based relief is necessary to provide the industry with improvements in its pricing, market share and profitability levels. These improvements are necessary to allow the industry to make the capital improvements necessary to remedy the serious injury the industry has suffered. Accordingly, I do not find that trade adjustment assistance is the only form of remedy warranted for this industry. I note that both the Department of Labor (for workers) and the Department of Commerce (for firms) are required to give expedited consideration to applications for trade adjustment assistance as a result of the action taken by the Commission in this section 201 investigation.[99]

Recommended Relief. I recommend that the President increase the current tariff applied to imports of stainless fittings and flanges for a four-year period. In the first year of relief, I recommend that imports be subject to an additional dutiable rate of 15 percent *ad valorem*. The additional duty would decrease to 12 percent *ad valorem* in the second year of relief, 9 percent *ad valorem* in the third year of relief, and 6 percent *ad valorem* in the fourth year of relief. These levels of relief will help stabilize prices and volumes in the stainless fittings and flanges market, provide the industry with the requisite volume and price relief, and increase industry profitability levels and will at the same time avoid the creation of supply shortfalls during the period of relief.

Although the industry has taken steps in the planning of its adjustment efforts, it is clear that it will take some time for the industry to modernize and update its current facilities, bring new equipment and capacity fully on line, and develop new product lines. I recognize that relief of more than three years duration will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to formally review, among other things, the progress of the stainless fittings and flanges industry in implementing its plan. It would also provide the President, after receiving the Commission's report, with the opportunity to reduce or terminate relief if it is no longer warranted or if the industry has not made adequate efforts to make a positive adjustment to import competition.

Having made negative findings under section 311(a) of the NAFTA Implementation Act with respect to imports of stainless fittings and flanges from Canada and Mexico, I recommend that the President not subject imports from Canada and Mexico to any relief action.

I also recommend that the President exclude from any remedy imports of stainless fittings and flanges from Israel and the beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Imports from these countries accounted for a small percentage of

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[98] EC-Y-046 at Table STAINLESS-33.

[99] 19 U.S.C. § 2252(g).

total imports and had a minimal share of the domestic stainless fittings and flanges market during the period of investigation.[100]

Short and Long-Term Effects of My Recommended Remedy. The tariff increase that I am recommending will address the serious injury to the domestic stainless fittings and flanges industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such threat of serious injury.

My tariff-based remedy is intended to reduce import volumes to non-injurious levels and to limit the effects of underselling by imports during the period of relief. By doing so, my remedy will restore the production levels, prices, and revenues of the industry to the levels in 1997-1998 in order to remedy the serious injury. This will allow the industry to be able to continue modernizing its productive facilities, adding new product lines, and bringing recent capacity increases to full utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. Based in the estimates of the COMPAS model, during the first year of relief, my recommended tariff would result in a small increase in domestic prices, a much more significant increase in domestic sales volumes, and an significant increase in the industry's revenue.[101] I also estimate that the tariff would have a more significant effect on import prices than domestic prices and that it would also have a more significant impact on import volumes.[102] Accordingly, the declines in import volumes resulting from the tariff will remedy the serious injury to this industry and allow it to make significant adjustments to import competition during the period of relief.

Moreover, my recommended remedy would provide the industry with significant positive benefits but would not result in the exclusion of imports from the domestic market. In this regard, I note that twenty-eight percent of purchasers who responded to the Commission's questionnaire noted that they had difficulty obtaining supply of certain stainless fittings and flanges products from domestic producers during the period of examination.[103] In light of this, the use of a tariff will allow these purchasers to obtain such products from import sources during periods of short supply.

I recognize that my recommended tariff would result in an initial negative impact on end users of stainless fittings and flanges, primarily in the form of reduced import volumes and increased prices in the domestic market. However, this effect will be limited by the small expected increase in domestic stainless fittings and flanges prices, which will minimize the effect of the tariff on the purchasers of the domestic product. The largest price impact will be felt by end users of imports since import prices will increase over 2000 levels. Although I estimate that this tariff will increase the aggregate cost to consumers, this cost will be offset by the benefits to the industry from increased prices and volumes of sales.

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[100] To the extent that section 211(a) of the Jordan FTA applies to this investigation, I recommend that the additional duty not apply to imports of stainless fittings and flanges from Jordan. There were no imports of stainless fittings and flanges from Jordan during the period of investigation. INV-Y-180 at Table G33.

[101] The COMPAS model estimates that in the first year of relief, the price of the domestic product would increase by 1.4 to 2.9 percent, the quantity of the domestic industry's shipments would increase by 8.2 to 19.2 percent, and the domestic industry's revenue would increase by 9.9 to 22.2 percent. EC-Y-051 at STAINLESS-4.

[102] The COMPAS model estimates that in the first year of relief, the prices of covered imports would increase by 8.7 to 11.8 percent and the covered imports market share would be 56.9 to 61.0 percent. EC-Y-051 at STAINLESS-4.

[103] EC-Y-046 at STAINLESS-8-9 & Table STAINLESS–18.

Short and Long-Term Effects of Not Taking the Recommended Action. In the absence of relief, the domestic industry's condition will continue to deteriorate seriously. Imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of domestic stainless fittings and flanges facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue depressing the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

In the absence of relief, the declines in the industry's sales revenues and profitability levels would also make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive. Moreover, any prolonged decline in the competitiveness of domestic stainless fittings and flanges producers would also likely impact adversely their principal customers due to an ensuing reduction in the number of alternative sources for stainless fittings and flanges in the U.S. market.

VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN ON REMEDY

I. SUMMARY OF FINDINGS AND RECOMMENDATIONS

On October 22, 2001, I found that increased imports are a substantial cause of serious injury, or threat of serious injury, to domestic industries producing eight steel products. For the reasons set forth below, I find that the following actions would be the most likely to address the serious injury, or threat thereof, that I have found to exist and would be the most effective in facilitating the efforts of the affected domestic industries to make a positive adjustment to import competition. More specifically –

(A) I recommend that the President continue to pursue the multilateral negotiations that he initiated, as contemplated by the 201 statute, to address the underlying cause of the increase in imports of steel or otherwise to alleviate the injury to the domestic steel industries.

(B) I recommend that the President ensure that displaced workers can take full advantage of trade adjustment assistance programs. I also recommend that the President ensure that domestic steel producing companies have access to technical assistance provided by trade adjustment assistance to firms.

(C) I urge the President to consider solutions to address legacy costs and other impediments to the rationalization and consolidation of the domestic industries producing steel.[1]

(D) For the industry producing **certain carbon flat-rolled steel**,[2] which includes slab, plate, hot-rolled, cold-rolled, and coated steel, I recommend that the President impose quantitative restrictions with country-specific allocations, for a three-year period, on imports of the following flat-rolled categories, in the following amounts in the first year, to be increased by three percent in each subsequent year that the action is in effect:

Product	Remedy	Liberalization (percent)	Year 1 Level* (short tons)	Year 2 Level (short tons)	Year 3 Level (short tons)
Plate	Quota	Three	1,232,260	1,269,227	1,307,304
Hot-Rolled	Quota	Three	4,928,712	5,076,573	5,228,871
Cold-Rolled	Quota	Three	2,796,196	2,880,082	2,966,485
Coated	Quota	Three	1,683,282	1,733,781	1,785,794
* The representative period is 1996, 1997, and July 2000 - June 2001.					

With respect to slab, I recommend that the President impose a tariff-rate quota with country-specific allocations, for a three-year period, in the following amount in the first year, increasing in each consecutive year with decreasing over-quota tariff rates:

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[1] The information contained in my views concerning this issue relates to information that is not authorized by law and thus it cannot be considered a recommendation under section 202 of the Trade Act of 1974.

[2] *See infra* section III for a detailed discussion of my trade remedy recommendation for certain carbon flat-rolled steel.

Product	Remedy	TRQ Form of Relief	Year 1 Level	Year 2 Level	Year 3 Level
Slab	Tariff-Rate Quota	In-Quota Amount	7,000,000 short tons	7,500,000 short tons	8,000,000 short tons
		Additional Duties	20 percent	17 percent	14 percent

(1) NAFTA Treatment – Having made negative findings with respect to imports of flat products from Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be excluded from the import relief. Having made affirmative findings with respect to imports of flat products from Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that the President allocate no less than 257,208 short tons of hot-rolled, 155,276 short tons of cold-rolled, 478 short tons of plate, and 329,520 short tons of coated certain flat-rolled steel imports from Mexico during the first year of the remedy period. Furthermore, I recommend that after the first year the quota for Mexico should be expanded by three percent in each subsequent year that it is in effect.

(2) Israel, CBERA, ATPA Treatment[3] – I recommend that these import relief actions not apply to any imports of the covered products from Israel, or to any imports of the covered products entered duty free from beneficiary countries of the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

(3) Administration – For the products where I have recommended quantitative restrictions or a tariff-rate quota, I recommend that the President administer the quota or tariff-rate quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

(4) Exclusion Requests – Based on this form of remedy, I recommend that the President should not exclude any of the requested products from the import relief.

(E) For the industries producing **carbon and alloy long products**,[4] which include the hot-rolled bar industry, the cold-finished bar industry and the rebar industry, I recommend that the President impose quantitative restrictions with country-specific allocations, for a three-year period, on imports of the following long-product categories, in the following amounts in the first year, to be increased by three percent in each subsequent year that the action is in effect:

[3] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to import relief.

[4] *See infra* section IV for a detailed discussion of my trade remedy recommendation for the industries producing carbon and alloy long products.

Product	Remedy	Liberalization (percent)	Year 1 Level (short tons)	Year 2 Level (short tons)	Year 3 Level (short tons)
Hot-Rolled Bar	Quota	Three	1,961,648	2,020,497	2,081,112
Cold-finished bar	Quota	Three	246,033	253,414	261,016
Rebar	Quota	Three	1,054,266	1,085,894	1,118,470
* The representative period is 1997-99 for hot-rolled bar and for cold-finished bar, and 1997, 1998, and 2000 for rebar.					

(1) **NAFTA Treatment** – Having made negative findings with respect to imports of rebar from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be excluded from the quantitative restrictions. Having made negative findings with respect to imports of carbon and alloy hot-rolled bar and carbon and alloy cold-finished bar from Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be excluded from the quantitative restrictions. Having made affirmative findings with respect to imports of carbon and alloy hot-rolled bar and carbon and alloy cold-finished bar from Canada under section 311(a) of the NAFTA Implementation Act, I recommend that the President allocate no less than 1,077,514 short tons of hot-rolled bar imports and 73,261 short tons of cold-finished bar imports from Canada during the first year of the remedy period. Furthermore, I recommend that after the first year the quota on hot-rolled bar imports and the quota on cold-finished bar imports for Canada should be expanded by three percent in each subsequent year that it is in effect.

(2) **Israel, CBERA, ATPA Treatment**[5] – I recommend that these import relief actions not apply to any imports of the covered products from Israel, or to any imports of the covered products entered duty free from beneficiary countries of the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

(3) **Administration** – For the products where I have recommended quantitative restrictions, I recommend that the President administer the quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

(4) **Exclusion Requests** – Based on this form of remedy, I recommend that the President should not exclude any of the requested products from the import relief.[6]

(F) For the industries producing **carbon and alloy tubular products**,[7] which include the welded tubular products industry and the fittings and flanges industry, I recommend that the President

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[5] To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to import relief.

[6] If the President chooses to implement a tariff-based remedy, I have included exclusion recommendations in section IV.

[7] *See infra* section V for a detailed discussion of my trade remedy recommendation for the industries producing carbon and alloy tubular products.

impose a tariff-rate quota, for a three-year period, on imports of welded tubular products other than OCTG, in the following amount in the first year, increasing in each consecutive year with decreasing over-quota tariff rates:

Product	Remedy	TRQ Form of Relief	Year 1 Level	Year 2 Level	Year 3 Level
Welded Tubular other than OCTG	Tariff-Rate Quota	In-Quota Amount	1,400,443 short tons	1,442,456 short tons	1,485,730 short tons
		Additional Duties	20 percent	17 percent	14 percent

I recommend that the President impose the following additional tariff on imported carbon and alloy fittings and flanges for a three-year period, which would be reduced by three percentage points in each subsequent year that the action is in effect:

Product	Remedy	Year 1 Level	Year 2 Level	Year 3 Level
Fittings and Flanges	Tariff	13 Percent	10 Percent	7 Percent

(1) **NAFTA Treatment** – Having made negative findings with respect to imports of welded tubular products from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be excluded from the tariff-rate quota. Having made affirmative findings with respect to imports of carbon and alloy fittings and flanges from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I have included such imports in my recommendation for increased tariffs.

(2) **Israel, CBERA, ATPA Treatment**[8] – I recommend that these import relief actions not apply to any imports of the covered products from Israel, or to any imports of the covered products entered duty free from beneficiary countries of the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

(3) **Administration** – For the products where I have recommended a tariff-rate quota or increased tariffs, I recommend that the President administer the tariff-rate quota on an annual basis.

(4) **Exclusion Requests** – Based on this form of remedy, I do not recommend that these remedies apply in their entirety to certain large diameter welded line pipe, nor to tool joints included within the fittings and flanges category.

[8] To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to import relief.

(G) For the industries producing **stainless and tool steel products**,[9] which include the bar industry and the wire rod industry, I recommend that the President impose quantitative restrictions with country-specific allocations, for a three-year period, on imports of the following stainless product categories, in the following amounts in the first year, to be increased by three percent in each subsequent year that the action is in effect:

Product	Remedy	Liberalization (percent)	Year 1 Level* (short tons)	Year 2 Level (short tons)	Year 3 Level (short tons)
Bar and Light Shapes	Quota	Three	109,440	112,724	116,106
Wire Rod	Quota	Three	62,573	64,451	66,385
* The representative period is 1997-99 for stainless bar and 1996, 1998, and 1999 for stainless rod.					

(1) **NAFTA Treatment** – Having made negative findings with respect to imports of stainless steel wire rod from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be excluded from the quantitative restrictions. Having made negative findings with respect to imports of stainless steel bar from Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be excluded from the quantitative restrictions. Having made affirmative findings with respect to imports of stainless steel bar from Canada under section 311(a) of the NAFTA Implementation Act, I recommend that the President allocate no less than 14,875 short tons of stainless bar imports from Canada during the first year of the remedy period. Furthermore, I recommend that after the first year the quota for Canada should be expanded by three percent in each subsequent year that it is in effect.

(2) **Israel, CBERA, ATPA Treatment**[10] – I recommend that these import relief actions not apply to any imports of the covered products from Israel, or to any imports of the covered products entered duty free from beneficiary countries of the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

(3) **Administration** – For the products where I have recommended quantitative restrictions or a tariff-rate quota, I recommend that the President administer the quota or tariff-rate quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

(4) **Exclusion Requests** – Based on this form of remedy, I recommend that the President should not exclude any of the requested products from the import relief.[11]

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[9] *See infra* section IV for a detailed discussion of my trade remedy recommendation for the industries producing stainless and tool steel products.

[10] To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to import relief.

[11] If the President implements a remedy different than the one I propose (*i.e.*, tariffs or tariff-rate quotas), the industries producing stainless bar and stainless rod supplied the Commission with substantial information; and based on this information, I would not recommend that the President grant any stainless bar or stainless rod

II. METHODOLOGY FOR REMEDY RECOMMENDATIONS

In deciding what relief to recommend, I took into account the considerations set forth in section 202(e)(5)(B) of the Trade Act of 1974 ("Trade Act") (19 U.S.C. 2252(e)(5)(B)), including the form and amount of action that would remedy the serious injury, or threat thereof, the Commission has found to exist, the objectives and actions specified in the adjustment plans submitted by domestic producers, individual commitments submitted in the course of the investigation, information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and whether international negotiations may be constructive to address the serious injury or to facilitate adjustment.

Based on the record presented, I find that elimination of worldwide inefficient or excess capacity to produce steel is the most important long-term solution to the injury experienced by the domestic steel industries. Cognizant of this solution, the President has initiated multilateral negotiations, as contemplated by the 201 statute, to address this problem both at home and abroad. I have selected a trade remedy for each of the injured domestic steel producing industries that in my view will stabilize the market in the short term and encourage parties to conclude an international agreement.[12]

I begin by first describing the general competitive conditions affecting the domestic industries and the likely developments affecting such conditions, providing an overview of the industries' adjustment plans, articulating the reasons why international negotiations are necessary, and describing the form of action needed to remedy the serious injury. I conclude this section by describing certain policy matters including legacy costs and other impediments to consolidation and restructuring that can be addressed only by the Executive and Legislative branches because any solution to these issues is not presently authorized by law. After setting out the analysis and methodology underlying my remedy recommendations, I detail in sections III - VI the specific recommendations for the eight steel industries for which I found that increased imports are a substantial cause of serious injury, or threat of serious injury.

A. Competitive Conditions

I considered the following conditions of competition in the domestic and world market, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for the eight products on which I made an affirmative determination. The discussion of my remedy recommendations for those products contain the specific competitive conditions in the marketplace for those products. However, I note the following global competitive conditions:

Global inefficient or excess capacity: The evidence collected in this investigation indicates that there exists worldwide inefficient or excess capacity to produce steel products. Many countries produce and export to the United States steel products.[13] Almost without exception, countries increased their

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exclusion requests.

[12] It is my view that the best solution for the steel producing industries is one that is market-based. Market forces, guided by the judgments of the steel industries' managers, employees, stockholders, creditors, and customers, should determine the shape and prospects of the domestic steel producing industries. In this respect, I am mindful that section 201(b)(2) of the Trade Act instructs that the "domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated . . . ."

[13] As of 2000, the United States remains the world's largest net importer of steel.

capacity to produce steel during the period examined and have available excess capacity.[14] The domestic steel producers also increased their capacity to produce steel during the period examined.[15] Capacity issues, including specific increases in capacity and capacity utilization, vary among the industries as discussed in sections III-VI.

While world capacity to produce steel is more difficult to quantify than actual production, estimates suggest that global annual steel production capacity (ranging from 1.1 to 1.2 billion tons in 2000) exceeds both actual production and current market demand.[16] Indeed, few parties, if any, appearing before the Commission argued that there is not overcapacity for steel production in the world market.[17] Furthermore, a recent report prepared by the U.S. Department of Commerce found that most industry experts have concluded that there is "a sizable and consistent gap between capacity and production over the long term."[18] Among the various studies attempting to quantify capacity, and examined by the Department of Commerce, is a 1999 Organization for Economic Cooperation and Development report concluding that world steelmaking capacity increased by almost 150 million metric tons between 1985 and 1999, projecting an increase of an additional 45 million metric tons by 2001, and finding that steel production has increased in "distinctly smaller proportions," resulting in a widening gap between production and capacity.[19] Evidence gathered during this investigation generally is consistent with these projections.

Access to Capital: The production of steel is a highly capital intensive undertaking. Companies require regular infusions of capital for modernization and maintenance and upkeep of existing capital stock. In the past, domestic producers made investments based on retained earnings, debt and equity. During the past decade, these sources have been constrained. Beginning in 1997, the stock prices of both the integrated and non-integrated producers declined significantly, inhibiting the companies' ability to raise money in equity markets.[20]

Bankruptcies and Closures: During the period examined, 25 domestic steel companies filed for bankruptcy protection and 9 companies closed facilities, removing at least 8.8 million tons of capacity.[21] Additional bankruptcies or closures are likely even if this or any other remedy is implemented. The last few weeks saw the following: (1) LTV, the fourth largest integrated steel producer with capacity of about 8 million tons, requested that the U.S. Bankruptcy Court permit it to close most of its facilities and liquidate its assets; and (2) Geneva Steel, a smaller integrated mill with capacity of about 2.5 million tons, announced a temporary shutdown of its hot-rolled sheet and plate operations.[22]

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[14] *See* CR/PR at Tables FLAT-30 - FLAT-48; LONG-39 - LONG-66; TUBULAR-24 - TUBULAR-38; and STAINLESS-42 - STAINLESS-62.

[15] CR/PR at Figure OVERVIEW-8.

[16] CR/PR at OVERVIEW-16-17; Dewey/Skadden's Prehearing Injury Brief at 28-31,70-71, and Appendix A; and Joint Respondents' Prehearing Framework Brief at Exh. 4.

[17] *See, e.g.*, 9/17/01 Injury Hearing Transcript at 270 (Charles Blum, Eurofer).

[18] *Global Steel Trade: Structural Problems and Future Solutions: Report to the President* at 3 (U.S. Department of Commerce, Washington, DC, July 2000).

[19] *Global Steel Trade* at 2-3. Commerce also found that a World Steel Dynamics study of capacity utilization rates reached similar conclusions. Finally, Commerce found that the London-based Iron and Steel Statistics Bureau estimated world excess capacity to be 250 to 275 million metric tons in 1997 and 1998, respectively. *Id.*

[20] CR/PR at OVERVIEW-36-37, CR/PR at Figure OVERVIEW-16 and Table OVERVIEW-10.

[21] CR/PR at OVERVIEW-37-41. Of these 25 companies, 23 are producers of products subject to this investigation.

[22] "Geneva's Closure Sends Customers Scrambling," *American Metal Markets* (Nov. 14, 2001); "Judge's Rulings Could Seal the Fate of LTV," *American Metal Markets* (Dec. 5, 2001).

Fragmented Nature of Industry: Global steel production remains fragmented.[23] In 2000, the individual production shares of the five largest global producers ranged from 2.5 percent to 3.4 percent of total world production, with an average share of 2.9 percent.[24] Indeed, the largest U.S. producer of steel, U.S. Steel, is not even in the top 10 producers in the world based on volume.[25] Domestic steel producers concede that the industry remains fragmented.[26]

Through the 1990s, however, foreign producers have increased their rate of consolidation, particularly through mergers between European producers, alliances between Asian producers, and increasing foreign investment by producers throughout the world.[27] While U.S. consolidation has not occurred at the same pace, many domestic producers and the United Steelworkers Association ("USWA") agree that there exists a need in the United States for further consolidation and restructuring.[28] Indeed, U.S. Steel, Bethlehem Steel Corp. and other integrated steel producers recently announced that they are pursuing proposals to consolidate.[29]

B. Industry Adjustment Plans

I carefully examined the individual domestic companies' adjustment plans.[30] By and large, these plans consist of investments aimed at improving the domestic industries' ability to adjust to import

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[23] In 2000, 80 competing firms produced two-thirds of the world's steel. CR/PR at OVERVIEW-16-17.

[24] *Id.*

[25] *Trends & Indicators: World Steel Production Data: The Largest Steel-Producing Companies, 1999 and 2000* (International Iron and Steel Institute, downloaded on December 18, 2001, at www.worldsteel.org/trends_prod/prod02) (U.S. Steel ranked 14th in 2000).

[26] *See, e.g.,* 11/6/01 Remedy Hearing Transcript at 180-81 (Robert S. Miller, Chairman and CEO of Bethlehem Steel Corporation, testified that the "United States industry is enormously fragmented. There are 20 or 30 or 40 or 50 producers. I still haven't learned all the names of them yet. And if you look at any other country, they're down to one or two major producers").

[27] CR/PR at OVERVIEW-16-17.

[28] Thomas Usher, Chairman and CEO of U.S. Steel, testified that any duties collected from increased tariffs should be distributed to the domestic industry conditioned upon steps to restructure, rationalize and consolidate. 11/6/01 Remedy Hearing Transcript at 80. *See also id.* at 153. Robert S. Miller, Chairman and CEO of Bethlehem Steel Corporation, testified that Bethlehem's plan to emerge from bankruptcy protection includes participating in "industry consolidation and rationalization, including the closing or replacement of obsolete facilities . . . ." *Id.* at 85-86. He further noted that "I have no doubt that Bethlehem will be part of a larger corporate entity when all of this is done which will be more efficient, which will have the opportunity to rationalize its production facilities." *Id.* at 152. *See also id.* at 180-81. Finally, Leo Gerard, International President, United Steelworkers of America, in his written testimony, stated that "we along with all producers want the remedy to halt the financial losses and bankruptcies and job losses, stabilize prices, allow bankrupt producers to restructure and emerge, facilitate industry consolidation, and honor the contractual commitments made over time to the men and women who have made steel and kept our country strong." 11/6/01 Remedy Hearing Transcript, Attachments, "Statement of Leo W. Gerard, International President, United Steelworkers of America, AFL-CIO-CLC" at 2.

[29] "USS Drafts Steel Industry Consolidation Plan," *American Metal Markets* (Dec. 4, 2001); "Bethlehem Pursuing Possible Steel Industry Consolidation," Bethlehem Steel Corporation Press Release (Dec. 4, 2001).

[30] My remedy recommendations for individual industries contain a more detailed analysis of the specific industry adjustment plans.

competition by enhancing each producer's competitiveness.[31] While specific objectives vary by producer, most of the adjustments fall into three general categories: (1) restoring financial stability; (2) investing in facilities and equipment, which includes developing new products and markets; and (3) pursuing market-based consolidation and rationalization. As part of their adjustment plans, several domestic producers committed to supporting, and participating in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[32]

Many of the commitments in the adjustment plans may add capacity. It is more difficult to evaluate whether these plans will reduce inefficient capacity when new capacity is added, and thereby not result in an increase in net capacity in the industry. Some of the domestic producers argue that these investments will not result in additional capacity, and instead will modernize the facilities to increase efficiencies, thereby lowering their cost structure. Finally, a number of domestic producers argue that there is not overcapacity in the United States and that some of the recent trends, *e.g.*, consolidation, have led to rationalization of the domestic industry.[33] Rationalization does appear to have occurred for some companies in some industries. However, as discussed below, in other steel producing industries, there exist impediments to consolidation and restructuring, such as legacy costs, environmental clean-up costs, and labor issues.

Based on the fragmentation of the domestic steel producing industries and other evidence on the record regarding impediments to consolidation and restructuring, I conclude that there is a certain level of inefficient capacity in the United States.[34]

C. International Negotiations Are Fundamental

Section 202(e)(5)(B)(v) directs the Commission to take into account "whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment." While my remedy recommendation will assist the domestic industries in addressing the serious injury caused by import competition and will facilitate the efforts of the domestic industries in making a positive adjustment to import competition, it will not suffice in the long term. International negotiations, therefore, will not only be "constructive" but fundamental to address the core issue presented – worldwide inefficient or excess capacity.

This problem is not new. Indeed, the Commission identified the importance of international negotiations in making its *1984 Steel* remedy recommendations.[35] Rather than implement the Commission's recommendation, which included quotas, tariff-rate quotas and tariffs, in fact, the President negotiated voluntary restraint agreements with 28 countries.[36] This program was extended in

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[31] *See, e.g.*, Dewey/Skadden's Adjustment Brief; Minimill 201 Coalition's Commitments Regarding Actions to Facilitate Positive Adjustment to Import Competition; Ispat Inland's Remedy Prehearing Brief at 21-28; Domestic Stainless Bar Industry Remedy Prehearing Brief at Att. 1, pp. 6-12; Domestic Stainless Rod Industry Remedy Prehearing Brief at Att. 1, pp. 6-12.

[32] *See, e.g.*, Domestic Stainless Bar Industry Remedy Prehearing Brief at Att. 1, pp. 3-4; 11/6/01 Remedy Hearing Transcript at 94 (Daniel R. Dimicco, President and CEO, Nucor Corporation).

[33] *See, e.g.*, Domestic Stainless Products Industry Remedy Posthearing Brief at pp. 72-75.

[34] While rationalization will be an important adjustment, inefficient domestic capacity is not an alternative cause of injury greater than that of imports. *See* Commission's injury opinion.

[35] *Carbon and Alloy Steel Products: Report to the President on Investigation No. TA-201-51*, USITC Pub. 1553 at 75 (July 1984).

[36] Tamera Fillinger, "The Anatomy of Protectionism: The Voluntary Restraint Agreements on Steel Imports," *UCLA Law Review* (June 1998), 35 UCLA L. Rev. 953, 953-955.

1989 for a shorter period in order to induce producers and governments to conclude negotiations of a multilateral steel agreement.[37] While the negotiations ultimately failed, several parties nearly reached an agreement in certain sectors.[38] When the VRAs expired in 1992, the industries filed numerous antidumping duty and countervailing duty cases.[39] Rather than repeat this cycle, the parties should conclude an international agreement to address the problem of worldwide inefficient or excess capacity.

The general form of my remedy recommendation, quantitative restrictions, provides the best inducement for a successful conclusion to the multilateral negotiations undertaken by the President. First, quotas set a cap on how much steel can be imported into the United States, which will prevent the United States from becoming the target for the world's excess capacity. Second, foreign producers will have to reduce or rationalize production to reflect quota allocations, which are managed by the foreign governments. Third, while I would prefer that the United States retain the economic benefit of tariffs or tariff-rate quotas through the generation of revenue from the duties applied to imported steel products, quotas allow foreign governments and/or foreign corporations to capture the "economic rents" generated.[40] While a strong remedy may be the stick to bring parties to the negotiating table, allowing foreign governments and/or foreign corporations to temporarily capture the economic rents of quotas may turn out to be the carrot that permits the parties to conclude a successful agreement to reduce worldwide excess or inefficient capacity.

D. Justification for Form of Relief

The aforementioned considerations lead me to recommend a plan of action involving temporary quantitative restrictions and conclusion of international negotiations to achieve agreements to reduce worldwide excess or inefficient capacity. The common thread of these actions is to increase the financial resources available to the domestic steel producing industries in the short-term (over a three-year relief period) to enable companies to consolidate, restructure or invest in increasing long-term efficiency and competitiveness, while at the same time achieving a cap on global overcapacity without eliminating imports from the U.S. market.

1. Selection of Import Quotas

For those products where I have recommended quantitative restrictions – all but carbon and alloy slab, carbon and alloy welded tubular products, and carbon and alloy fittings and flanges – the form of remedy is appropriate for two primary reasons. First, the domestic market needs certainty. Quantitative restrictions are predictable because they cap the level of imports that may enter during any given period

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[37] CR/PR at OVERVIEW-42-47; The White House Office of the Press Secretary, "Statement by the President," July 25, 1989.

[38] Indeed, the Commission heard extensive testimony from the stainless steel parties about how their sector made the most progress toward reaching an agreement. 11/9/01 Remedy Hearing Transcript at 1183 (Richard O Cunningham, counsel to AvestaPolarit Oy).

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

[40] Section 203(a)(3)(F) of the Trade Act, however, permits the President to proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States. By auctioning import licenses, the President could recapture the economic rents lost through the imposition of quantitative restrictions.

of time. Thus, they permit U.S. producers to plan and implement their adjustment plans to adjust to market-based import competition. Second, as elaborated upon above, quantitative restrictions provide the leverage and incentive for worldwide steel capacity reductions.

In addition, quotas offer other benefits, which I view as fundamental with respect to what has occurred over the period examined for these steel producing industries. First, the economics of steel encourage foreign producers to gain market share through low pricing in order to reap the cost savings associated with high production volumes. Quantitative restrictions, therefore, eliminate the incentive to lower prices to gain volume. The volume that foreign producers can import into the United States is capped. As such, there is no reason to try to capture more sales through discounting prices.

Second, the record also indicates that domestic producers cannot, and do not, produce all of the types of products that steel consuming industries purchase.[41] Therefore, imports are necessary. Quotas allow any type of product to enter the United States up to a specified level.

Third, parties have alleged that some importers are likely to absorb a certain level of duties in order to gain volume.[42] Tariffs are most effective if the higher costs serve as a market incentive to encourage consumption of the domestic product over the imported product. If a tariff is absorbed by an importer, then the full costs are not passed through. Quotas prevent duty absorption as there is no duty to absorb. Rather, products may enter the United States without additional duties until the quota-level is reached.

Fourth, the record indicates that the currencies of selected countries, many of which export substantial amounts of steel to the United States, demonstrated substantial depreciations relative to the U.S. dollar.[43] Exchange rate fluctuations between the U.S. dollar and foreign currencies can have a significant effect on the relative competitiveness of global steelmakers selling products in the U.S. market. Quotas prevent a surge of low-priced imports from countries that have experienced currency depreciations.

Finally, quotas are the most appropriate form of remedy for most of these products because of the number of antidumping duty and countervailing duty orders that are in place on subsets of these products.[44] Cognizant of the Commission's obligation in the Statement of Administrative Action to take other relief (*e.g.*, antidumping duty and countervailing duty orders) "into account in determining what actions to recommend to the President under Section 202...,"[45] I have proposed the remedy that would

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[41] The record is replete with hundreds of requests from importers arguing that the domestic steel industries cannot produce certain products or in sufficient quantities. I note that I have recommended that the President exclude certain products (*e.g.* certain large diameter welded line pipe) from import relief.

[42] *See, e.g.*, Domestic Stainless Products Industry Remedy Posthearing Brief at 36; 11/6/01 Remedy Hearing Transcript at 174 (Daniel R. Dimicco, Nucor Corporation).

[43] CR/PR at Table OVERVIEW-16. All but two countries showed depreciations.

[44] CR/PR at Table OVERVIEW-1 (products included in this investigation already are subject to more than one hundred antidumping or countervailing duty orders). As a basic matter, Title VII and section 201 remedy different problems facing an industry. Title VII remedies the injury caused by unfairly traded imports by applying a tariff to those imports from a specific country (or company) to either nullify a subsidy bestowed on those products or to raise the price of the imports if they are sold at less than fair value. Section 201 remedies the injury caused by increased imports that are presumed to be fairly traded. It does so on a global scale to give the domestic industry time to adjust to import competition by either becoming more efficient or by shifting productive resources to other pursuits. Moreover, the remedy for Title VII cases is only tariffs. The remedy for section 201 cases is much broader and may include tariffs, tariff-rate quotas, quantitative restrictions, trade adjustment assistance, international negotiations and any other action authorized by law that would be likely to facilitate positive adjustment to import competition.

[45] Uruguay Round Agreements Act Statement of Administrative Action at 964.

permit imports subject to antidumping duty and countervailing duty orders into the United States while restricting the total amount of global imports. Moreover, it allows the Title VII remedies to operate without imposing additional tariff duties on top of those already in place.

I am mindful, based on the possible closure of further domestic steel producers and ongoing international negotiations, that any remedy adopted will be for a U.S. steel industry that may or may not have a significantly different capacity to produce the covered products. The President, however, has authority under section 203(e)(4) of the Trade Act to set different quantitative restrictions when conditions clearly justify such action.

2. Selection of Tariff-Rate Quotas

For those products where I have recommended a tariff-rate quota – carbon and alloy slab and carbon and alloy welded tubular products – the form of remedy is appropriate for the following reasons. For slab, a portion of the domestic flat products industry must rely on the purchase of slab as a function of their business plan. Moreover, Geneva Steel's announcement last month of the temporary shutdown of its slab production operations halts its ability to sell slab on the commercial market. Finally, most domestic integrated steel producers have exhibited sporadic willingness to sell slab to their domestic competitors, and minimills have never sold slab on the open market.

In proposing a tariff-rate quota on welded tubular products rather than quantitative restrictions, I note that I determined that this industry is threatened with serious injury. This form of import relief is the most likely to address the threat of serious injury. Moreover, given the diverse nature of demand in the U.S. welded pipe market, in particular the divergent trends in demand for pipeline projects and for other applications, I find that the flexibility of a tariff-rate quota makes it a better remedy.

3. Selection of Tariffs

For those products where I have recommended an *ad valorem* tariff – carbon and alloy fittings and flanges – the form of remedy is appropriate for two reasons. First, this category is composed of a diverse range of products and a tariff allows for more flexibility among the various products. Second, this category is the furthest removed from the direct steelmaking process and, therefore, it is not the focus of international negotiations.

4. Duration and Degressivity[46]

For all products, I recommend that the period of relief should last for three years. For the products that I have recommended quantitative restrictions I further recommend that the President

[46] Section 203(e)(5) of the Trade Act requires that import restrictions must be phased down at "regular intervals" during the period that the relief is in effect. My remedy recommendations for individual industries contain my degressivity analysis.

administer the quota amounts on a quarterly basis.[47] [48] To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

5. Exclusion Requests

The Commission received numerous exclusion requests during the course of the investigation. The Commission requested that U.S. producers provide detailed, product specific responses, including information regarding U.S. production volumes.[49] Please refer to the industry-specific sections for my recommendations.

6. Any Other Action Authorized Under Law

Section 203(e)(4)(B) of the Trade Act permits the Commission to make recommendations concerning whether the President should "implement any other action authorized under law that is likely to facilitate positive adjustment to import competition." There are two to consider: trade adjustment assistance and the Emergency Steel Loan Guarantee program.

a. Trade Adjustment Assistance

Workers whose positions have been eliminated because of the impact of direct trade competition are eligible for additional unemployment compensation and retraining assistance through Trade Adjustment Assistance (TAA), a program administered by the U.S. Department of Labor.[50] Moreover, companies that have been negatively affected by trade also are eligible for technical assistance through regional Trade Adjustment Assistance Centers, a program administered by the U.S. Department of Commerce.

The estimated number of workers covered by certifications under both TAA for workers programs averaged about 163,000 annually from fiscal year 1995 to 2000, reaching a high of about 228,000 in fiscal year 1999. The estimated total service and benefit payments under both programs averaged about $277 million annually from fiscal year 1995 to 2000, reaching an estimated high of about

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[47] While I am cognizant that quantitative restrictions require more resources to administer the programs than do tariffs, the U.S. Department of Commerce and the U.S. Customs Service have substantial experience and expertise in administering quota-based import programs. The Voluntary Restraint Agreement program of the 1980s and early 1990s involved a world-wide program of quantitative restraints that was administered efficiently by these agencies. Moreover, Commerce also has experience in administering quantitative restrictions on imports under suspension agreements pursuant to antidumping and countervailing duty investigations.

[48] In making these recommendations, I note the Commission's recent mid-term review of the carbon and alloy wire rod safeguard remedy and the problems that arose from the action's implementation. *See Certain Steel Wire Rod*, Inv. No. TA-204-6, USITC Pub. 3451 (August 2001). The tariff-rate quota administration in that case caused market disruption because during the first three quarters of each quota year, there was a quarterly quota that was one-third of the total quota amount for the quota year. For the fourth quarter of a year, the total quantity entered at the in-quota rate during the first three quarters of the quota year was subtracted from the annual within-quota quantity to calculate the remaining available in-quota quantity for that quota year.

[49] *See, e.g.*, Vice Chairman Okun's request (11/09/01 Remedy Hearing Transcript at 1098) and Commissioner Devaney's request (11/09/01 Remedy Hearing Transcript at 1003-04).

[50] There also is a separate, but distinct North American Free Trade Agreement Transitional Adjustment Assistance program.

$360 million in fiscal year 2000.[51] From fiscal years 1995 through 1999, these certifications covered workers in apparel and textiles (35 percent), oil and gas (15 percent), electronics (9 percent), and metal and machinery (8 percent); the remaining petitions were from a range of manufacturing industries.[52] The TAA for firms program was funded for $10.5 million in fiscal year 2000.[53] However, only a few steel firms have received assistance under this program.[54] [55]

In the domestic steel industries where further bankruptcies or closures appear likely to occur regardless of the Commission's recommendations,[56] action to facilitate positive adjustment must include measures to allow dislocated workers in an industry to experience an orderly transition to productive pursuits as stated in section 201(b)(1)(B) of the Trade Act. Therefore, I recommend that the President ensure that displaced workers can take full advantage of trade adjustment assistance programs. Furthermore, I also recommend that the President ensure that domestic steel producing companies have access to technical assistance provided by trade adjustment assistance to firms.[57]

While the President should ensure that workers and firms have access to these programs, trade adjustment assistance alone is not the solution to the domestic steel industries' serious injury, or threat thereof, caused by import competition.

b. Emergency Steel Loan Guarantee Program

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[51] *Trade Adjustment Assistance: Improvements Necessary, but Programs Cannot Solve Communities' Long-Term Problems* at Appendix (GAO-01-988T, Jul. 20, 2001). *See also Trade Adjustment Assistance: Trends, Outcomes, and Management Issues in Dislocated Workers Programs* (GAO-01-59, Oct. 13, 2000).

[52] *Trade Adjustment Assistance: Improvements Necessary, but Programs Cannot Solve Communities' Long-Term Problems* at 6-7 (GAO-01-988T, Jul. 20, 2001).

[53] *Id.* at 5. *See also Trade Adjustment Assistance: Impact of Federal Assistance to Firms is Unclear* (GAO/GAO-01-12, Dec. 15, 2000).

[54] Indeed, the U.S. Department of Commerce certified only 17 firms from 1995-1999 under the category "primary materials," which would cover the vast majority of the steel products covered under this investigation. This represented only 2.4 percent of the classifications during this period. Id. at App. II.

[55] Last year, the U.S. Trade Deficit Review Commission released its report, which include a chapter on worker adjustment assistance. While there was were many points of disagreement in the report, the issue of worker adjustment assistance was one where a majority of the Commission were able to find common ground on policy recommendations. These included: consolidating TAA and NAFTA-TAA, providing adequate funding for benefits and administration of the consolidated program, and extending the time period of providing income support to coincide with the time required for training. *The U.S. Trade Deficit: Causes, Consequences and Recommendations for Action* at pp. 165-166 (U.S. Trade Deficit Review Commission, Nov. 14, 2000).

[56] USWA Remedy Posthearing Brief at 2-3 (noting that more companies will file for bankruptcy before relief is granted). Examples of possible mill closures include Geneva Steel and LTV.

[57] I note, however, that the current status of these TAA programs is uncertain. They were set to expire on September 30, 2001, and were renewed only by a series of continuing resolutions. On December 6, 2001, the House of Representatives approved H.R. 3008 extending the existing TAA programs for two years and extending unemployment benefits for six months. On December 4, 2001, the Senate Committee on Finance approved S. 1209, which significantly expands the programs and extends them for five years. Further Senate action is tied to procedural questions concerning how it was reported out of the Senate Committee on Finance and Senate passage of Trade Promotion Authority.

The Emergency Steel and Oil and Gas Loan Guarantee Program is designed to assist steel companies that are unable to obtain loans in the private sector.[58] It is administered by the Emergency Loan Guarantee Board and provides guaranteed loans of up to $250 million to a single company, with the total amount outstanding not to exceed $1 billion.[59] In November, 2001, legislation was enacted that extends the repayment period for loans from 2005 to 2015, increases the guaranteed portion of the loan from 85 percent up to 95 percent, and extends the program until 2003.[60]

Seven steel companies have been approved by the Emergency Loan Guarantee Board for these loans. As of November 2001, only one loan for $110 million had been disbursed by a private lender to these companies.[61] Domestic producers have argued that this program is ineffective and that even with the recent changes, it is unlikely that the program will have a significant impact on the domestic steel industry.[62] Robert S. Miller, Chairman and CEO of Bethlehem Steel Corp., testified that the program has not been used because it requires pledgeable assets to obtain a guarantee, and those companies that need the loan guarantee generally have already pledged their assets for earlier financing.[63] In addition, domestic producers have not used the program because they believe that additional debt will not promote consolidation and restructuring.[64]

In conclusion, this program has not demonstrated positive results to date. Therefore, I do not recommend that the President rely on the use of this program as a comprehensive remedy.

7. National Security

A number of parties argued that the Commission should consider national security concerns in this analysis.[65] I note that although section 203 of the statute mandates that the President consider the national security interests of the United States in determining whether to take action,[66] the Commission's mandate is far narrower under section 202. Indeed, the statute is silent as to whether the Commission should consider national security issues when it is very explicit on the areas the Commission should take into account.[67] Moreover, there are separate statutes addressing national security concerns and trade, namely section 232 of the Trade Expansion Act of 1962. Finally, although the Commission received anecdotal information regarding the importance of steel products in general to national security, there was no attempt to quantify such information, nor to identify which steel products are most critical to our national security. Moreover, parties were not specifically asked to address this issue in response to questionnaires. Therefore, my remedy recommendation does not address national security concerns.

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[58] Pub. L. 106-51 ("Emergency Steel Loan Guarantee Act of 1999 and Emergency Oil and Gas Guaranteed Loan Program Act").

[59] CR/PR at OVERVIEW-47.

[60] Pub. L. 107-63.

[61] Stephen Cooney, "Steel Industry and Trade Issues," CRS Report for Congress at 28 (Nov. 5, 2001) (Order Code RL31107). *See also* CR/PR at OVERVIEW-57.

[62] Dewey/Skadden Posthearing Brief at App. E-2.

[63] 11/6/01 Remedy Hearing Transcript at 223-224 ("If you have pledgeable assets, you don't need a government guarantee program to get access to capital. And once you've pledged all your assets, then you're out of business to go to the government").

[64] *Id.*; Dewey/Skadden Posthearing Brief at App. E-2.

[65] *See, e.g.*, 9/17/01 Injury Hearing Transcript at 52, 58, *Id.* at 87-88 ; 9/24/01 Injury Hearing Transcript at 1273.

[66] Section 203(a)(2)(I) of the Trade Act.

[67] *See, e.g.*, Section 202(e)(5)(B) of the Trade Act.

8. Short and Long-Term Effects

Section 202(f)(2)(G) of the Trade Act directs the Commission to include in its report a description of the short- and long-term effects that implementation of the action recommended is likely to have on the domestic industry, on other domestic industries, and on consumers, and the short- and long-term effects of not taking the recommended action on the domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries. My remedy recommendations for individual industries contain a detailed analysis of these effects.

E. Policy Considerations – Actions Not Authorized By Law

The statute directs the Commission to recommend the action that would be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. Moreover, in the Administration's request that the Commission initiate this investigation, the U.S. Trade Representative stated that he was particularly interested in receiving the Commission's views on these issues.[68]

As a preliminary matter, the Commission has collected a vast amount of information in this investigation during both the injury and remedy phases either through submissions or the eleven hearings. While this information permits the Commission to identify the problems and the conditions of competition in the steel industry, it does not, in my view, give the Commission the appropriate expertise, incentive, or power to recommend specifically how the industry – here or abroad – should restructure. Nor should it. The role of the Commission has been one of fact finding as opposed to policy making.

With the aforementioned limitations in mind, I have identified problems that would hinder certain sectors of the domestic steel producing industries from adjusting to import competition at the end of any period of import relief. These problems relate to impediments to industry restructuring and consolidation and would require solutions not authorized currently by law. Large, unfunded liabilities make companies unattractive to potential purchasers and can make it too expensive to shut down even inefficient capacity. These impediments include: pension costs, healthcare costs, environmental clean-up costs, and certain labor-related issues.[69]

I recommend that the President evaluate carefully the information the Commission gathered throughout this proceeding regarding these impediments and the solutions proposed by various parties. These are policy matters that can be addressed only by the Executive and Legislative branches. While I make no recommendations regarding these issues, the following provides additional views on these various impediments. Specific solutions proposed by the parties are discussed in the sections describing each industry's adjustment plans.

Pension Costs: After two decades of consolidation and reduction of the workforce, many domestic steel producers shoulder the cost of pension benefits for retirees. The costs associated with pension benefits are often significant, particularly for the integrated companies, when the number of retirees vastly outnumber the current workforce.[70] Under most labor agreements, steelworkers meeting

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[68] Letter from U.S. Trade Representative Robert B. Zoellick to Chairman Stephen Koplan, U.S. International Trade Commission (June 22, 2001) with attachments.

[69] While the Commission did not find these alternative causes to be a more important cause of serious injury, or threat thereof, than imports, this does not mean that these issues should not be addressed as part of remedy that will facilitate positive adjustment to import competition by lowering costs and allowing the industry to restructure.

[70] CR/PR at OVERVIEW-31. *See, e.g.,* 11/6/01 Remedy Hearing Transcript at 151 (Robert S. Miller, Chairman and CEO of Bethlehem Steel Corporation, testified "We now have 13,000 active workers trying to support 74,000 dependent families which is over a hundred thousand actual people that small work base is trying to support.").

certain conditions were eligible for certain benefits, including retirement eligibility and benefits for workers affected by the closure of facilities. When these plans were negotiated in the 1970s, the cost was estimated at about 5 cents per hour. This estimate was calculated, however, before the industry started its first round of restructuring in the 1980s when many companies closed inefficient facilities or laid off workers as the steel companies modernized and became more efficient. The plant shutdown costs were estimated to exceed $75,000 per worker.[71]

Pensions are significant costs for certain steel companies. For example, the net periodic cost for pension benefits for 23 U.S. steel companies ranged from a cost of $346 million to a benefit of $147 million for companies with defined benefit plans, and from a cost of $3 million to a cost of $82 million for companies with defined contribution plans between 1996 and 2000.[72] Of the 23 steel companies for which data regarding pension benefit costs were compiled, 16 were producers of certain carbon flat-rolled steel. Morever, 13 of the 18 reporting firms with defined benefit plans were producers of certain carbon flat-rolled steel and 3 of the 5 reporting firms with defined contribution plans were producers of certain carbon flat-rolled steel.[73] Pension expense is reported in a company's cost of goods sold in its current-period income statement, and is included in the cost of inventories in the company's balance sheet.[74] Pension expense in defined benefit plans, however, is not simply the amount that the company currently funds its plan obligations. Rather, the pension expense for these plans is based on actuarial assumptions calculated by adding certain costs and benefits.[75] Many of the accounts set aside for pension benefits are underfunded.[76] Pension benefits are insured by the Pension Benefit Guaranty Corporation (PBGC).[77] After a plan is terminated, PBGC becomes trustee of the plan and administers benefits. The costs potentially can be large.[78]

Healthcare Costs: Like pension costs, many domestic producers are responsible for post-employment benefits other than pensions, generally health and medical benefits and life insurance plans. These costs also are significant costs for certain steel companies, particularly the integrated steel producers. In the United States, the steel industry, like most of the private sector, shoulders the cost of providing a form of health care protection to employees. Whereas in most other countries, including the European Union, the government bears the majority of health care expenses for its citizens.[79] While foreign steel producers do not face zero additional costs, *i.e.*, the government collects taxes to pay for these social benefits, they do not have the same burdens that American producers face each year for current employees and the large number of retirees.

The net periodic cost to producers for health and medical and life insurance plans is significantly greater in each period than the net periodic cost of the companies' pension plans.[80] Like pension costs,

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[71] CR/PR at OVERVIEW-31, n. 34.

[72] CR/PR at OVERVIEW-32-34; Table OVERVIEW-9.

[73] CR/PR at OVERVIEW-32-34, nn. 37-38; Appendix D; INV-Y-190.

[74] CR/PR at OVERVIEW-33.

[75] CR/PR at OVERVIEW-33-34, n. 40. Bethlehem Steel and LTV are examples of companies that recorded large net pension costs in 2000 of $55 million and $107 million, respectively. *Id.*

[76] CR/PR at OVERVIEW-35-36.

[77] CR/PR at OVERVIEW-31, n. 35, OVERVIEW-35.

[78] Bethlehem's Chairman testified that if the company were to liquidate, the PBGC might have to pick up, perhaps, $2 billion of underfunded pension costs. 11/6/01 Remedy Hearing Transcript at 151-52 (Robert S. Miller, Chairman and CEO of Bethlehem Steel Corporation).

[79] *See* USWA Remedy Posthearing Brief (Responses to Questions of Commissioner Hillman at 7); 11/6/01 Remedy Hearing Transcript at 397-98 (Charles Blum, Eurofer).

[80] CR/PR at OVERVIEW-34-35; Table OVERVIEW-9;

these costs also are included in cost of goods sold and in inventory on the companies' balance sheets. However, unlike pension costs, most domestic producers do not have separate funds established to pay these annual benefits, which may fluctuate significantly each year.[81] Other post-employment benefits are not guaranteed by the PBGC and in 2000 totaled more than $8.6 billion for the 23 reporting steel firms, more than $8 billion of which was recognized on the companies' financial statements as a non-current liability.[82]

Environmental Clean-up Costs: Another impediment to domestic industry restructuring and consolidation is environmental clean-up costs.[83] In the United States, companies are responsible for environmental clean-up costs under two laws.[84] Not only are steel producers responsible for cleaning up and containing wastes while operating their facilities, but in the event of closure, significant liabilities and obligations arise to prepare the land for other productive uses.

Under the Resource Conservation and Recovery Act, as amended ("RCRA"), owners of certain facilities that managed hazardous waste after 1980 are required to investigate and, if appropriate, remediate certain historical contamination found at the facility. While the requirement falls upon companies whether or not the facility continues in operation, it is often the shutdown of a facility and the subsequent sale to another owner that triggers the need to promptly remediate the environmental damage. Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), also known as "Superfund," the U.S. Environmental Protection Agency can impose liability for site remediation on generators and transporters of waste, as well as past and present owners and operators of the sites where the waste was disposed of, regardless of fault or the legality of the disposal activities.

According to the American Iron and Steel Institute ("AISI"), there exists the potential of enormous costs for the industries producing steel, particularly under the RCRA because steel companies tended, in the past, to dispose of their major waste streams on plant property. Thus, the disposal sites are covered under RCRA rather than CERCLA. Considering the age of many steel plants, the diversity of operations, and practices over the life of those facilities, AISI believes that the clean-up costs are potentially significant. Data on RCRA liabilities are difficult to quantify as they are not clearly stated in financial disclosure forms, but in one study commissioned by AISI, the RCRA corrective action program was projected to cost the U.S. steel industry $3 billion.[85]

Labor Issues: The record indicates that labor and management have made significant gains in improving worker productivity and increasing flexibility in the workforce.[86] These changes have contributed positively to the efficiency of the U.S. workforce, both union and non-union.[87]

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[81] CR/PR at OVERVIEW-34-35.

[82] CR/PR at OVERVIEW-34-35; Table OVERVIEW-9. Bethlehem's Chairman testified that if the company were to liquidate, it has about $3 billion of estimated health care costs. Furthermore, he testified that "Many of those retirees would be unable to afford their ongoing health care and might end up showing up at the various welfare offices. {M}y point . . . is that {the} government is going to be paying a big share of my legacy costs if I don't find a way to take care of it myself." 11/6/01 Remedy Hearing Transcript at 151-52 (Robert S. Miller, Chairman and CEO of Bethlehem Steel Corporation).

[83] Ispat Inland's Remedy Prehearing Brief at 25-26.

[84] Resource Conservation and Recovery Act, 42 U.S.C. § 321; Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601.

[85] *Policy Positions Environment: Resource Conservation and Recovery Act (RCRA)* (American Iron and Steel Institute, downloaded on December 17, 2001, at www.steel.org/policy/environment/rcra.asp).

[86] 10/5/01 Injury Hearing Transcript at 2921 (Tom Conway, Secretary, Basic Steel Industrial Conference).

[87] *See generally* USWA Injury Prehearing Brief at 123-24.

Nevertheless, it is not surprising that unions attempt, through their labor agreements, to preserve jobs, to prevent closures, and to secure the highest level of benefits. In this investigation, the USWA expressed its support for consolidation and restructuring,[88] but not for the reduction of capacity.[89] Moreover, the USWA provided copies of union contracts and proposed contracts that ***.[90] In addition, the USWA has proposed an agreement with ***.[91] These provisions, in my view, represent impediments to industry restructuring and consolidation.

Furthermore, in many countries, including the European Union, the government ensures a certain income for displaced workers (roughly 80 percent to 90 percent of income).[92] Whereas unemployment compensation in the United States does not approach this level of support. The difference helps explain why European producers have found it easier to consolidate. In the United States, if the mills close, then the former employees have minimal income support until they secure new employment.[93]

Certain domestic producers, with the primary exception of the industries producing stainless and tool steel products, propose that the domestic industry should be assisted by public policy measures such as legacy cost relief including access to federal health programs/plans for retirees, tax incentives to spur consolidation/rationalization by providing relief for acquiring companies or incentives to liquidate capacity, and improved unfair trade law enforcement. Actions specifically discussed by the domestic carbon and alloy flat-rolled steel producers in their presentations to the Commission include various forms of government assistance that would provide them relief from legacy costs and enable them to gain access to capital. These integrated producers also proposed that any tariff revenues collected be distributed to the industry,[94] although this proposal is opposed strongly by the minimills.[95] Moreover, the USWA requested legislation that would authorize the payment of funds to the industry to cover its legacy costs and legislation that would establish a floor price on domestic sales of all flat-rolled steel products.[96]

I note that the President does not have current authorization to implement these proposals. While the Section 201 statute authorizes the President to, *inter alia*, "submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition," the Commission may only recommend to the President actions currently authorized under law.[97] Whether the requested assistance is paid directly to companies or workers is a fundamental policy issue about the proper role of the government in the market. I, therefore, make no recommendation to the President with

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[88] Leo Gerard, in his written testimony, stated that "we along with all producers want the remedy to halt the financial losses and bankruptcies and job losses, stabilize prices, allow bankrupt producers to restructure and emerge, facilitate industry consolidation, and honor the contractual commitments made over time to the men and women who have made steel and kept our country strong." 11/6/01 Remedy Hearing Transcript, Attachments, "Statement of Leo W. Gerard, International President, United Steelworkers of America, AFL-CIO-CLC" at 2.

[89] 11/06/01 Remedy Hearing Transcript at 150 (Leo Gerard, International President, USWA, testified that the USWA is not opposed to consolidation, but it does not want to see consolidation resulting in capacity reductions).

[90] USWA Remedy Prehearing Brief at 45 *citing* ***.

[91] USWA Remedy Prehearing Brief at 46 *citing* ***.

[92] *See* USWA Remedy Posthearing Brief (Responses to Questions of Commissioner Hillman at 7); 11/6/01 Remedy Hearing Transcript at 397-98 (Charles Blum, Eurofer).

[93] I note that while this is a distinction between the United States and other countries, U.S. workers in other manufacturing sectors face the same issues as steelworkers when plants close. *See, e.g.*, Trade Deficit Review Commission report discussing worker adjustment assistance (Chapter 5).

[94] 11/6/01 Remedy Hearing Transcript at 80 (Thomas Usher, Chairman and CEO of U.S. Steel).

[95] 11/6/01 Remedy Hearing Transcript at 94-95 (Daniel R. Dimicco, President and CEO of Nucor Corporation).

[96] 11/6/01 Remedy Hearing Transcript at 110 (Leo Gerard, International President, USWA).

[97] 19 U.S.C. § 2253(a)(3)(H).

respect to these proposals, except to note for the President's consideration that they are part of certain domestic steel industries' requests for relief and adjustment plans presented to the Commission and that there was a split among industry participants about the proposals' contribution to restructuring and consolidation.

Finally, domestic producers also support expanding the steel import monitoring system. The Steel Action Plan of January 1999 featured a steel import monitoring program designed to identify sudden price drops or import increases, as well as monthly steel import data released by the U.S. Department of Commerce. The program began in August 1999.[98] Several producers, however, advocate the adoption of the steel import monitoring system proposed by H.R. 1988, the Trade Law Reform Act of 2001.[99] This proposed program is modeled on the Canadian steel import monitoring system that has been operating since 1986. The Canadian system requires importers to provide information regarding imported steel prior to importation. This includes country of origin, quantity, and value. The data are made available on a weekly basis. Such a system would improve upon the current program's delay in releasing the import data.[100]

III. CARBON AND ALLOY FLAT PRODUCTS

A. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act, I considered the following conditions of competition in the domestic and world markets and likely developments affecting such conditions during the next several years in evaluating the various remedy options for certain carbon flat-rolled steel for which I made an affirmative determination.

1. Demand Conditions

Demand for certain carbon flat-rolled steel is derived from the demand for end-use applications, particularly for end-use applications in the automotive and construction market sectors.[101] During the period examined, demand, as measured by apparent U.S. consumption, was strong, particularly from 1998 into 2000, but then began to decline in the second half of 2000, in line with a general economic downturn in the United States.[102] Apparent domestic consumption of certain carbon flat-rolled steel, including internally consumed production, increased steadily during the first five years of the period examined, from 203.2 million short tons in 1996 to 218.9 million short tons in 2000, an increase of 7.8

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[98] CR/PR at OVERVIEW-47.

[99] Dewey/Skadden Posthearing Brief at App. B-2.

[100] I note that domestic carbon and alloy flat-rolled producers believe that this enhanced type of monitoring system already is authorized by law under 19 U.S.C. §§ 1484, 1624. Dewey/Skadden Posthearing Brief at App. B-2.

[101] CR at FLAT-66 / PR at FLAT-51; Table OVERVIEW-2. A significant percentage of certain carbon flat-rolled steel is consumed in the production of other downstream certain carbon flat-rolled steel. CR/PR at OVERVIEW-10; Table OVERVIEW-2.

[102] I am cognizant of the difficulty of measuring apparent consumption for certain carbon flat-rolled steel since a significant portion of such steel is consumed in the production of further processed flat-rolled steel also included in the like product. I have considered a variety of different measurements in reaching my determination and generally found that the same conclusions were to be drawn regardless of which measurement was used. *See* CR at FLAT-57 n.14 / PR at FLAT-44, n.14.

percent. However, domestic consumption was 14.9 percent lower in interim (January-June) 2001 compared with the same period in 2000.[103]

Projections supplied by the domestic industry indicate that steel demand will not bottom out until the middle of 2002 at the earliest and will then begin a modest recovery from a base lower than the current low levels of demand. World Steel Dynamics forecasts that global steel consumption will not begin growing until the third quarter of 2002 and will not recover to second quarter 2000 levels until the fourth quarter of 2000. In the U.S. market, World Steel Dynamics forecasts that there will be some minor growth in 2002 versus 2001 consumption levels, but consumption will still be far below 2000 levels.[104]

Alternatively, CRU forecasts that U.S. consumption for cold-rolled and coated flat-rolled products will continue to contract through second quarter 2002 and consumption of hot-rolled steel products will remain nearly flat through third quarter 2002. CRU forecasts that consumption of hot-rolled and coated products will not return to 2000 levels until 2004 and consumption of cold-rolled products will not return to 2000 level until 2006.[105]

Purchasers report that there are few substitute products for certain carbon flat-rolled steel.[106] Domestic and imported certain carbon flat-rolled steel generally are substitutable.[107] While price is an important factor in purchasing decisions, demand for certain carbon flat-rolled steel has a low to moderate degree of sensitivity to changes in prices in part due to the lack of substitute products, the moderate cost component for the end-use product, and the dependence on demand for the end-use product.[108]

2. Domestic Supply Conditions

The U.S. industry is composed of various segments: integrated producers, who typically produce steel at the melt stage by smelting iron ore using coke in a blast furnace; nonintegrated producers, or minimills, who produce molten steel by melting scrap or scrap substitutes in an electric arc furnace; and producers without melt stage capabilities.[109] This latter group of domestic producers, in addition to integrated and nonintegrated producers with excess further processing capacity, purchase either domestic or imported slab to use as a feedstock to produce flat-rolled steel. Approximately 7.3 million short tons of slab were imported in 2000 to further the operations of these producers.[110]

The industry has invested tens of billions of dollars since the early 1980s to become more competitive and efficient by shutting down inefficient capacity, developing new products and technologies, improving the quality of existing products, and undergoing some consolidation.[111]

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[103] INV-Y-209 at Table FLAT-ALT-7.

[104] Dewey/Skadden Remedy Posthearing Brief at A-9-10.

[105] *Id.*

[106] CR at FLAT-67 / PR at FLAT-53.

[107] CR at FLAT-68 / PR at FLAT-54; EC-Y-046 at FLAT-8.

[108] CR at FLAT-66 and 70-72 / PR at FLAT-51 and 56-58; EC-Y-046 at FLAT-9.

[109] CR/PR at OVERVIEW-8.

[110] CR/PR at Table FLAT C-2.

[111] CR/PR at OVERVIEW-42-47; Dewey/Skadden's Adjustment Brief at 10-25.

As discussed in my overview, pensions and other post-employment benefits ("legacy costs") are significant costs for certain steel companies, and for producers of certain carbon flat-rolled products in particular. [112]

Beginning in 1997, the stock prices of both the integrated and non-integrated producers declined significantly, inhibiting the companies' ability to raise money in equity markets.[113] During the period examined, 10 companies making certain carbon flat-rolled steel filed for bankruptcy.[114] Moreover, in the last few weeks, several potentially significant events have occurred in the flat-rolled steel industry: (1) LTV, the fourth largest integrated company with capacity of approximately 8.4 million short tons, requested that the U.S. Bankruptcy Court permit it to close most of its facilities and liquidate its assets; (2) Geneva Steel, a smaller, integrated mill with capacity of approximately 2.2 million short tons, announced temporary shutdown of its hot-rolled sheet and plate operations; and (3) U.S. Steel, the largest integrated producer with a capacity of approximately 12.8 million short tons, Bethlehem Steel, the third largest producer with 9.6 million short tons of capacity, and other integrated steel producers announced that they are pursuing possible consolidation of their operations.[115]

The industry overall increased its capacity to produce certain carbon flat-rolled steel during the period examined, from approximately 202.3 million short tons in 1996 to approximately 234.6 million short tons in 2000. The domestic industry's capacity is similar to the level of U.S. consumption, which was approximately 219.0 million short tons in 2000. Capacity utilization of U.S. producers declined overall during the period examined from 91.0 percent in 1996 to 85.1 percent in 2000. Capacity utilization was 81.0 percent in interim 2001 compared with 90.8 percent in the same period in 2000.[116] Thus, the U.S. industry currently has the ability to utilize more of its existing capacity in response to changes in domestic prices or demand.[117]

3. Import Supply Conditions

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[112] CR/PR at OVERVIEW-32-34; Table OVERVIEW-9. Of the 23 steel companies for which data regarding pension benefit costs was compiled, 16 were producers of certain carbon flat-rolled steel. Morever, 13 of the 18 reporting firms with defined benefit plans were producers of certain carbon flat-rolled steel and 3 of the 5 reporting firms with defined contribution plans were producers of certain carbon flat-rolled steel. *Id.* at nn. 37 and 38, and Appendix D; INV-Y-190.

[113] CR/PR at OVERVIEW-36-37; Figure OVERVIEW-16; Table OVERVIEW-10.

[114] INV-Y-181; 11/6/01 Remedy Hearing Transcript at 85.

[115] *See* "Geneva's Closure Sends Customers Scrambling," *American Metal Markets* (Nov. 14, 2001); "Judge's Rulings Could Seal the Fate of LTV," *American Metal Markets* (Dec. 5, 2001); "Bethlehem Pursuing Possible Steel Industry Consolidation," Bethlehem Steel Corporation Press Release (Dec. 4, 2001).

[116] INV-Y-209 at Table FLAT-ALT7. Capacity utilization varied somewhat for the different flat-rolled products. Capacity utilization for slab declined from 94.8 percent in 1996 to 89.0 in 2000, and was 84.8 percent in interim 2001 compared with 94.5 percent in interim 2000. Capacity utilization for plate declined overall from 80.7 percent in 1996 to 60.7 percent in 2000, and was 63.7 percent in interim 2001 compared with 71.4 percent in interim 2000. Capacity utilization for hot-rolled declined overall from 91.7 percent in 1996 compared with 86.4 percent in 2000, and was 82.9 percent in interim 2001 compared with 92.1 percent in interim 2000. Capacity utilization for cold-rolled declined from 87.5 percent in 1996 to 83.9 percent in 2000, and was 79.3 percent in interim 2001 compared with 89.1 percent in interim 2000. Capacity utilization for corrosion-resistant steel declined overall from 86.7 percent in 1996 to 82.2 percent in 2000, and was 73.8 percent in interim 2001 compared with 86.5 percent in interim 2000. CR/PR at Tables FLAT-C-2-FLAT-C-5 and FLAT-C-7.

[117] CR/PR at OVERVIEW-25-27; INV-Y-209 at Table FLAT-ALT7.

More than 40 countries produce and export to the United States certain carbon flat-rolled steel. These exports increased overall during the period of investigation, from 18.4 million short tons in 1996 to 20.9 million short tons in 2000, an increase of 13.7 percent. This comparison, however, masks the surge in imports that occurred in 1998, when imports of certain carbon flat-rolled steel were 25.3 million short tons, an increase of 37.5 percent over 1996 levels.[118]

Foreign producers generally increased their capacity to produce certain carbon flat-rolled steel during the period examined and have available capacity. While world production capacity to produce steel is more difficult to quantify than actual production, estimates suggest that global steel production capacity, including certain carbon flat-rolled steel, exceeds both actual production and current market demand. Information submitted in the briefs in this investigation indicate that world crude steel capacity is 1.042 billion metric tons.[119] The data gathered by the Commission indicates that foreign capacity for each of the categories of certain flat-rolled steel increased significantly during the period. Foreign capacity to produce slab rose 8.0 percent between 1996 and 2000; foreign capacity to produce plate increased 9.5 percent between 1996 and 2000; foreign capacity to produce hot-rolled steel increased by 16.3 percent between 1996 and 2000; foreign capacity to produce cold-rolled steel increased by 13.9 percent between 1996 and 2000; and foreign capacity to produce coated steel increased by 29.4 percent between 1996 and 2000.[120] Finally, during the period of investigation, most types of certain carbon flat-rolled steel were subject to antidumping and/or countervailing duty orders and investigations.[121]

B. Industry Adjustment Plans

I have examined carefully the individual domestic companies' adjustment plans. These plans consist of investments designed to improve the domestic industry's ability to adjust to import competition.[122] While specific objectives vary by producer, most of the adjustments fall into three general categories: restoring financial stability, investment in facilities and equipment which includes developing new products and markets, and pursuing market-based consolidation and rationalization.

Specifically, one group of integrated steel companies that filed adjustment plans with the Commission (Bethlehem, LTV Steel, National Steel, and U.S. Steel) described the following types of major investments as being required over the next three years: $50-150 million to rebuild existing coke plants and $100-200 million to build one or two new "non-recovery" plants; $50-150 million to reline or refit blast furnaces; $75-125 million to modify some blast furnaces to provide for coal injection or oxygen injection; $100-300 million to replace older furnaces with COREX units; $75-200 million per unit for minimills to develop alternatives to scrap so they can produce higher quality steel; $10-60 million for ladle refining and degassing equipment at some mills; $115-$230 million to rebuild or convert continuous casters at some mills; $190-$250 million to upgrade hot-rolling mills with walking beam reheat furnaces, hydraulic coilers, and coil bending equipment; $70-$170 million to upgrade cold-rolling mills with annealing furnaces and new pickle lines so they can produce higher quality steels; and $100-300 million in environmental investments such as waste oxide treatment facilities.[123] The industry also

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[118] INV-Y-209 at Table FLAT-ALT7.

[119] CR/PR at OVERVIEW-13-14; Dewey/Skadden's Injury Prehearing Brief at 28-31, 70-71, and Appendix A; Jt. Respondents Injury Prehearing Brief at Exh. 4 (installed world capacity 1.05 billion metric tons in 1998).

[120] CR/PR at Tables FLAT-30, 33, 36, 39, 43.

[121] CR/PR at Table OVERVIEW-1.

[122] Dewey/Skadden's Adjustment Brief; Minimill 201 Coalition's Commitments Regarding Actions to Facilitate Positive Adjustment to Import Competition ("Commitments"); Ispat Inland's Remedy Prehearing Briefs at 21-28.

[123] Dewey/Skadden's Adjustment Brief at 16-17 and Appendices I-VI.

would continue to invest in developing new products and markets, such as Ultra Light Steel Autobody for automobiles. Overall, this group estimated that the industry needs to invest $7 to $9 billion over the next three years to maintain competitiveness.[124] Finally, these domestic producers indicated their intention to pursue steps to rationalize and consolidate within the industry.[125]

This group of domestic producers also proposed a number of policy initiatives that the Administration could pursue to remove market barriers to consolidation, restore confidence in the industry in the capital markets, and encourage needed investments. First, they propose legacy cost relief, particularly with respect to retiree health care costs. These producers estimate that industry-wide the health care costs are approximately $965 million per year. They suggest that such relief could take a number of forms, including, but not limited to: (i) providing health care for retirees through established programs such as the Federal Employees Health Plan, special access to programs under Medicare, or through another program then available; (ii) a refundable tax credit in the amount of a specified percentage of a company's legacy cost; or (iii) government provision of interest-free loans to assist in the payment of legacy costs.[126]

These domestic producers also suggest that the Administration consider any number of tax incentives to help spur consolidation and rationalization within the industry, including providing relief so that: (i) acquiring companies could be granted special, more favorable rules for the utilization of the acquired company's net operating losses or alternative minimum tax credits; (ii) a one time basis step up subject to a limit per acquired corporation; (iii) the acquiring company could receive a refundable tax credit of a specified percentage of the purchase price of the acquired company; and (iv) the acquiring company could receive a refundable tax credit to cover the costs of environmental clean up/liability associated with the acquisition of a steelmaking facility.[127]

Similarly, and in conjunction with the incentives described above, these domestic producers propose that tax benefits could be provided to encourage appropriate liquidations or sales of capacity to other domestic steel producers, as dictated by market forces. In order to quality for such benefits, the company would be required to meet specified criteria such as payment of a portion of the liquidation or sale proceeds into a fund dedicated to retiree health care costs and into a fund dedicated to environmental clean-up costs. They propose the following options: (i) steel companies that liquidate assets would be provided tax-free treatment in liquidation, so that shareholders would not be subject to capital gains taxes on the distribution and the liquidating company would not be subject to tax on any appreciation in the liquidated assets, and (ii) steel companies who sell or otherwise dispose of all or a substantial portion of their steel production assets would be allowed to treat the sale or disposition as a tax-free involuntary conversion. Alternatively, steel companies that sell or exchange steel production assets would not be subject to paying tax on any gain on the sale or exchange of the asset.[128]

Finally, these domestic integrated producers proposed improved unfair trade laws enforcement. In particular, they advocate adoption of an import licensing and monitoring system that would provide early information on future potentially disruptive import surges.[129]

The Minimill 201 Coalition described investment plans of $2.3-2.6 billion over four years to increase efficiency and productivity by, for example, upgrading existing equipment and installing new

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[124] Dewey/Skadden's Adjustment Brief at 14-21 and 30; Dewey/Skadden's Injury Prehearing Brief at Exhibit 2 (Fruehan Report).

[125] Dewey/Skadden's Adjustment Brief at 21-26.

[126] Dewey/Skadden's Adjustment Brief at 28.

[127] Dewey/Skadden's Adjustment Brief at 29.

[128] Dewey/Skadden's Adjustment Brief at 30.

[129] Dewey/Skadden's Adjustment Brief at 30.

equipment; developing new product grades; expanding capacity in certain product lines; adding marketing personnel and production workers; and installing new information processing systems to improve customer service.[130] Their adjustment plan also contains proposals for improving steelmaking efficiency and quality, including iron unit supply and steel manufacturing processes, as well as conducting environmental studies.[131]

Ispat Inland's adjustment plan contains a commitment to improving competitiveness through rationalization of resources, noting that it plans to undertake investment and improvements. In addition, Ispat Inland proposes that the government support legislative changes to induce consolidations through more favorable tax treatment for acquisition of firms with operating losses and their legacy costs, and limit environmental risks and promote growth after consolidations via exemptions from Alternative Minimum Tax and tax credits for investment in new technologies.[132]

Information was requested at the remedy hearing regarding the impact of the certain flat-rolled producers' adjustment plans on domestic capacity.[133] Domestic certain flat-rolled steel producers provided no aggregate information on the impact of capacity on their proposed adjustments. One company president indicated that his firm was not considering expanding capacity, but rather considering productivity, quality and technological improvements.[134] In addition, counsel for some of the domestic producers indicated that the $7 to $9 billion dollar expenditures that the domestic industry estimated was necessary over the next three years did not involve capacity increases except as a by-product of projects that enhance efficiency.[135]

C. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quotas, tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. As discussed earlier, I have determined that a quota will provide the domestic certain carbon flat-rolled industry, with the exception of slab, with the most appropriate form of relief. I have also determined that a tariff-rate quota will be the most appropriate form of relief for the slab sector of that industry.

1. Proposals of the Parties

Members of the domestic industry proposed various tariff levels and forms, in addition to other forms of assistance noted above. One group of domestic producers (Bethlehem, LTV, National, and U.S. Steel) proposed a tariff on all certain carbon flat-rolled steel, to remain in effect for four years, with tariff revenues collected to be made available for distribution to the domestic industry, contingent upon industry consolidation. Their proposed tariff would be an additional 40 percent *ad valorem* on all certain carbon flat-rolled steel during the first year, provided that all such imports would be subject to a minimum tariff of $100 per ton, not to exceed an additional 50 percent *ad valorem*; and would be

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[130] Minimill 201 Coalition's Commitments at 1-8 and Exhibit 1.

[131] Minimill 201 Coalition's Commitments at Exhibit 2.

[132] Ispat Inland's Remedy Prehearing Brief at 21-28.

[133] *See, e.g.*, Commissioner Devaney's request (11/6/01 Remedy Hearing Transcript at 132).

[134] Testimony of Mr. Miller (11/6/01 Remedy Hearing Transcript at 134).

[135] Testimony of Mr. Narkin (11/6/01 Remedy Hearing Transcript at 134-135).

reduced by two percentage points each year on the anniversary date of imposition of the tariff.[136] The Association of Cold-Rolled Strip Steel Producers supported a tariff of 40 percent *ad valorem* on all cold-rolled imports, as proposed by the above group of domestic producers.[137]

Other domestic producers made similar recommendations with different tariff levels proposed. The Minimill 201 Coalition proposed a four-year tariff remedy of an additional 50 percent *ad valorem* tariff on all certain carbon flat-rolled steel imports for the first year of relief, to decline by 2 percent in each successive year, to 44 percent during the final year.[138] Domestic producer, Ispat Inland, proposed a 35 percent *ad valorem* tariff rate increase for all certain carbon flat-rolled steel, with no more than 1 to 2 percent decreases in each successive year over a four-year period.[139]

The USWA proposed the maximum additional tariff rate of 50 percent *ad valorem* allowed by law, for four years, to be phased down by no more than 7.5 percent a year. As an alternative to the additional 50 percent tariff, the USWA proposed a stratified tariff plus a quota. The absolute quota would be based on the pre-surge volume of imports for a three-year period (July 1, 1994 through June 30, 1997) or for a two-year period (1996-97). For imports within the quota level, a stratified tariff of an additional 30 percent *ad valorem* was proposed, which would increase upwards to an additional 50 percent based on the price of the imported product for the base period. The stratified tariff plus quota would remain in effect for four years, with a phase-down in the tariff rate of 5 percent per year; the quota increases would be equal to growth above apparent consumption in the three-year base period (July 1, 1994 through June 30, 1997), plus 1 percent per year.[140]

The respondents, representing U.S. consumers of certain carbon flat-rolled steel, foreign producers and exporters, and foreign governments, uniformly opposed any type of import relief, in particular a tariff remedy. Respondents generally took the position that, if the Commission recommends an import restriction as a remedy, it should recommend quotas, rather than tariffs, based on the most recent three years as the representative period (1998-2000), with country-specific allocations.[141]

2. Selection of Import Quota for Certain Flat-Rolled Products Other Than Slab

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy serious injury that has been substantially caused by increased imports. Several additional considerations led me to recommend a quantitative restriction as the specific tool which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition in the flat-rolled industry.

The certain flat-rolled steel market comprises a wide range of products. A quantitative restriction allows all market participants flexibility in both supply and sourcing decisions, permitting them to allocate resources in accordance with market signals. Moreover, a quantitative restriction offers

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[136] Dewey/Skadden's Remedy Prehearing Brief at 5-6.

[137] Association of Cold-Rolled Strip Steel Producers' Remedy Posthearing Brief at 1-3.

[138] Minimill 201 Coalition's Remedy Prehearing Brief at 2.

[139] Ispat Inland's Remedy Prehearing Brief at 3-15.

[140] USWA's Remedy Prehearing Brief at 24-25 and 28-30. USWA also proposed the establishment of a floor price on domestic sales of all covered flat rolled steel products in conjunction with the trade remedy.

[141] *See* EC-Y-046 at Table FLAT-4.

a degree of certainty that cannot always be matched by other forms of import relief.[142] The certain flat-rolled industry experienced instability in the form of a sharp increase in import volume, particularly in 1998. The dramatic increase in the volume of imports in 1998 coincided with sharp declines in the domestic industry's performance and condition despite growing U.S. demand. The relative certainty of a quantitative restriction on imports which will not permit such an increase to reoccur provides the industry with a period of stability in which them can implement their various plans to adjust to import competition, including modernization, consolidation and rationalization.[143]

a. Quota Amount

Section 203(e)(4) provides that any quantitative restriction

> shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

The statute requires that any quantitative restriction be based on average import levels "in the most recent 3 years that are representative of imports." I have selected 1996-1997, and the last half of 2000 and the first half of 2001, as the most recent three years that are representative of imports. I have considered the respondents' argument that the most representative period is 1998 to 2000. However, this period includes the unprecedented surge in most flat-rolled products. To include that period would result in a meaningless remedy to the flat-rolled industry. Consequently, I have chosen the two year period prior to the unprecedented 1998 surge in imports, and the most recent one year period for which data was available (July 2000-June 2001).[144] This latter period reflects the latest import trends which have been

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[142] Indeed, the domestic integrated producers, in a submission to the U.S. government on August 14, 2001, recognized that internationally, incentives necessary for true rationalization and reduction of capacity would only come with restrictions on access to the U.S. market. They stated that the experience with Voluntary Restraint Agreements (VRAs) in the mid-80's confirmed the essential role of market restrictions in creating the conditions necessary for real rationalization in this industry, and that implementation of quotas on foreign steel products resulted in significant consolidation due to the removal of the U.S. market as an unlimited outlet for excess production. They stated that the breathing space provided by the VRAs also allowed the domestic industry to undertake a massive restructuring and rationalization. U.S. Steel-Integrated Mill Submission to the U.S. Government, dated August 14, 2001, found in Japanese Respondents' Remedy Posthearing Brief: General Issues and Amendments to Exclusions at Exhibit 6.

[143] As was pointed out in the hearing of the injury phase of this investigation, the domestic industry has different concerns when it comes to meeting domestic competition than it does in meeting foreign competition. One company president explained that when the company decides to meet the price of a domestic competitor to get the order, it knows that a certain amount of domestic capacity has gone away. In contrast, in meeting foreign price competition, there is excess capacity that continues to be available at lower prices. The view of this company president was that if the business goes to the foreigner, "then there's just another guy down the block." 9/19/01 Injury Hearing Transcript at 439-440 (Testimony of Mr. Usher).

[144] It would be inappropriate to include 1998 in the "representative" period because this was the year in which the significant surge in imports occurred, which was a substantial cause of the domestic industry's serious injury. Based on the structure of the statute, I cannot conclude that this elevated, injurious level of imports is "representative." To include such imports might suggest an inconsistency between the injury determination and remedy recommendation because "representative" levels of imports should not be a substantial cause of serious

impacted by the recent decline in demand for flat-rolled steel products. The Commission's economic analysis indicates that these quota levels will increase domestic production, revenue, and to a lesser extent, increase domestic prices for most domestic flat-rolled products, particularly in hot-rolled operations. Given the integrated nature of the flat-rolled industry, the Commission's linked economic model indicates that some of the benefits of the quota will increase prices and revenues in the downstream products.[145] This is consistent with evidence cited in the injury opinion regarding the close relationship in the prices of hot-rolled, plate, cold-rolled and coated steel.

I also have recommended separate quotas for plate, hot-rolled, cold-rolled and coated steel to avoid product shifting to higher valued products for quota allocations. Such a shift would deny the domestic industry the relief that I have found necessary. In addition, I recommend that the President impose quantitative restrictions with country-specific allocations, for a three-year period, on imports of the following flat-rolled categories, in the following amounts in the first year, to be increased by three percent in each subsequent year that the action is in effect:

Product	Remedy	Liberalization (percent)	Year 1 Level (short tons)	Year 2 Level (short tons)	Year 3 Level (short tons)
Plate	Quota	Three	1,232,260	1,269,227	1,307,304
Hot-Rolled	Quota	Three	4,928,712	5,076,573	5,228,871
Cold-Rolled	Quota	Three	2,796,196	2,880,082	2,966,485
Coated	Quota	Three	1,683,282	1,733,781	1,785,794

In proposing a quantitative restriction on these flat-rolled products, I note that the following events have recently transpired: LTV Corp, the fourth largest integrated company with capacity of approximately 8.4 million short tons, requested the U.S. Bankruptcy Court in Ohio for permission to close most of its facilities and to liquidate its assets; Geneva Steel, with a capacity of approximately 2.2 million short tons announced last month a temporary shutdown of its hot-rolled sheet and plate operations; and the announcement this week that U.S. Steel, with a capacity of approximately 12.8 million short tons, Bethlehem Steel Corp.,with a capacity of approximately 9.6 million short tons, and other integrated steel producers are pursuing proposals to consolidate.[146]

Therefore, any remedy adopted will be for a U.S. steel industry that may or may not have a significantly different capacity to produce the covered products. The President, however, has authority under section 203(e)(4) to set different quantitative restrictions when conditions clearly justify such action. The aforementioned market conditions may justify different quota levels.

b. Duration and Degressivity

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injury. Moreover, I conclude that the clause "unless the President finds that the importation of a different quantity or value is clearly justified" in section 203(e)(4) is an exception to the general rule that the minimum quantitative restriction level be the "most recent 3 years that are representative of imports." Such an exception authorizes the President to set different quantitative restrictions, including a lower level, when conditions justify such action.

[145] *See, e.g.,* EC-Y-050.

[146] *See, e.g.,* Bethlehem Steel's 2000 Annual Report; LTV's 1999 Annual Report; the 2000 U.S. Steel Group Annual Report; and Geneva Steel's 1999 Annual Report.

I recommend that the period of relief should last for three years. In so doing, I have considered that the domestic industry is capital intensive in nature, and that any modernization of plants and equipment will likely take time to complete, secure financing, and become operational. I have also considered, however, the nature of my remedy, which is most likely to provide U.S. producers with the market stability necessary to allow them to proceed expeditiously with their plans to adjust to import competition. Considering all of these factors, I find three years to be an appropriate duration for my proposed remedy. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

Section 203(e)(5) requires that quotas must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the quota should be expanded by three percent in each subsequent year that it is in effect. This rate of increase would allow for a reasonable rate of growth in imports taking into consideration the recent decline in demand and the projection that demand will not improve in the short-term.

c. Country Allocation

Having made affirmative findings with respect to imports of certain flat-rolled steel from Mexico under section 311(a) of the NAFTA Implementation Act, section 312(d) requires that any action proclaiming a quantitative restriction shall permit the importation of a quantity of the article that is not less than the quantity of such article imported during the most recent period that is representative of imports of such article, with allowances for reasonable growth. Having found that 1996-1997 and July 2000 - June 2001 is the most representative period of imports of such article, I recommend that the President allocate no less than 257,208 short tons of hot-rolled, 155,276 short tons of cold-rolled, 478 short tons of plate, and 329,520 short tons of coated certain flat-rolled steel from Mexico during the first year of the remedy period. Furthermore, based on my recommended rate of degressivity, I recommend that after the first year the quota for Mexico be expanded by three percent in each subsequent year that it is in effect.

Within the overall remaining quota, I recommend that the President establish country-specific allocations. The one exception to this country specific allocation should be for the European Union because the industry in the EU is highly integrated. In making any such specific allocations, I believe that it would be appropriate for the President to take into account any disproportional growth and impact of imports.

3. Tariff-Rate Quota for Slab Imports

Certain domestic producers urged the Commission to recommend the same tariff increase for slabs as for other types of certain carbon flat-rolled steel. Other domestic producers that rely on purchases of slab, whether domestic or imported, to produce certain carbon flat-rolled steel urged the Commission not to penalize them for rationalizing production capacity and allocating their investment capital to the most efficient aspects of their operations.[147] These producers proposed that the Commission recommend an import remedy for slab that would permit current import levels with growth but prevent a surge in imports of slab. In particular, the domestic slab purchasers suggested a quota set at least two million tons above the 1999-2000 average slab import level in year one with increases in subsequent years, a country-specific allocation for the quota, and an increased tariff rate above the quota level of not more than 15 percent in year one and reduced to 10 percent in year two, and five percent in

[147] Slab Purchasers' Remedy Posthearing Brief at 23-36.

year three.[148] While most other respondents opposed any type of import relief on slab, Australian and New Zealand foreign producers supported the Commission recommending quotas on slab imports.[149]

In determining the appropriate import relief for slab, I considered the fact that historically, commercial sales of domestically produced slab have been extremely limited. Domestic producers typically internally consume nearly all the slabs they produce to make higher-value downstream products. While some domestic slab sales do take place, the record demonstrates that there is not a long-term supply of domestically-produced slab readily available. Testimony at the hearing and evidence provided in briefs indicates that most domestic integrated steel producers have exhibited sporadic willingness to sell slab to their domestic competitors, and minimills have never sold slab on the open market.[150] This is particularly problematic given the fact that Geneva Steel, one of the few domestic producers that showed any consistent desire to market slabs, recently announced the temporary shut-down of its hot-end facilities. I note, however, that even when Geneva was in operation, domestic merchant market sales of slabs were less than one percent of total U.S. shipments.[151]

I also considered the fact that the various economic models showed a great impact with certain quota levels and tariff levels on slab. However, I have given less weight to the models for slab as they do not take into account the inconsistent availability of supply of slabs from domestic sources.

Certain domestic producers of certain carbon flat-rolled steel have business models that require the purchase of slabs, and thus the importation of slab to ensure a steady, dependable supply of their feedstock. Some of these domestic producers have recently restructured by closing obsolete capacity and made, or are making, long-term investments that depend on purchases, and thus imports, of slab. Moreover, the evidence demonstrates that imports of slab are not only needed by processors of slab that have no hot-end capability, but also by producers that have more rolling capacity than slab producing capacity and integrated producers during furnace re-lines or other melt shop outages.[152] Therefore, I recommend a tariff-rate quota for imports of slab that is intended not to harm domestic producers that have a legitimate need to continue to import slabs, including those that have made positive adjustments that depend on slab purchases. In doing so, I have considered the testimony of certain integrated producers at the remedy phase that the Commission recommend strong tariffs on slabs, and revisit the issue of supply concerns in any monitoring proceeding.[153] However, I believe that to do so would have a potentially severe impact on the members of the domestic industry that need a reliable source of slab.

I note that there was testimony at the hearing in the injury phase of this investigation that members of the domestic industry were not against the use of slabs for those producers that used them to continue their operations, but rather were opposed to the flood that will occur in the future if some limits were not put on the importation of slabs.[154] Indeed, there was concern expressed that the continued unfettered importation of slab would force other integrated producers to adopt a business model that

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[148] Slab Purchasers' Remedy Posthearing Brief at 3-4.

[149] BHP's Remedy Posthearing Brief at 11-14 and EC-Y-046 at Table 4.

[150] Slab Purchasers' Prehearing Remedy Brief at 7-9.

[151] CR at FLAT-1, PR at FLAT-1.

[152] Slab Purchasers' Prehearing Remedy Brief at 39.

[153] *See, e.g.* Dewey/Skadden Posthearing Remedy Brief at 20.

[154] Testimony of Mr. DiMicco (We're not against them using product today in the United States as slabs to continue their operations. We're against the flood that will occur in the future sure as we're sitting here with semi finished if we don't put some limits on it going forward.) 9/19/01 Injury Hearing Transcript at 448.

relied on imported slab to support their rolling operations.[155] A tariff-rate quota which permits the continued importation of slab at levels close to current imports will most alleviate the concerns expressed at the hearing and will not favor one domestic business model at the expense of another. I have recommended a tariff-rate quota rather than a quota because the tariff-rate quota will permit importation at current levels, but will also allow for additional importation under tariff should conditions develop that any domestic producer require additional slab feedstock to continue operations.

Consequently, I join the majority in recommending that the President impose a tariff-rate quota on imports of slabs. My tariff-rate quota differs from that of the majority only to the extent that I recommend that it be for a three, and not a four-year period, as follows: an additional tariff of 20 percent *ad valorem* on imports in excess of 7 million short tons in the first year of relief, 17 percent *ad valorem* on imports in excess of 7.5 million short tons in the second year of relief, and 14 percent *ad valorem* on imports in excess of 8.0 million short tons in the third year of relief.

In concurrence with the majority, I am recommending an import level with no tariff for the first year of relief that is set at the level of imports of slab minus imports of slab from Canada in year 2000. This import level is substantially above expected year 2001 imports of slab and thus should have virtually no negative impact on domestic users of imported slab.[156] Moreover, I am recommending a 7.1 percent increase in the import level for the second year, and a 6.7 percent increase for the third year. Such increases should permit domestic producers that depend on slab imports adequate supply to meet their needs. Finally, in the event that the President adopts a tariff-rate quota recommendation for slab, I recommend country-specific, quarterly allocations based on historical import levels.

4. Country Exclusions

Having made a negative finding with respect to imports of certain carbon flat-rolled steel from Canada under section 311(a) of the NAFTA Implementation Act for the reasons set out in my injury views, I recommend that the President not subject imports from Canada to any remedy action. I also recommend that the President not subject imports of certain carbon flat-rolled steel from Israel and beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. The only imports of certain carbon flat-rolled steel during the period of investigation from these countries were small and sporadic.[157][158]

5. Exclusion Requests

The Commission received numerous exclusion requests during the course of this investigation, including requests for the exclusion certain carbon flat rolled products. The Commission requested U.S.

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[155] Testimony of Mr. Lighthizer (It's not the position, I don't think, of the domestic industry that there should be no slab that comes into this market. Our position rather is that if you don't grant relief on one industry that includes slab you will have unlimited amounts coming in, and eventually you'll be a position where everyone is going to have that model.) 9/19/01 Injury Hearing Transcript at 458-59.

[156] Imports of slab (minus imports of slab from Canada) were 2.4 million short tons in interim 2001 (January-June) compared with 3.9 million short tons in interim 2000 (January-June). CR/PR at Table FLAT-4.

[157] CR/PR at Tables E-1, E-2, and E-3.

[158] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, which is two days before this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, is submitted to the President. There have been virtually no imports of certain carbon flat-rolled steel from Jordan during the period of investigation. To the extent that section 221(a) of the Act applies to this investigation, I recommend that such imports not be subject to the quota or tariff-rate quota described above.

producers to provide detailed, product specific responses, including information regarding domestic U.S. production volumes of the articles subject to exclusion requests. Based on my quantitative restriction remedy recommendation, the requested excluded products can enter the United States under the quota levels. Moreover, as indicated above, I recommend that the President implement a short-supply mechanism. Therefore, I would not recommend that the President grant any certain flat-rolled exclusion requests.

However, if the President implements a remedy different than the one I propose (*i.e.,* tariffs or tariff-rate quotas), I note that the domestic industry supplied some information to the Commission and additional information to the President with respect to exclusion requests. I recommend that the President carefully examine the responses to those requests and exclude products that are not produced or not produced in commercially meaningful amounts by the domestic industry from any non-quota based remedy.

6. Short and Long-Term Effects of the Recommended Action

The quota and tariff rate quota I am recommending will address the serious injury to the domestic certain flat-rolled steel industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

My quota-based remedy reduces import volumes, particularly in the hot-end, to increase domestic production and increase capacity utilization during the period of relief. By doing so, my remedy will restore production levels, revenues, and restore profitability to sectors of the industry. In this regard, I estimate that during the first year of relief, my recommended quota will result in a small to moderate increase in domestic prices, a more significant increase in domestic sales, and an overall increase in domestic revenue, particularly with respect to hot-rolled carbon steel. I also note that the quota would have a much more significant effect on import prices than domestic prices (and therefore a decline in the underselling by imports) and a substantial impact on import volumes for certain sectors of the flat rolled industry.

Moreover, my recommended quota would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market.

I recognize that my recommended quota would result in a negative impact on end users of certain flat rolled carbon steel, primarily in the form of reduced import volumes and increased prices in the domestic market. Although I estimate that the quota will increase overall consumer costs during the first year of the period of relief, those costs will be offset by the benefits to the industry from increased prices and volume of sales.

7. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the domestic industry's operating losses will continue and worsen. In particular, the price depression evident in the market during the period examined will remain a major adverse market factor, and imports will continue to capture an increasing share of the domestic market. Without appropriate relief, this trend is likely to worsen in its price and revenue impact on the domestic industry. Continued operating losses will prohibit the domestic industry from implementing its proposed investments and other aspects of its adjustment plans, thereby leaving it less viable and less able to compete with imports. The industry incurred substantial losses from 1999 through the first half of

2001, and many companies are not likely to survive if such losses continue unabated.[159] Such closings and partial closings will lead to increased layoffs of workers in the industry. Many companies are located in communities where the closings will have a significant impact on the local economy.

IV. CARBON AND ALLOY LONG PRODUCTS

A. Carbon and Alloy Hot-Rolled Bar

1. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act of 1974, I considered the following conditions of competition in the domestic and world markets, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for carbon and alloy hot-rolled bar.

a. Demand Conditions

As discussed in section V of the injury opinion, hot-rolled bar is used in construction, automotive equipment, and industrial applications. Hot-rolled bar encompasses a wide range of products including merchant bar, special bar quality steel bars, and light shapes.[160] A majority of market participants indicate that there are no known substitutes for steel bar products, including hot-rolled bar.[161]

While demand did increase by 11.7 percent between 1996 and 2000, this increase occurred almost entirely between 1996 and 1997. Demand was less volatile thereafter, until 2001, when it fell by 19.0 percent.[162]

The domestic producers project that demand for hot-rolled bar will be higher in 2002 than in 2001 and higher in 2003 than in 2002.[163] Economic projections submitted by respondents indicate that demand for most types of construction equipment and for automobiles should be higher in 2002 than in 2001.[164]

b. Domestic Supply Conditions

There were 32 U.S. hot-rolled bar producers that responded to the Commission questionnaire. As discussed in section V of the injury opinion, capacity reported in the questionnaires increased slightly from 1996 to 2000, but overall capacity likely declined during this period due to closures by bankrupt

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[159] INV-Y-209 at Table FLAT-ALT7 and INV-Y-212 at STL201FT.WK4. As discussed above, during the period examined, 10 companies making certain carbon flat-rolled steel already have filed for bankruptcy protection. INV-Y-181.

[160] *See* CR/PR at LONG-1.

[161] EC-Y-046 at LONG-13.

[162] Apparent U.S. consumption rose by 12.2 percent from 1996 to 1997 and by 3.5 percent from 1997 to 1998. It then fell by 5.2 percent from 1998 to 1999 but rose by 1.4 percent from 1999 to 2000. The overall increase between 1996 and 2000 was 11.7 percent. Apparent U.S. consumption was 19.0 percent lower in interim 2001 than it was in interim 2000. CR/PR at Table LONG-C-3.

[163] Minimill 201 Coalition Posthearing Remedy Brief at 15. *See also* Ispat Inland Posthearing Remedy Brief at 1 (projection of demand for that company's products).

[164] Turkish Respondents Remedy Posthearing Brief, ex. 5.

producers that did not respond to the Commission questionnaire.[165] Capacity reported in questionnaires was lower in interim 2001 than in interim 2000. Capacity utilization reported in questionnaires fluctuated during the period examined, ranging from 67.2 percent in 1996 to 74.3 percent in 1998. Reported capacity utilization was 70.0 percent in 2000, 75.1 percent in interim 2000, and 60.3 percent in interim 2001.

The U.S. industry has sufficient capacity to supply the entire U.S. market. Nominal domestic capacity exceeded apparent U.S. consumption by 16.9 percent in 2000.[166] Thus, U.S. hot-rolled bar producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

c. Import Supply Conditions

During the period examined, there were hot-rolled bar imports from over 40 different countries, although not every country imported product in every year.[167] Imports of hot-rolled bar increased by 52.5 percent from 1996 to 2000 and were 28.9 percent lower in interim 2001 than interim 2000.[168] As discussed in section V of the injury opinion, purchasers generally perceived domestically-produced and imported hot-rolled bar to be comparable products.

Both capacity and production of hot-rolled bar from sources outside the United States increased irregularly during the period examined, peaking in 2000 with levels of 29.8 million short tons of capacity and 23.6 million tons of production. Capacity utilization of non-U.S. producers also increased irregularly from 74.7 percent in 1996 to 79.4 percent in 2000. Capacity utilization was 77.2 percent in interim 2000 and 74.4 percent in interim 2001.[169]

Capacity outside the United States is projected to continue to grow in 2001 and 2002, reaching and then surpassing 30.2 million short tons for reporting foreign producers. These increases in capacity are projected despite projected declines in home market and export sales that are expected to depress actual production levels.[170] As a result, capacity utilization is projected to decline to period lows of 72-73 percent in 2001 and 2002.[171]

2. Industry Adjustment Plans

Pursuant to section 202(e)(5)(B)(ii) of the Trade Act, I have closely examined the adjustment plans submitted by U.S. producers and the commitments contained therein. These plans include capital expenses intended to enhance efficiency and reduce costs. Such projects would include modifying, refurbishing, replacing, or installing a range of productive equipment. Several producers propose to resume a more normal scope and pace of operations by increasing productive shifts, rehiring laid off workers, or paying down debt. Another element of the adjustment plans is the installation of equipment

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[165] In this calendar year alone, both CSC and Qualitech have closed hot-rolled bar facilities. CR/PR at Table OVERVIEW-48.

[166] CR/PR at Table LONG-C-3.

[167] INV-Y-180, Hot-Rolled Bar data.

[168] CR/PR at Table LONG-C-3.

[169] CR/PR at Tables LONG-42, LONG-44.

[170] Exports have accounted for least one-quarter of total foreign sales over the period examined.

[171] CR/PR at Table LONG-42. Mexico, which is excluded from this remedy, produces a greater share of hot-rolled bar for its home market, exporting less than 20 percent of its production. Capacity in Mexico is expected to increase in 2001 and 2002, as are exports to the United States.

designed to permit producers to offer new product lines, such as special bar quality bar and high-strength joint bar.[172] Finally, the Steel Manufacturers' Association outlined an extensive series of proposed studies on steelmaking, metallurgy, best practices, environmental issues, and energy issues. These are not limited to the products at issue. They appear to be qualitative in nature, rather than quantitative.[173]

Several Commissioners requested information in posthearing submissions regarding the impact of U.S. producers' adjustment plans on domestic capacity.[174] Domestic producers provided minimal information on capacity and the impact of capacity on their proposed adjustments, citing antitrust reasons. They imply that capacity increases will expand to meet increased demand. They observe that of all the companies producing bar products, only one bar producer specifically reported that it would increase capacity (***). They also note the recent closure of Ispat Inland's bar mill, eliminating 950,000 tons of capacity from the market, and refer to possible reductions by RTI. Ispat Inland's bar mill closure far exceeds quantified increases in capacity, but no attempt was made to quantify the effect of upgraded mills and possible new Nucor and Nucor Auburn mills (although these might entail purchases of existing facilities).[175]

3. Recommended Relief

I have examined the different forms of relief that the Commission is authorized to recommend, to determine which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition. I find that a quantitative restriction will best address the serious injury to the hot-rolled bar industry and would be most effective in facilitating positive adjustment of that industry to import competition.

a. Proposals of the Parties

Domestic producers have requested that the Commission recommend imposition of a tariff for each bar product for a four-year period.[176] The USWA has proposed two remedies for long products, one of which involves a combination of a fixed tariff and an absolute quota, and the other of which involves a combination of a stratified tariff and an absolute quota. Respondents have generally argued that any recommended relief be limited to trade adjustment assistance and not include restrictions on imports. Respondents have indicated that if the Commission is inclined to recommend import restrictions, they should be in the form of quotas.[177]

b. Selection of Import Quota

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[172] ***. *See* Minimill 201 Coalition Prehearing Remedy Brief at 27-32; Minimill 201 Coalition Posthearing Remedy Brief, exs. 5, 6.

[173] All adjustment plan information comes from the Minimill 201 Coalition's prehearing remedy brief at exhibits 4-7.

[174] *See, e.g.*, Vice Chairman Okun's request to domestic producers to review their adjustment plans and evaluate each plan "in terms of its impact on domestic capacity." 11/8/01 Remedy Hearing Transcript at 533. *See also* requests made by Chairman Koplan (at 513-515) and Commissioner Hillman (at 561).

[175] Minimill 201 Coalition Remedy Posthearing Brief at 15-16.

[176] The Minimill 201 Coalition advocated an initial duty rate for hot-rolled bar, cold-finished bar, and rebar of 50 percent. Ispat Inland advocated an initial duty rate of 40 percent for hot-rolled bar.

[177] EC-Y-046 at Table LONG-16.

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy the serious injury that has been substantially caused by increased imports. Several additional considerations lead me to recommend a quantitative restriction as the specific tool which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition in the hot-rolled bar industry.

First, as noted above, demand for hot-rolled bar has been relatively stable between 1997 and 2000 and, despite a sharp decrease in 2001, is expected to rebound in 2002. Thus, a quantitative restriction based on historic import levels during this period would eliminate a potential source of market volatility (import surges).

Second, the hot-rolled bar market comprises both merchant bar and special bar quality steel bars. A quantitative restriction allows all market participants flexibility in both supply and sourcing decisions, permitting them to allocate resources in accordance with market signals.

Finally, a quantitative restriction offers a degree of certainty that cannot always be matched by other forms of import relief. The hot-rolled bar market has experienced instability in the form of a sharp increases in import volume as well as the closure of several domestic production facilities. The relative certainty of a quantitative restriction on imports will provide U.S. producers with a period of stability in which they can implement their various plans to adjust to import competition.

As discussed above, I have considered a range of options that do not include direct import remedies. While many of these options do hold out promise for improving the state of the domestic industry and its workers, non-import related options do not fully address the need to remedy the serious injury and facilitate positive adjustment to import competition because they do not provide a "time-out" for U.S. producers to implement their adjustment plans.

c. Quota Amount

Section 203(e)(4) provides that any quantitative restriction

> shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

The statute requires that any quantitative restriction should be based on average import levels "in the most recent 3 years that are representative of imports." I believe that 1997-1999 are the most recent three years that are representative of imports of hot-rolled bar.[178] Apparent U.S. consumption varied slightly over this period (ranging from 11.3 million short tons to 11.7 million short tons). Moreover, import levels did not exhibit steep, clearly injurious increases and were well below the injurious levels of 2000.

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[178] It would be inappropriate to include 2000 in the "representative" period because this was the year in which the significant surge in imports occurred, which was a substantial cause of the domestic industry's serious injury. Based on the structure of the statute, I cannot conclude that this elevated, injurious level of imports is "representative." To include such imports might suggest an inconsistency between the injury determination and remedy recommendation because "representative" levels of imports should not be a substantial cause of serious injury. Moreover, I conclude that the clause "unless the President finds that the importation of a different quantity or value is clearly justified" in section 203(e)(4) is an exception to the general rule that the minimum quantitative restriction level be the "most recent 3 years that are representative of imports." Such an exception authorizes the President to set different quantitative restrictions, including a lower level, when conditions justify such action.

The Commission's economic analysis indicates that a quota that restores imports approximately to the relative market shares prevailing in 1997-1999 would allow the domestic industry to increase prices modestly, increase sales quantities moderately, and generate meaningful additional revenue.[179] Accordingly, I recommend that any quota initially be established in the amount of 1,961,648 short tons for hot-rolled bar imports from all non-excluded countries during the first year of the remedy period.[180] Pursuant to section 203(e)(2), I find that a quota in this amount would not exceed the amount necessary to remedy the serious injury that I have found to exist. Under the quota I am recommending, imports would continue to supply a large share of the U.S. market and would continue to be an important competitive force in the U.S. market.

d. Duration and Degressivity

I recommend that the quantitative restriction be imposed for a three-year period. In so doing, I have carefully considered the nature of the adjustment plans submitted by U.S. producers, the domestic industry's relatively strong level of capital expenditures through 1998, and the level of operating income generated through 1998. I have further considered that domestic industry is capital intensive in nature. The modernization of plants and equipment is a multi-year process, and will likely require time to complete plant and equipment design work, secure financing, manufacture the equipment, and once installed, make the new equipment operational. I have also considered, however, the nature of my remedy, which I feel is most likely to provide U.S. producers with the market stability necessary to allow them to proceed expeditiously with their plans to adjust to import competition. Considering all of these factors, I find three years to be an appropriate duration for my proposed remedy. I further recommend that the President administer the quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

Section 203(e)(5) requires that quotas must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the quota should be expanded by three percent in each subsequent year that it is in effect. This rate of increase would permit a faster rate of growth in imports than has been demonstrated by apparent U.S. consumption, which in the aggregate has been stable since 1997.

e. Country Allocation

Having made affirmative findings with respect to imports of hot-rolled bar from Canada under section 311(a) of the NAFTA Implementation Act, section 312(d) requires that any action proclaiming a quantitative restriction shall permit the importation of a quantity of the article that is not less than the quantity of such article imported during the most recent period that is representative of imports of such article, with allowance for reasonable growth. Having found that 1997-1999 is the representative period for hot-rolled bar imports, I recommend that the President allocate no less than 1,077,514 short tons of hot-rolled bar imports from Canada during the first year of the remedy period. Furthermore, based on my recommended rate of degressivity, I recommend that after the first year the quota for Canada should be expanded by three percent in each subsequent year that it is in effect.

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[179] EC-Y-051 at LONG-ALT-35.

[180] I have taken into account my recommendations for the exclusion of Mexico, Israel, Jordan, and CBERA and ATPA countries. As I do not recommend including such imports in my remedy, I have adjusted the overall amount of imports to be included accordingly.

Within the overall remaining quota, I recommend that the President establish country-specific allocations (other than those specifically excluded from the recommended action). The one exception to this country-specific allocation should be for the European Union because the industry in the EU is highly integrated. In making any such specific allocations, I believe that it would be appropriate for the President to take into account any disproportional growth and impact of imports.

f. Exclusion of Mexico, Israel, and CBERA and ATPA Countries[181]

Having made a negative finding under section 311(a) of the NAFTA Implementation Act with respect to imports from Mexico, I recommend that the President exclude Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel.

In light of the minuscule volume of imports from ATPA countries in 2000 (82 short tons), CBERA countries in 2000 (297 short tons), and Israel in 2000 (20 short tons),[182] I do not recommend including such countries in any import relief.

g. Exclusion Requests

The Commission received numerous exclusion requests during the course of the investigation, including requests for the exclusion of certain forms of hot-rolled bar. The Commission requested U.S. producers to provide detailed, product specific responses, including information regarding U.S. production volumes.[183] Based on my quantitative restriction remedy recommendation, the requested excluded products can enter the United States under the quota levels. Moreover, as indicated above, I recommend that the President implement a short-supply mechanism. Therefore, I would not recommend that the President grant any hot-rolled bar exclusion requests.

However, if the President implements a remedy different than the one I propose (*i.e.*, tariffs or tariff-rate quotas), I note that the domestic hot-rolled bar industry supplied the Commission with substantial information.[184] Based on this information and information provided by Caterpillar,[185] I would recommend that the President grant an exclusion request to exclude track bar.[186] The record indicates

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[181] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. There have been no imports of hot-rolled bar from Jordan during the period of investigation. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to the quota described above.

[182] CR/PR at Tables E-1 (ATPA), E-2 (CBERA), and E-3 (Israel).

[183] *See, e.g.,* 11/8/01 Remedy Hearing Transcript at 583-584 (Vice Chairman Okun); at 574 (Commissioner Devaney); and at 651 (Commissioner Bragg).

[184] Minimill 201 Coalition Remedy Posthearing Brief at exhibit 3.

[185] Caterpillar Remedy Prehearing Brief at 6-12; Caterpillar Remedy Posthearing Brief at 2-4 and exhibit 3 (support for the exclusion of track bar by ***.

[186] Caterpillar defines track bar as carbon or alloy special profile bar of hot-rolled aluminum fine grain alloy steel, with single, double, or triple grousers for the production of track shoes for machines such as Track Type Bulldozers and excavators. The bars are 20-27 feet in length and range in thickness from 8.5mm to 28 mm. The width of the bars range from 182.5mm to 254.5mm. The grouser height ranges from 47mm to 101mm. The steel is produced to Caterpillar's proprietary chemistry specifications. Caterpillar Exclusion Request Data Sheets.

that this product is not produced in the United States.[187] Imports of track bar were *** in 2000, but have *** over the period examined.[188]

4. Short and Long-Term Effects of the Recommended Action

I believe that the quantitative restriction I am recommending would address the serious injury to the domestic hot-rolled industry and would be the most effective actions in facilitating the efforts of this industry to make a positive adjustment to import competition. The quantitative restriction also would not exceed the amount necessary to remedy serious injury.

The quantitative restriction is intended to reduce the import volumes of hot-rolled bar to levels existing before the recent import surge. As a result of reduced import volumes, the domestic industry should experience modest increases in shipments and prices. These in turn should increase the industry's revenues and permit the industry to earn reasonable operating profits. I observe that while the hot-rolled bar industry experienced operating losses during 2000, it showed satisfactory operating margins during earlier portions of the period examined before being seriously injured as a result of the import surges. I acknowledge that the price increases would increase costs to consumers, but I believe any cost increases would be modest and unlikely to have adverse effects.

On a longer-term basis, the restored profitability of the domestic hot-rolled bar industry should inspire investor confidence. This would permit the domestic producers to make the necessary investments to be able to implement the changes outlined in their adjustment plans and to enable the industries to adjust to future import competition.

5. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the negative performance trends experienced by the domestic hot-rolled bar industry during the latter portions of the period examined would continue and worsen. In particular, imports would maintain or further increase their share of the pertinent U.S. markets. The continued competition would force domestic producers either to lose market share, cut prices, or both.

As a result, domestic producers would face further declines in their revenues and worsening financial performance. The operating losses witnessed in the hot-rolled bar industry in 2000 would continue at increased levels. Continued operating losses, in turn, would accelerate the rate of bankruptcies and plant closures. Indeed, since 1999, there have been four bankruptcies among hot-rolled bar producers, three of which resulted in full or partial closures of productive facilities.[189] Such bankruptcies and plant closures would lead to layoffs of workers in the industries, and adverse impacts on the communities in which the production facilities are located.

B. Carbon and Alloy Cold-Finished Bar

1. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act, I considered the following conditions of competition in the domestic and world markets, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for carbon and alloy cold-finished bar.

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[187] Caterpillar Remedy Posthearing Brief at exhibit 2.

[188] Imports of alloy track bar ***. Imports of carbon track bar ***. Caterpillar Exclusion Request Data Sheets.

[189] CR/PR at Table OVERVIEW-11.

a. Demand Conditions

As discussed in section V of the injury opinion, the principal use of cold-finished bar is in construction applications. Cold-finished bar, like hot-rolled bar, encompasses a variety of products. A majority of market participants indicate that there are no known substitutes for steel bar products, including cold-finished bar.[190]

While demand did increase by 16.6 percent between 1996 and 2000, this increase occurred primarily between 1996 and 1997. Demand was less volatile thereafter, until 2001, when it fell by 22.6 percent.[191]

The domestic producers project that demand for cold-finished bar will be higher in 2002 than in 2001 and higher in 2003 than in 2002.[192]

b. Domestic Supply Conditions

There were 18 U.S. cold-finished bar producers that responded to the Commission's questionnaire. Capacity fluctuated over the period examined, increasing 5.7 percent from 1996 to 2000. Capacity was 6.0 percent lower in interim 2001 than in interim 2000. Reported capacity utilization was below 50 percent throughout the period examined.[193] As discussed in section V of the injury opinion, the capacity utilization data reported in the questionnaires tend to understate actual capacity utilization.

The U.S. industry has sufficient capacity to supply the entire U.S. market. Nominal domestic capacity, adjusting for data anomalies, exceeded apparent U.S. consumption by 16.9 percent in 2000. It is clear that U.S. cold-finished bar producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

Additionally, hot-rolled bar is the principal input in the production of cold-finished bar. As stated in section V of the injury opinion, however, the cross-price effects between hot-rolled and cold-finished bar are limited because the bulk of hot-rolled bar production is not cold-finished.

c. Import Supply Conditions

During the period examined, there were cold-finished bar imports from over 30 different countries, although not every country imported product in every year.[194] Imports of cold-finished bar increased by 52.7 percent from 1996 to 2000 and were 20.6 percent lower in interim 2001 than in interim 2000.[195] As discussed in section V of the injury opinion, purchasers generally perceived domestically-produced and imported cold-finished bar to be comparable products.

Both capacity and production of cold-finished bar from sources outside the United States increased during the period examined. Capacity grew from 1.6 million short tons in 1996 to 2.0 million

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[190] EC-Y-046 at LONG-13.

[191] Apparent U.S. consumption rose by 13.5 percent from 1996 to 1997 and by 4.5 percent from 1997 to 1998. It then fell by 3.6 percent from 1998 to 1999 but rose by 2.1 percent from 1999 to 2000. The overall increase between 1996 and 2000 was 16.6 percent. Apparent U.S. consumption was 22.6 percent lower in interim 2001 than it was in interim 2000. CR/PR at Table LONG-C-4.

[192] Minimill 201 Coalition Remedy Posthearing Brief at 15. Respondents did not provide any projections of overall demand levels for cold-finished bar.

[193] CR/PR at Table LONG-C-4.

[194] INV-Y-180, Cold-Finished Bar data.

[195] CR/PR at Table LONG-C-4.

short tons in 2000. Production grew from 1.2 million short tons in 1996 to 1.7 million short tons in 2000. Capacity utilization of producers outside the United States increased irregularly from 76.4 percent in 1996 to 84.3 percent in 2000. Capacity utilization was 81.6 percent in interim 2001 compared to 82.1 percent in interim 2000.[196]

Capacity outside the United States is projected to continue to grow in 2001 and 2002, rising from 2.0 million short tons in 2000 to 2.1 million short tons in 2001 and to 2.2 million short tons in 2002. These increases in capacity are projected despite projected declines in home market sales. Instead, exports to the United States and to other markets are expected to increase in 2001 and 2002.[197] As a result, capacity utilization is projected remain between 82 and 83 percent in 2001 and 2002.[198]

2. Industry Adjustment Plans

Pursuant to section 202(e)(5)(B)(ii) of the Trade Act of 1974, I have closely examined the adjustment plans submitted by U.S. producers and the commitments contained therein. These plans include capital expenses intended to enhance efficiency and reduce costs. Such projects would include modifying, refurbishing, installing, or replacing furnaces and installing new transformers, control systems, and other productive equipment. Several producers propose to resume a more normal scope and pace of operations by increasing productive shifts, rehiring laid off workers, or paying down debt. Another element of the adjustment plans is the installation of equipment designed to permit producers to offer new product lines, such as specialty types of cold-finished bar.[199] Finally, the Steel Manufacturers' Association outlined an extensive series of proposed studies on steelmaking, metallurgy, best practices, environmental issues, and energy issues. These are not limited to the products at issue. They appear to be qualitative in nature, rather than quantitative.[200]

Several Commissioners requested information in posthearing submissions regarding the impact of U.S. producers' adjustment plans on domestic capacity.[201] Domestic producers provided minimal information on capacity and the impact of capacity on their proposed adjustments, citing antitrust reasons. They imply that capacity increases will expand to meet increased demand. They observe that of all the companies producing bar products, only one bar producer specifically reported that it would increase capacity (***). They also refer to possible reductions by RTI. No attempt was made to quantify the effect of upgraded mills and possible new Nucor and Nucor Auburn mills (although these might entail purchases of existing facilities).[202]

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[196] CR/PR at Tables LONG-45, LONG-47.

[197] Exports have accounted about one-third or more of total foreign sales over the period examined, a share that is projected to increase substantially – to more than 40 percent – in 2001 and 2002.

[198] CR/PR at Table LONG-45. Mexico, which is excluded from this remedy, produces cold-finished bar ***.

[199] *See* Minimill 201 Coalition Remedy Prehearing Brief at 27-32; Minimill 201 Coalition Remedy Posthearing Brief, exs. 5, 6. ***.

[200] All adjustment plan information comes from the Minimill 201 Coalition's Remedy Prehearing Brief at exhibits 4-7.

[201] *See, e.g.*, Vice Chairman Okun's request to domestic producers to review their adjustment plans and evaluate each plan "in terms of its impact on domestic capacity." 11/8/01 Remedy Hearing Transcript at 533. *See also* requests made by Chairman Koplan (at 513-515) and Commissioner Hillman (at 561).

[202] Minimill 201 Coalition Remedy Posthearing Brief at 15-16.

3. Recommended Relief

I have examined the different forms of relief that the Commission is authorized to recommend, to determine which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition. I find that a quantitative restriction will best address the serious injury to the cold-finished bar industry and would be most effective in facilitating positive adjustment of that industry to import competition.

a. Proposals of the Parties

Domestic producers have requested that the Commission recommend imposition of a tariff for each bar product for a four-year period.[203] The USWA has proposed two remedies for long products, one of which involves a combination of a fixed tariff and an absolute quota, and the other of which involves a combination of a stratified tariff and an absolute quota. Respondents have generally argued that any recommended relief be limited to trade adjustment assistance and not include restrictions on imports. Respondents have indicated that if the Commission is inclined to recommend import restrictions, they should be in the form of quotas.[204]

b. Selection of Import Quota

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy the serious injury that has been substantially caused by increased imports. Several additional considerations lead me to recommend a quantitative restriction as the specific tool which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition in the cold-finished bar industry.

First, as noted above (and similar to market conditions for hot-rolled bar), demand for cold-finished bar has been relatively stable between 1997 and 2000 and, despite a sharp decrease in 2001, is expected to rebound in 2002. Thus, a quantitative restriction based on historic import levels during this period would eliminate a potential source of market volatility (import surges).

Second (and again similar to hot-rolled bar), the cold-finished bar market comprises both merchant bar and special bar quality steel bars. A quantitative restriction allows all market participants flexibility in both supply and sourcing decisions, permitting them to allocate resources in accordance with market signals.

Finally, a quantitative restriction offers a degree of certainty that cannot always be matched by other forms of import relief. The cold-finished bar market has experienced instability in the form of a sharp increases in import volume, especially in 2000. The relative certainty of a quantitative restriction on imports will provide U.S. producers with a period of stability in which they can implement their various plans to adjust to import competition.

As discussed above, I have considered a range of options that do not include direct import remedies. While many of these options do hold out promise for improving the state of the domestic industry and its workers, non-import related options do not fully address the need to remedy the serious injury and facilitate positive adjustment to import competition because they do not provide a "time-out" for U.S. producers to implement their adjustment plans.

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[203] The Minimill 201 Coalition advocated an initial duty rate for hot-rolled bar, cold-finished bar, and rebar of 50 percent. Ispat Inland advocated an initial duty rate of 40 percent for hot-rolled bar.

[204] EC-Y-046 at Table LONG-16.

c. Quota Amount

Section 203(e)(4) provides that any quantitative restriction

> shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

The statute requires that any quantitative restriction should be based on average import levels "in the most recent 3 years that are representative of imports." I believe that 1997-1999 are the most recent three years that are representative of imports of cold-finished bar.[205] Apparent U.S. consumption varied slightly over this period (ranging from 1.597 million short tons to 1.668 million short tons). Moreover, import levels were relatively stable (238,221 - 272,972 short tons) and were well below the injurious levels of 2000 (314,958 short tons).

The Commission's economic analysis indicates that a quota that restores imports approximately to the relative market shares prevailing in 1997-1999 would allow the domestic industry to increase prices modestly, increase sales quantities moderately, and generate meaningful additional revenue.[206] Accordingly, I recommend that any quota initially be established in the amount of 246,033 short tons for cold-finished bar imports from all non-excluded countries during the first year of the remedy period.[207] Pursuant to section 203(e)(2), I find that a quota in this amount would not exceed the amount necessary to remedy the serious injury that I have found to exist. Under the quota I am recommending, imports would continue to supply a large share of the U.S. market and would continue to be an important competitive force in the U.S. market.

d. Duration and Degressivity

I recommend that the quantitative restriction be imposed for a three-year period. In so doing, I have carefully considered the nature of the adjustment plans submitted by U.S. producers, the domestic industry's relatively strong level of capital expenditures through 1999, and the level of operating income generated through 1998. I have further considered that domestic industry is capital intensive in nature. The modernization of plants and equipment is a multi-year process, and will likely require time to complete plant and equipment design work, secure financing, manufacture the equipment, and once

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[205] It would be inappropriate to include 2000 in the "representative" period because this was the year in which the significant surge in imports occurred, which was a substantial cause of the domestic industry's serious injury. Based on the structure of the statute, I cannot conclude that this elevated, injurious level of imports is "representative." To include such imports might suggest an inconsistency between the injury determination and remedy recommendation because "representative" levels of imports should not be a substantial cause of serious injury. Moreover, I conclude that the clause "unless the President finds that the importation of a different quantity or value is clearly justified" in section 203(e)(4) is an exception to the general rule that the minimum quantitative restriction level be the "most recent 3 years that are representative of imports." Such an exception authorizes the President to set different quantitative restrictions, including a lower level, when conditions justify such action.

[206] EC-Y-051 at LONG-ALT-35.

[207] I have taken into account my recommendations for the exclusion of Mexico, Israel, Jordan, and CBERA and ATPA countries. As I do not recommend including such imports in my remedy, I have adjusted the overall amount of imports to be included accordingly.

installed, make the new equipment operational. I have also considered, however, the nature of my remedy, which I feel is most likely to provide U.S. producers with the market stability necessary to allow them to proceed expeditiously with their plans to adjust to import competition. Considering all of these factors, I find three years to be an appropriate duration for my proposed remedy. I further recommend that the President administer the quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

Section 203(e)(5) requires that quotas must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the quota should be expanded by three percent in each subsequent year that it is in effect. This rate of increase would permit a faster rate of growth in imports than has been demonstrated by apparent U.S. consumption, which in the aggregate has been stable since 1997.

e. Country Allocation

Having made affirmative findings with respect to imports of cold-finished bar from Canada under section 311(a) of the NAFTA Implementation Act, section 312(d) requires that any action proclaiming a quantitative restriction shall permit the importation of a quantity of the article that is not less than the quantity of such article imported during the most recent period that is representative of imports of such article, with allowance for reasonable growth. Having found that 1997-1999 is the representative period for cold-finished bar imports, I recommend that the President allocate no less than 73,261 short tons of cold-finished bar imports from Canada during the first year of the remedy period. Furthermore, based on my recommended rate of degressivity, I recommend that after the first year the quota for Canada should be expanded by three percent in each subsequent year that it is in effect.

Within the overall remaining quota, I recommend that the President establish country-specific allocations (other than those specifically excluded from the recommended action). The one exception to this country-specific allocation should be for the European Union because the industry in the EU is highly integrated. In making any such specific allocations, I believe that it would be appropriate for the President to take into account any disproportional growth and impact of imports.

f. Exclusion of Mexico, Israel, and CBERA and ATPA Countries[208]

Having made a negative finding under section 311(a) of the NAFTA Implementation Act with respect to imports from Mexico, I recommend that the President exclude Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel.

In light of the small volume of imports from ATPA countries in 2000 (1,462 short tons), the absence of imports from CBERA countries in 2000 and Israel in 2000,[209] I do not recommend including such countries in any import relief.

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[208] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. There have been no imports of cold-finished bar from Jordan during the period of investigation. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to the quota described above.

[209] CR/PR at Tables E-1 (ATPA), E-2 (CBERA), and E-3 (Israel).

g. Exclusion Requests

The Commission received numerous exclusion requests during the course of the investigation, including requests for the exclusion of certain forms of cold-finished bar. The Commission requested U.S. producers to provide detailed, product specific responses, including information regarding U.S. production volumes.[210] Based on my quantitative restriction remedy recommendation, the requested excluded products can enter the United States under the quota levels. Moreover, as indicated above, I recommend that the President implement a short-supply mechanism. Therefore, I would not recommend that the President grant any cold-finished bar exclusion requests.

However, if the President implements a remedy different than the one I propose (*i.e.*, tariffs or tariff-rate quotas), I note that the domestic cold-finished bar industry supplied the Commission with substantial information;[211] and based on this information, I make no specific recommendations on exclusion requests.

4. Short and Long-Term Effects of the Recommended Action

I believe that the quantitative restriction I am recommending would address the serious injury to the domestic cold-finished industry and would be the most effective actions in facilitating the efforts of this industry to make a positive adjustment to import competition. The quantitative restriction also would not exceed the amount necessary to remedy serious injury.

The quantitative restriction is intended to reduce the import volumes of cold-finished bar to levels existing before the recent import surge. As a result of reduced import volumes, the domestic industry should experience modest increases in shipments and prices. These in turn should increase the industry's revenues and permit the industry to earn reasonable operating profits. I observe that while the cold-finished bar industry experienced depressed operating performance in 1999 and 2000, and operating losses in 2001, it showed satisfactory operating margins during earlier portions of the period examined before being seriously injured as a result of the import surges. I acknowledge that the price increases would increase costs to consumers, but I believe any cost increases would be modest and unlikely to have adverse effects.

On a longer-term basis, the restored profitability of the domestic cold-finished bar industry should inspire investor confidence. This would permit the domestic producers to make the necessary investments to be able to implement the changes outlined in their adjustment plans and to enable the industries to adjust to future import competition.

5. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the negative performance trends experienced by the domestic cold-finished bar industry during the latter portions of the period examined would continue and worsen. In particular, imports would maintain or further increase their share of the pertinent U.S. markets. The continued competition would force domestic producers either to lose market share, cut prices, or both.

As a result, domestic producers would face further declines in their revenues and worsening financial performance. The depressed operating performance of the cold-finished bar industry in 1999 and 2000 and the operating losses witnessed in the cold-finished bar industry in 2001 would continue. Depressed performance or operating losses, in turn, would lead to bankruptcies and plant closures. Such

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[210] *See, e.g.*, 11/8/01 Remedy Hearing Transcript at 583-584 (Vice Chairman Okun); at 574 (Commissioner Devaney); and at 651 (Commissioner Bragg).

[211] Minimill 201 Coalition Remedy Posthearing Brief at exhibit 3.

bankruptcies and plant closures would lead to layoffs of workers in the industries, and adverse impacts on the communities in which the production facilities are located.

C. Carbon and Alloy Rebar

1. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act, I considered the following conditions of competition in the domestic and world markets, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for carbon and alloy rebar.

a. Demand Conditions

The sole use of rebar is structural reinforcement of cast concrete structures.[212] A majority of market participants indicate that there are no known substitutes for steel bar products, including rebar.[213]

Demand rose by 48.1 percent between 1996 and 2000, with double-digit gains thorough 1999. In 2000 and through the first half of 2001, however, demand has been essentially stable.[214]

The domestic producers presented two diverging projections of demand for rebar. One projection showed increases in demand for every year between 2001 and 2006. The second projection showed demand declining from 2001 to 2002, and then increasing in 2003 to a level below that of 2001.[215] Respondents submitted projections showing residential construction stagnant to declining from 2001 to 2002 but then rising from 2002 to 2003.[216]

b. Domestic Supply Conditions

There were 17 U.S. rebar producers that responded to the Commission's questionnaire. Capacity rose during each year of the period examined, increasing 26.6 percent from 1996 to 2000. Capacity was 2.5 percent higher in interim 2001 than in interim 2000. Capacity utilization rose irregularly during the period examined, increasing from its full-year low of 64.9 percent in 1996 to its full-year high of 68.5 percent in 2000. Reported capacity utilization was 68.1 percent in interim 2000 and 73.2 percent in interim 2001.[217]

The U.S. industry has sufficient capacity to supply the entire U.S. market. Nominal domestic capacity exceeded apparent U.S. consumption by 19.1 percent in 2000.[218] Thus, U.S. rebar producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

c. Import Supply Conditions

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[212] EC-Y-046 at LONG-14.

[213] EC-Y-046 at LONG-13.

[214] Apparent U.S. consumption increased during each full year during the period examined, rising 48.1 percent from 1996 to 2000. Apparent U.S. consumption was 2.0 percent higher in interim 2001 than in interim 2000. CR/PR at Table LONG-C-5.

[215] Minimill 201 Coalition Remedy Posthearing Brief at 15.

[216] Turkish Respondents Remedy Posthearing Brief, ex. 5.

[217] CR/PR at Table LONG-C-5.

[218] CR/PR at Table LONG-C-5.

During the period examined, there were rebar imports from over 30 different countries, although not every country imported product in every year.[219] Imports of rebar from all sources increased by 187.0 percent between 1996 and 2000, while imports from sources other than Canada and Mexico increased by 434.8 percent from 1996 to 2000. Rebar imports were 13.5 percent lower in interim 2001 than in interim 2000.[220] Rebar imports from Turkey became subject to provisional antidumping duties in October 1996 and have been the subject of an antidumping order since April 1997. Rebar imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine became subject to provisional antidumping duties in January 2001 and have been the subject of antidumping orders since September 2001. As discussed in section V.D.3. of the injury opinion, rebar is a commodity product sold largely on the basis of price.

Both capacity and production of rebar from sources outside the United States increased during the period examined, although capacity did not increase during every year of the period. Capacity grew from 24.0 million short tons in 1996 to 29.6 million short tons in 2000, while production grew from 19.6 million short tons in 1996 to 25.6 million short tons in 2000. Capacity utilization of producers outside the United States increased irregularly from 81.7 percent in 1996 to 86.5 percent in 2000. Capacity utilization was 78.2 percent in interim 2000 and 81.1 percent in interim 2001.[221]

Capacity outside the United States is projected to dip to approximately 1999-levels (28 million short tons) in 2001 and 2002 after growing rapidly between 1996 and 2000. These reported decreases in capacity are projected in light of reduced domestic and export sales that are expected to depress actual production levels.[222] As a result, capacity utilization is projected to decline to a period lows of 81.2 percent in 2001 and remain at 82.8 percent in 2002.[223]

2. Industry Adjustment Plans

Pursuant to section 202(e)(5)(B)(ii) of the Trade Act of 1974, I have closely examined the adjustment plans submitted by U.S. producers and the commitments contained therein. These plans include capital expenses intended to enhance efficiency and reduce costs. Such projects would include modifying, refurbishing, replacing, or installing a range of productive equipment. Several producers propose to resume a more normal scope and pace of operations by increasing productive shifts, rehiring laid off workers, or paying down debt. Another element of the adjustment plans is the installation of equipment designed to permit producers to offer new product lines, such as stainless or corrosion-resistant rebar.[224] Finally, the Steel Manufacturers' Association outlined an extensive series of proposed studies on steelmaking, metallurgy, best practices, environmental issues, and energy issues. These are not limited to the products at issue. They appear to be qualitative in nature, rather than quantitative.[225]

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[219] INV-Y-180, Rebar data.

[220] CR/PR at Table LONG-C-5.

[221] CR/PR at Table LONG-48.

[222] Exports accounted approximately one-quarter of total foreign sales over the period examined, although this share began to dip beginning in 2001.

[223] CR/PR at Table LONG-48. Canada, which is excluded from this remedy, exports virtually no rebar to the United States. Mexico, which is also excluded from this remedy, projects a decline in capacity, although exports to the United States are projected to increase, approaching levels in 1997.

[224] ***. *See* Minimill 201 Coalition Prehearing Remedy Brief at 27-32; Minimill 201 Coalition Remedy Posthearing Brief, exs. 5, 6.

[225] All adjustment plan information comes from the Minimill 201 Coalition's Remedy Prehearing Brief at exhibits 4-7.

Several Commissioners requested information in posthearing submissions regarding the impact of U.S. producers' adjustment plans on domestic capacity.[226] Domestic producers provided minimal information on capacity and the impact of capacity on their proposed adjustments, citing antitrust reasons. They observe that of all the companies producing bar products, only one bar producer specifically reported that it would increase capacity (***). They imply any capacity increases will expand to meet increased demand.[227]

3. Recommended Relief

I have examined the different forms of relief that the Commission is authorized to recommend, to determine which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition. I find that a quantitative restriction will best address the serious injury to the rebar industry and would be most effective in facilitating positive adjustment of that industry to import competition.

a. Proposals of the Parties

Domestic producers have requested that the Commission recommend imposition of a tariff for each bar product for a four-year period.[228] The USWA has proposed two remedies for long products, one of which involves a combination of a fixed tariff and an absolute quota, and the other of which involves a combination of a stratified tariff and an absolute quota. Respondents have generally argued that any recommended relief be limited to trade adjustment assistance and not include restrictions on imports. Respondents have indicated that if the Commission is inclined to recommend import restrictions, they should be in the form of quotas.[229]

b. Selection of Import Quota

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy the serious injury that has been substantially caused by increased imports. Several additional considerations lead me to recommend a quantitative restriction as the specific tool which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition in the rebar industry.

First, as noted above, demand for rebar has begun to stabilize. Future demand is uncertain, as different market participants forecast stagnation, lower levels, and higher levels. As with hot-rolled bar and cold-finished bar, I conclude that a quantitative restriction based on historic import levels during this period would eliminate a potential source of market volatility (import surges).

Second, a quantitative restriction offers a degree of certainty that cannot always be matched by other forms of import relief. The rebar market has experienced instability in the form of multiple sharp increases in import volume. The relative certainty of a quantitative restriction on imports will provide

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[226] *See, e.g.*, Vice Chairman Okun's request to domestic producers to review their adjustment plans and evaluate each plan "in terms of its impact on domestic capacity." 11/8/01 Remedy Hearing Transcript at 533. *See also* requests made by Chairman Koplan (at 513-515) and Commissioner Hillman (at 561).

[227] Minimill 201 Coalition Remedy Posthearing Brief at 15-16.

[228] The Minimill 201 Coalition advocated an initial duty rate for hot-rolled bar, cold-finished bar, and rebar of 50 percent. Ispat Inland advocated an initial duty rate of 40 percent for hot-rolled bar.

[229] EC-Y-046 at Table LONG-16.

U.S. producers with a period of stability in which they can implement their various plans to adjust to import competition.

Finally, I note that rebar imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine became subject to provisional antidumping duties in January 2001 and have been the subject of antidumping orders since September 2001. Because these orders impose additional duties to offset unfair sales practices, I find it appropriate to recommend a different form of remedy to offset the serious injury substantially caused by rebar imports from these and, increasingly, other countries.

As discussed above, I have considered a range of options that do not include direct import remedies. While many of these options do hold out promise for improving the state of the domestic industry and its workers, non-import related options do not fully address the need to remedy the serious injury and facilitate positive adjustment to import competition because they do not provide a "time-out" for U.S. producers to implement their adjustment plans.

c. Quota Amount

Section 203(e)(4) provides that any quantitative restriction

> shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

The statute requires that any quantitative restriction should be based on average import levels "in the most recent 3 years that are representative of imports." I believe that 1997-98 and 2000 are the most recent three years that are representative of imports of rebar.[230] Apparent U.S. consumption generally increased over this period (ranging from 6.1 million short tons in 1997 to 7.1 million short tons in 1998 and 8.1 million short tons in 2000), as it did over most of the period examined. Import levels, however, did not exhibit the combination of a substantial increase in volume and a steep decline in average unit values, as was the case in 1999.[231]

The Commission's economic analysis indicates that a quota that restores imports approximately to the relative market shares prevailing in 1997-1998 would allow the domestic industry to increase prices modestly, increase sales quantities moderately, and generate meaningful additional revenue.[232] Accordingly, I recommend that any quota initially be established in the amount of 1,054,266 short tons

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[230] It would be inappropriate to include 1999 in the "representative" period because this was the year in which the significant surge in imports occurred, which was a substantial cause of the domestic industry's serious injury. Based on the structure of the statute, I cannot conclude that this elevated, injurious level of imports is "representative." To include such imports might suggest an inconsistency between the injury determination and remedy recommendation because "representative" levels of imports should not be a substantial cause of serious injury. Moreover, I conclude that the clause "unless the President finds that the importation of a different quantity or value is clearly justified" in section 203(e)(4) is an exception to the general rule that the minimum quantitative restriction level be the "most recent 3 years that are representative of imports." Such an exception authorizes the President to set different quantitative restrictions, including a lower level, when conditions justify such action.

[231] In 1999, rebar imports rose by 49.1 percent, and their average unit value fell by 23.6 percent (after a period of marked stability between 1996 and 1998, when average unit value ranged from $270 per short tons to $278 short tons). CR/PR at Table LONG-C-5.

[232] EC-Y-051 at LONG-ALT-35.

for rebar imports from all non-excluded countries during the first year of the remedy period.[233] Pursuant to section 203(e)(2), I find that a quota in this amount would not exceed the amount necessary to remedy the serious injury that I have found to exist. Under the quota I am recommending, imports would continue to supply a large share of the U.S. market and would continue to be an important competitive force in the U.S. market.

d. Duration and Degressivity

I recommend that the quantitative restriction be imposed for a three-year period. In so doing, I have carefully considered the nature of the adjustment plans submitted by U.S. producers, the domestic industry's relatively strong level of capital expenditures through 1997, and the level of operating income generated through 1999. I have further considered that domestic industry is capital intensive in nature. The modernization of plants and equipment is a multi-year process, and will likely require time to complete plant and equipment design work, secure financing, manufacture the equipment, and once installed, make the new equipment operational. I have also considered, however, the nature of my remedy, which I feel is most likely to provide U.S. producers with the market stability necessary to allow them to proceed expeditiously with their plans to adjust to import competition. Considering all of these factors, I find three years to be an appropriate duration for my proposed remedy. I further recommend that the President administer the quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

Section 203(e)(5) requires that quotas must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the quota should be expanded by three percent in each subsequent year that it is in effect. This rate of increase would permit a faster rate of growth in imports than has been demonstrated by apparent U.S. consumption in recent years, which in the aggregate has been stable since 2000.

e. Country Allocation

Within the overall quota, I recommend that the President establish country-specific allocations (other than those specifically excluded from the recommended action). The one exception to this country-specific allocation should be for the European Union because the industry in the EU is highly integrated. In making any such specific allocations, I believe that it would be appropriate for the President to take into account any disproportional growth and impact of imports.

f. Exclusion of Canada, Mexico, Israel, and CBERA and ATPA Countries[234]

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[233] I have taken into account my recommendations for the exclusion of Canada, Mexico, Israel, Jordan, and CBERA and ATPA countries. As I do not recommend including such imports in my remedy, I have adjusted the overall amount of imports to be included accordingly.

[234] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. There have been no imports of rebar from Jordan during the period of investigation. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to the quota described above.

Having made negative findings under section 311(a) of the NAFTA Implementation Act with respect to imports from Canada and Mexico, I recommend that the President exclude Canada and Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel. In light of the minuscule volume of imports from CBERA countries in 2000 (1,751 short tons), and the absence of imports from ATPA countries and Israel in 2000,[235] I do not recommend including such countries in any import relief.

g. Exclusion Requests

The Commission received numerous exclusion requests during the course of the investigation. The Commission requested U.S. producers to provide detailed, product specific responses, including information regarding U.S. production volumes.[236] Based on my quantitative restriction remedy recommendation, the requested excluded products can enter the United States under the quota levels. In contrast to hot-rolled bar and cold-finished bar, however, the Commission has not received extensive requests for exclusions of specific forms of rebar.[237] Moreover, as indicated above, I recommend that the President implement a short-supply mechanism. Therefore, I would not recommend that the President grant any rebar exclusion requests.

Even if the President implements a remedy different than the one I propose (*i.e.*, tariffs or tariff-rate quotas), the record in this investigation would not lead me to recommend that the President grant an exclusion to specific forms of rebar.

4. Short and Long-Term Effects of the Recommended Action

I believe that the quantitative restriction I am recommending would address the serious injury to the domestic rebar industry and would be the most effective actions in facilitating the efforts of this industry to make a positive adjustment to import competition. The quantitative restriction also would not exceed the amount necessary to remedy serious injury.

The quantitative restriction is intended to reduce the import volumes of rebar to levels existing before the recent import surge. As a result of reduced import volumes, the domestic industry should experience modest increases in shipments and prices. These in turn should increase the industry's revenues and permit the industry to earn reasonable operating profits. I observe that while the rebar industry experienced operating losses during 2000, it showed satisfactory operating margins during earlier portions of the period examined before being seriously injured as a result of the import surges. I acknowledge that the price increases would increase costs to consumers, but I believe any cost increases would be modest and unlikely to have adverse effects.

On a longer-term basis, the restored profitability of the domestic rebar industry should inspire investor confidence. This would permit the domestic producers to make the necessary investments to be able to implement the changes outlined in their adjustment plans and to enable the industries to adjust to future import competition.

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[235] CR/PR at Tables E-1 (ATPA), E-2 (CBERA), and E-3 (Israel).

[236] *See, e.g.*, 11/8/01 Remedy Hearing Transcript at 583-584 (Vice Chairman Okun); at 574 (Commissioner Devaney); and at 651 (Commissioner Bragg).

[237] *See* EC-Y-046 at Table LONG-16.

5. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the negative performance trends experienced by the domestic rebar industry during the latter portions of the period examined would continue and worsen. In particular, imports would maintain or further increase their share of the pertinent U.S. markets. The continued competition would force domestic producers either to lose market share, cut prices, or both.

As a result, domestic producers would face further declines in their revenues and worsening financial performance. The operating losses witnessed in the rebar industry in 2000 would continue at increased levels. Continued operating losses, in turn, would accelerate the rate of bankruptcies and lead to plant closures. Such bankruptcies and plant closures would lead to layoffs of workers in the industries, and adverse impacts on the communities in which the production facilities are located.

V. CARBON AND ALLOY TUBULAR PRODUCTS

A. Carbon and Alloy Welded Pipe (Other Than OCTG)

1. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act, I considered the following conditions of competition in the domestic and world markets, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for carbon and alloy welded pipe.

a. Demand Conditions

Demand for welded pipe is driven by a range of industrial and other applications requiring tubular products for the conveyance of liquids or gases or for structural / mechanical applications. There are a range of welded pipe products produced and sold in the United States (including line, standard, structural, and mechanical), but comparable products are available for most varieties of pipe from multiple sources, both foreign and domestic.[238] A majority of market participants indicate that there few practical substitutes for welded pipe products.[239]

Both imported and domestic welded pipe are produced to defined API and ASTM industry standards.[240] The record shows that welded pipe is sensitive to price competition, and imported and domestic welded pipe are interchangeable. Thus, in terms of "specialized" products, the most distinctive are certain products in the line pipe category (thick-walled pipe outside most if not all U.S. producers' ability to produce).[241]

While demand increased by 19.3 percent between 1996 and 2000, this increase occurred almost entirely between 1996 and 1998.[242] Aggregate demand was stable thereafter, although different components of demand (such as construction, automotive, oil & gas) do exhibit divergent trends.[243]

The domestic producers estimate that, across the whole range of welded tubular products, "demand in the second half is probably down by approximately 20 percent. In 2002, demand is likely to

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[238] EC-Y-046 at TUBULAR-11-14.

[239] EC-Y-046 at TUBULAR-10.

[240] CR at TUBULAR-60 / PR at TUBULAR-48.

[241] *See, e.g.*, EC-Y-046 at TUBULAR-8-9.

[242] CR/PR at Table TUBULAR-C-4.

[243] *See, e.g.*, EC-Y-046 at TUBULAR-8-9.

remain below 15 or 20 percent below 2000 levels."[244] Japanese Respondents, in contrast, submitted an estimate that, at least for welded line pipe, demand would "grow by roughly three percent per year for the foreseeable future."[245] Korean Respondents also addressed likely U.S. demand levels, observing that demand for welded standard pipe generally follows overall trends in the economy, which has been projected to grow at rates between 1.4 percent and 3.5 percent between 2001 and 2005.[246]

b. Domestic Supply Conditions

There were 32 U.S. welded pipe producers that responded to the Commission's questionnaire. Capacity rose during each year of the period examined, increasing 22.0 percent from 1996 to 2000, consistent with an increase of 19.3 percent in apparent U.S. consumption.[247] Capacity utilization fluctuated during the period examined, with levels of approximately 70 percent between 1996 and 1998, before declining to 63.8 percent in 1999, 56.2 percent in 2000, and 53.2 percent in the first half of 2001.

The U.S. industry has sufficient capacity to supply the entire U.S. market. Nominal domestic capacity exceeded apparent U.S. consumption by 16.9 percent in 2000, although U.S. producers require available capacity not only to meet the needs of the U.S. market but also export markets.[248] Thus, U.S. welded pipe producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

Several pipe facilities opened or closed over the period examined: Both Laclede and Excaliber have closed,[249] while several firms have added new facilities (including LTV/Marion, Nova Steel, Prudential Steel, and Hanna).[250] The recent closure of Laclede alone in July 2001 will reduce domestic available capacity by more than *** short tons, based on the company's sales history.[251]

c. Import Supply Conditions

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[244] Committee on Pipe and Tube Imports' Remedy Posthearing Brief at 4. These estimates appear to be based on general perceptions regarding the relative strength of the general economy. Domestic producers are "hopeful" for a return to healthy levels of demand in 2003 or 2004. *Id.* at 4-5.

[245] Japanese Respondents' Remedy Posthearing Brief at 23. These estimates are based on a study by Spears & Associates that draws upon an extensive compilation of pipeline projects underway or anticipated in 2002 and beyond, as well as upon growth expectations published by the U.S. Energy Information Administration. *Id.* at 23 and at exhibits 3 and 4.

[246] Korean Respondents' Remedy Posthearing Brief, ex. 1 at 19. These estimates are from Oxford Economic Forecasting, which projects 1.4 percent growth in demand in 2001; 1.6 percent growth in 2002; 3.5 percent growth in 2003; 3.3 percent in on 2004; and 2.9 percent in 2005.

[247] CR/PR at Table TUBULAR-C-4 . Likewise, domestic capacity was 0.5 percent higher in the first half of 2001, in line with the modest (0.2 percent) increase in apparent U.S. consumption. *Id.*

[248] Indeed, as recently as 1998, exports of welded pipe exceeded 475,000 short tons. CR/PR at Table TUBULAR-C-4 .

[249] *See, e.g.*, testimony of James Feeney, consultant on international trade issues for Wheatland Tube Company (11/8/01 Remedy Hearing Transcript at 724).

[250] CR/PR at Table OVERVIEW-11.

[251] Based on the company's questionnaire response, Laclede's net sales exceeded *** short tons in 1996 and 1997.

During the period examined, there were welded pipe imports from over 60 different countries, although not every country imported product in every year.[252] Imports of welded pipe from sources other than Canada and Mexico increased by 80.7 percent from 1996 to 2000 and were 20.2 percent higher in interim 2001 than in interim 2000.[253] Imports of certain welded pipe are subject to antidumping duty and countervailing duty orders. The orders cover only a limited number of welded pipe products and, of those, only imports from a limited number of countries. These orders primarily cover standard pipe, but also cover certain structural tubing as well. The orders have been in place throughout the period examined in this investigation.[254] The orders only offset the margins of dumping and amounts of foreign subsidies. They did not preclude the surge in imports in 2000 and continued high level of imports in 2001. Although the outstanding orders have been in place throughout the period examined, an antidumping order was placed on Japanese line pipe in the period following the injury vote.[255] Investigations remain pending against line pipe from Mexico and standard pipe from China.[256]

Capacity to produce welded pipe from sources outside the United States other than Canada and Mexico increased overall during the period examined, although not during every year of the period. Production, however, declined, largely as a result of steep reductions in home market sales (although after 1998, even exports to markets other than the United States decreased). Capacity utilization of producers outside the United States, Mexico, and Canada decreased steadily from 77.5 percent in 1996 to 71.5 percent in 2000. Capacity utilization was also 71.5 percent in interim 2001.[257]

Capacity to produce welded pipe from sources outside the United States other than Canada and Mexico is projected to grow in both 2001 and 2002; indeed, the projected level of capacity in 2002 (17.1 million short tons) will approach the peak levels reported in 1998 (17.4 million short tons) and exceed levels reported for all other years during the period examined. Production levels also are projected to rise to their highest levels during the period examined (15.2 million short ton in 2001 and 14.7 million short tons in 2002). These projected increases reflect the expectations of sharp increases in exports, both to the United States and to other markets.[258]

2. Industry Adjustment Plans

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[252] INV-Y-180, Table G-20.

[253] CR/PR at Table TUBULAR C-4.

[254] CR/PR at Table OVERVIEW-1.

[255] The order was issued by the U.S. Department of Commerce in November 2001 following receipt of an affirmative Commission injury determination. *Certain Welded Large Diameter Line Pipe From Japan*, Inv. No. 731-TA-919 (Final), USITC Pub. 3464 (Nov. 2001).

[256] The Commission made affirmative determinations in the preliminary phases of both investigations. *Certain Welded Large Diameter Line Pipe From Japan and Mexico*, Inv. Nos. 731–TA-919-920 (Preliminary), USITC Pub. 3400 (March 2001); and *Circular Welded Non-Ally Steel Pipe From China, Indonesia, Malaysia, Romania, and South Africa*, Invs. Nos. 731-TA-943-947 (Preliminary), USITC Pub. 3439 (July 2001). The Commission made negative determinations in the preliminary phase with respect to imports from Indonesia, Malaysia, Romania, and South Africa; as a result, the investigations with respect to those countries were terminated.

[257] CR/PR at Tables TUBULAR-30-32. Similarly, production and capacity in all sources outside the United States declined from peak levels in 1999 and 2000, even though exports to the United States increased. Capacity utilization fell from 73-74 percent to 70 percent. CR/PR at Table TUBULAR-30.

[258] CR/PR at Tables TUBULAR-30-32. Similarly, production and capacity in all sources outside the United States is projected to reach new highs in 2001 and 2002 as a result of increased exports. CR/PR at Table TUBULAR-30.

Pursuant to section 202(e)(5)(B)(ii) of the Trade Act of 1974, I have closely examined the adjustment plans submitted by U.S. producers and the commitments contained therein. Should import relief be granted, the welded pipe industry other than LTV-Copperweld collectively intends to invest approximately $*** million over the period of relief. U.S. producers intend to start or finish capital spending to improve efficiency and lower costs, expand the range of products produced, rebuild and re-train labor forces, and increase capacity. Several parties noted difficulties in obtaining capital or engaging in lengthy upgrade in the current price environment. Other plans included idling of some plants to reduce freight costs, taking some capabilities in-house that are currently outsourced at higher cost, improving integration with distributors in order to permanently reduce inventory levels, and re-starting currently idled capacity.[259] Importantly, LTV-Copperweld provided a separate adjustment plan, indicating ***.[260]

Several Commissioners requested information in posthearing submissions regarding the impact of U.S. producers' adjustment plans on domestic capacity.[261] Domestic pipe producers provided no aggregate information on the impact of capacity on their proposed adjustments. Indeed, rather than address the issue directly, domestic pipe producers simply asserted that "additional capacity in relation to the market is not as important as it would be on the flat-rolled side, because the pipe and tube industry does not have the fixed costs associated with capacity on the hot end that require continuous operations to recover costs."[262]

3. Recommended Relief

I have examined the different forms of relief that the Commission is authorized to recommend, to determine which would be most effective in remedying the threat of serious injury and facilitating positive adjustment to import competition. I find that a tariff-rate quota will best address the threat of serious injury to the welded pipe industry and would be most effective in facilitating positive adjustment of that industry to import competition.

a. Proposals of the Parties

The Committee on Pipe and Tube Imports and its associated U.S. producers advocate an increase in tariff rates of 50 percent on welded pipe, an action which they calculate would increase domestic market share by more than 14 percentage points.[263] U.S. producer Bethlehem likewise advocates an increase in tariff rates of 40-50 percent on welded pipe.[264] Japanese Respondents advocate at most a country-specific quota at 2000 import levels to keep imports at "standstill" levels.[265] Korean Respondents advocate no import relief for large diameter welded line pipe, and at most a quota based on

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[259] The more significant proposed investments include a ***. Brief on industry commitments filed Oct. 29, 2001, by the Committee on Pipe and Tube Imports, et al., at 8-15.

[260] Committee on Pipe and Tube Imports' Remedy Posthearing Brief, et al, at exh. 1.

[261] *See, e.g.*, Vice Chairman Okun's request (Remedy Hearing Transcript at 784) and Commissioner Devaney's request (Remedy Hearing Transcript at 767).

[262] Committee on Pipe and Tube Imports' Remedy Posthearing Brief, et. al., at 6.

[263] Posthearing Remedy Brief of the Committee on Pipe and Tubes, et. al., at 9.

[264] Bethlehem's Remedy Posthearing Brief at 1.

[265] Japanese Respondents' Remedy Posthearing Brief at 1.

2001 imports for other forms of welded pipe.[266] The European Steel Tube Association (ESTA) advocates no import relief for large diameter welded line pipe (considered separately from other forms of welded pipe).[267] Turkish Respondents advocate no import relief for standard pipe (considered separately from other forms of welded pipe). If the Commission recommends an import restraint, they recommend a global quota, at a "standstill" level based on 2001.[268]

b. Selection of Tariff-Rate Quota

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy the serious injury that has been substantially caused by increased imports. I find, however, that a tariff-rate quota will best address the threat of serious injury to the welded pipe industry and would be most effective in facilitating positive adjustment of that industry to import competition. As discussed in greater detail below, a carefully-structured tariff-rate quota would not place an absolute cap on imports, would not impose additional costs on all imports regardless of volume, and would minimize market distortion and consumer costs. Thus, I find that a tariff-rate quota is particularly appropriate in this case, in order to restrain the significant growth in import volume that has contributed to an erosion of domestic industry performance and poses an imminent threat of serious injury to a U.S. industry producing price-sensitive products.

I have considered other measures to remedy the threat of serious injury posed by increased imports of welded pipe. As noted in my discussion of remedies for certain flat-rolled, long, and stainless steel products, quantitative restrictions can be a useful tool in addressing increased imports that are a substantial cause of serious injury. Likewise, such a remedy could produce a useful solution to a threat of injury, as it can provide stable market conditions by restricting imports to existing levels. Given the diverse nature of demand in the U.S. welded pipe market, in particular the divergent trends in demand for pipeline projects and for other applications, I find that the flexibility of a tariff-rate quota makes it a better remedy. A tariff-rate quota provides for over-quota shipments in a timely fashion (that is, without the need to resort to a short-supply mechanism). The timeliness and flexibility of this remedy, therefore, is better suited for a market in which one component of demand includes welded pipe used in large-scale pipeline projects.

I have also considered increased tariffs, which arguably offer the greatest degree of flexibility in response to imports. Given my finding of threat, however, I do not view increased tariffs as an appropriate form of remedy, as the additional duties are applied to all imports, regardless of volume.

Finally, as discussed above, I have considered a range of options that do not include direct import remedies. While many of these options do hold out promise for improving the state of the domestic industry and its workers, non-import related options do not fully address the need to remedy the threat of serious injury and facilitate positive adjustment to import competition because they do not provide a "time-out" for U.S. producers to implement their adjustment plans.

c. Tariff-Rate Quota Amount

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[266] Korean Respondents' Remedy Posthearing Brief at 1-2. It should be noted that the Korean Respondents' proposal, by their calculations, would result in a lower level of "other" welded pipe (pipe other than line pipe) than if they had used 2000 as their basis for calculating import levels. *See id.* at exhibit 2.

[267] ESTA's Remedy Posthearing Brief at 11. Williams and CSO take a similar position, based on their letter of November 14, 2001.

[268] Alternatively, the Commission could recommend a standstill level for standard pipe, regardless of what it recommend for other forms of pipe. In no case should the Commission recommend a quota more restrictive than 90 percent. Turkish Respondent's Remedy Posthearing Remedy Brief at 2.

Unlike the quantitative restrictions that I have recommended for certain flat, long, and stainless steel products, a tariff-rate quota does not require the identification of a multi-year "representative period." In considering the appropriate amount of import relief under a tariff-rate quota, however, I have taken into account a number of factors. Most importantly, I found increased imports of welded pipe to be a substantial cause of threat of serious injury to the domestic industry. Therefore, although the performance of the domestic industry clearly weakened in 2000, while imports increased markedly, I have focused on the volume of imports for consumption in 2000.[269]

I have also taken into account the pendency of antidumping duty investigations on large diameter line pipe from Japan and Mexico, and on standard pipe from China. Each of these investigations, however, covers only a portion of the total line of welded pipe products that my remedy recommendations must address, thus allowing the respective suppliers some flexibility in terms of their product offerings in the United States. Accordingly, I did not adjust the overall amount of imports to be covered by my proposed remedy.

Finally, I seriously considered arguments regarding short supply and related arguments as to demand trends. These arguments focused primarily on large diameter welded line pipe,[270] but not exclusively.[271] Because I have considered demand issues in the aggregate, rather than with respect to each individual type of welded pipe, I did not adjust the overall amount of imports to be covered by my proposed remedy (since apparent U.S. consumption has, in the aggregate, remained stable since 1998). Moreover, in light of my proposal as to the manner of treating over-quota entries of large diameter line pipe *not* produced in the United States (*i.e.*, entry without additional tariffs), I did not adjust the overall amount of imports to be covered by my proposed remedy.

Accordingly, I recommend that any tariff-rate quota initially be established in the amount of 1,400,443 short tons for welded pipe imports from all non-excluded countries during the first year of the remedy period.[272] Imports in excess of this amount would be subject to increased duties of 20 percent in the first year, 17 percent in the second year, and 14 percent in the third year.[273] Pursuant to section 203(e)(2), I find that a tariff-rate quota in this amount would not exceed the amount necessary to remedy the threat of serious injury that I have found to exist. Under the tariff-rate quota I am recommending, imports would continue to supply a large share of the U.S. market and would continue to be an important competitive force in the U.S. market.

d. Duration and Degressivity

I recommend that the tariff-rate quota be imposed for a three-year period. In so doing, I have carefully considered the nature of the adjustment plans submitted by U.S. producers, the domestic

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[269] The Commission collected data through the first half of 2001. Because our data for 2001 is partial, I do not feel it appropriate to focus exclusively on a sixth-month period.

[270] *See, e.g.*, Posthearing Remedy Brief of BP America Inc. and Posthearing Remedy Brief of Brazilian Respondent Confab.

[271] *See, e.g.*, ESTA and Tubeurop's Remedy Posthearing Brief and ESTA and Mannesmann's Remedy Posthearing Brief.

[272] I have taken into account my recommendations for the exclusion of Canada, Mexico, Israel, Jordan, and CBERA and ATPA countries. As I do not recommend including such imports in my remedy, I have adjusted the overall amount of imports to be included accordingly.

[273] Section 203(e)(3) provides that

> No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

industry's relatively strong level of capital expenditures through 1998, and the level of operating income generated through 1999. I have further considered that the domestic industry is capital intensive in nature. The modernization of plants and equipment is a multi-year process, and will likely require time to complete plant and equipment design work, secure financing, manufacture the equipment, and once installed, make the new equipment operational. I have also considered, however, the nature of my remedy, which I feel is most likely to provide U.S. producers with the market stability necessary to allow them to proceed expeditiously with their plans to adjust to import competition. Considering all of these factors, I find three years to be an appropriate duration for my proposed remedy.

Section 203(e)(5) requires that tariff-rate quotas must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the in-quota level of the tariff-rate quota should be expanded by three percent in each subsequent year that it is in effect. I also recommend that after the first year the over-quota tariff increase be reduced by three percentage points in each subsequent year that it is in effect. This additional liberalization of import relief is consistent with the liberalization included in my proposed relief for upstream products, particularly hot-rolled steel. This rate of liberalization would permit a faster rate of growth in imports than has been demonstrated by apparent U.S. consumption in recent years, which in the aggregate has been stable since 1998.

e. Country Allocation

Within the overall tariff-rate quota, I do not propose administering the relief on a country-specific basis. While this recommendation stands in contrast to my approach to that employed in my quota-based remedies, the reasoning is straightforward. I have taken into consideration arguments raised by the parties regarding both the different nature of demand for line pipe and for other forms of welded pipe and regarding potential scenarios that could lead to supply disruptions for certain types of pipe. To mitigate such concerns, therefore, I have opted to recommend a remedy with a greater degree of flexibility. Thus, to the extent that imports of welded pipe are required to address specific supply or demand considerations, a global tariff-rate quota allows for the greatest number of potential alternative suppliers.

f. Exclusion of Canada, Mexico, Israel, and CBERA and ATPA Countries[274]

Having made negative findings under section 311(a) of the NAFTA Implementation Act with respect to imports from Canada and Mexico, I recommend that the President exclude Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel. In light of the modest level of imports from ATPA countries in 2000 (16,869 short tons), the

[274] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. There have been no imports of welded pipe from Jordan during the examined. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to the tariff-rate quota described above.

minor volume of imports from CBERA countries in 2000 (3,373 short tons), and the virtual absence of imports from Israel in 2000,[275] I do not recommend including such countries in any import relief.

g. Exclusion Requests

Finally, with respect to specific product exclusions, I have considered a variety of exclusion requests offered by the parties. Based on the information gathered, I am recommending to the President that he address certain large diameter and thick-walled welded line pipe.[276] These products appear to be produced in the United States in very limited quantities, if at all, and have been excluded from recent antidumping proceedings.[277] Furthermore, the primary U.S. producers of welded large diameter line pipe do not object to the exclusion of these products.[278] Accordingly, I recommend that the following products be counted against tariff-rate quota fill rates but not be assessed increased tariffs for over-quota entries:

Certain large diameter line pipe: Carbon and alloy welded line pipe –

- Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
- Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
- Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X-80 or greater.
- Having an outside diameter of 64 inches or greater.

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[275] CR/PR at Tables E-1 (ATPA), E-2 (CBERA), and E-3 (Israel).

[276] *See, e.g.*, Posthearing Remedy Brief of BP America Inc. at 5; Posthearing Remedy Brief of Confab at 3-4; and ESTA Remedy Posthearing Brief at 18-21. Williams and CSO also request exclusions for these products in their letter of November 14, 2001.

[277] The import volume at issue are as follows, based on data submitted in this investigation: ***. *See* Japanese Respondents' Injury Posthearing Brief at exh. 5 and ESTA's Injury Posthearing Brief at exh. 1.

[278] *See, e.g.*, Posthearing Remedy Brief of the Committee on Pipe and Tubes, et. al., at 14 (American Steel Pipe and Stupp Corp.); ESTA's Remedy Posthearing Brief at 20 (Berg); telephone interviews by Commission staff with *** of December 5, 2001 (***).

To the extent possible, I have also considered additional product exclusion requests. While certain requests may have merit,[279] because sufficient information was not provided, I am unable to fully evaluate the ability of the domestic industry to produce these products in commercially meaningful volumes.

4. Short and Long-Term Effects of the Recommended Action

I believe that the proposed tariff-rate quota will address the threat of serious injury to the domestic welded tubular industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. This remedy does not exceed the amount necessary to prevent serious injury, and minimizes disruption to the market and consumer costs.

The remedy is intended to stabilize domestic prices and halt deterioration of profitability, as the industry continues its investment efforts to modernize production facilities, add new product lines, and help the industry gain access to credit. The remedy gives the industry the time needed to make positive adjustment efforts while not excluding imports from the domestic market.

Based on 2000 data, the recommended tariff-rate quota on welded tubular products will initially leave the price of the domestic product, sales volume, and sales revenue unchanged. If import volumes increase beyond 2000 levels, then the tariff-rate quota will begin to take effect, stabilizing prices without preventing the entry of products in short supply. The stability of the market should allow the domestic industry to remain profitable at 2000 levels.

At the same time, the tariff-rate quota would ensure a substantial amount of competition in the U.S. market for welded tubular products and pose little likelihood of supply problems for domestic consumers. First, the proposed remedy for welded tubular products would still permit the same quantity of imports from 2000 at the current low rate of duty. This amount exceeds the amount that entered in any previous year. Second, there is sufficient unused domestic capacity in the case of an unexpected rise in demand. Finally, to the extent that any specialty grades of welded tubular products are in short domestic supply, purchasers would still be able to obtain their products even after the in-quota level is filled, albeit at the over-quota rates of duty (other than certain large diameter thick-walled line pipe, which would not be subject to over-quota rates).

While this remedy may result in some initial negative impact on end users of welded tubular products, primarily in the form of modestly increased prices in the domestic market and some restrictions in import volumes, I believe this effect will be limited. The stabilized or increased price of welded tubular products will not significantly affect the natural gas, crude oil, construction, industrial, or transportation industries or consumers since welded tubular products make up only a moderate to low percentage of the ultimate end use cost.[280] This remedy should also provide a modest protection or benefit to domestic industries that supply raw materials to the welded tubular industry, particularly hot rolled steel, as a result of the expected stability of domestic welded tubular production.

It is not possible to predict market effects with precision following the initial year of relief. In general, I would expect that as prices stabilize for welded tubular products, the domestic industry will be able to respond better to new market demands and to increase production as necessary. A stable price environment will also give policymakers a better idea of the size of needed worldwide steel capacity reductions by showing what the U.S. market actually demands. In addition, I would expect the domestic

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[279] *See. e.g.,* the discussion of ESTA and Mannesmann of certain cold-drawn automotive tubing in their prehearing and posthearing remedy briefs.

[280] CR at TUBULAR-57 / PR at TUBULAR-45, and Remedy Memorandum at TUBULAR-10. While the report notes that some end uses have large cost shares, these end uses are not "ultimate" end uses in the sense of being a larger industry category.

industry to be able to increase its ability to compete with imported welded tubular products as it modernizes and upgrades its production facilities. After the initial year of relief, I expect imports to stay in a stable market share range that may grow slightly above the level in 2000, depending on demand conditions.

5. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the recent market share deterioration of the domestic welded tubular producers likely will continue. In particular, the recent surges in import volumes will continue to erode domestic prices and market share, particularly if non-U.S. consumption remains sluggish and volumes continue to be diverted to the United States even in an environment of little or no net demand growth. Without appropriate relief, the welded tubular industry remains under threat of serious injury. If operating performance continues to deteriorate in the face of increased imports, the domestic industry will not be able to implement its proposed investments, thereby leaving it less viable and less able to compete with imports. Furthermore, the U.S. industry will bear a disproportionate share of the needed worldwide steel capacity reduction. Over the longer term, a significant portion of the industry would be forced to shut down. This assessment is based on the recent surge in volume of imported welded tubular products, a surge which has captured significant market share from U.S. production during a period of stable demand. This surge has already led to multiple plant closings, and such closings and partial closings will lead to increased layoffs of workers in the industry.

B. Carbon and Alloy Pipe Connectors (including Fittings, Flanges, and Tool Joints)

1. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act, I considered the following conditions of competition in the domestic and world markets, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for carbon and alloy pipe connection devices.[281]

a. Demand Conditions

Pipe connection products are diverse (including flanges, butt-weld fittings, other fittings (*e.g.*, couplings and nipples), and tool joints, although many of the products are produced to standard specifications (ASTM, API, AWWA, etc). Demand for carbon and alloy pipe connectors is driven by downstream applications including utilities, automotive, and oil and gas.[282] Although there are a range of pipe connection devices produced and sold in the United States, comparable products are available for most varieties of pipe connectors from multiple sources, both foreign and domestic.[283] A majority of market participants indicate that there are few practical substitutes for pipe connection devices.[284]

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[281] This product category contains a number of pipe connection devices. I shall at times use the short form "fittings and flanges" to designate the broader product. Unless specifically noted, however, the term "fittings and flanges" is understood to mean all products properly included in this category.

[282] EC-Y-046 at TUBULAR-9.

[283] EC-Y-046 at TUBULAR-11-14.

[284] EC-Y-046 at TUBULAR-10.

While demand increased by 9.7 percent between 1996 and 2000, this increase occurred largely between 1996 and 1997. Aggregate demand fluctuated thereafter, but was noticeably higher in the first half of 2001 relative to the first half of 2000.[285]

The domestic producers provided no demand projections in their posthearing briefs, although certain producers made reference to a "contraction in the market during the remedy period."[286] In contrast, the European Flange Producers projected *** demand in 2000, and *** of *** in 2003, *** in 2004, and *** in 2005.[287] Respondent Awaji Sangyo of Thailand suggested an increase in consumption of fittings, based on recent increases in 2000 and 2001.[288] Grant Prideco projected a *** in tool joint demand in 2002, and ***.[289]

b. Domestic Supply Conditions

There were 19 U.S. producers of pipe connection devices that responded to the Commission's questionnaire. While data were collected from a variety of fitting, flange, nipple, and coupling producers, none of the reporting companies provided questionnaire data on tool joint production. U.S. capacity increased markedly between 1996 and 1997, then continued to increase gradually through 1998, then declined in 2000 and 2001. Over the period examined, net domestic capacity grew at about the same rate as apparent U.S. consumption (7.4 percent and 9.7 percent, respectively).[290]

The U.S. industry reportedly has insufficient capacity to supply the entire U.S. market. In 2000, domestic capacity was 12.7 percent less than apparent U.S. consumption. Import market share, however, is far in excess of the capacity shortfall (accounting for 41.7 percent of apparent U.S. consumption in 2000), and imports are increasing rapidly (by 15.3 percent in 2000 and by 32.1 percent in 2001). Domestic capacity utilization fell from 74-76 percent in 1996-97 to 70 percent in 1998, and to the low-to-mid 60 percent range thereafter.[291] Thus, U.S. pipe connector producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

Several production facilities closed over the period examined. Trinity has closed plants in Kentucky, Arkansas, Mississippi, and in early 2001, Texas, effectively halting its flange production.[292]

c. Import Supply Conditions

During the period examined, there were fitting and flange imports from over 60 different countries, although not every country imported product in every year.[293] Imports rose by 30.8 percent between 1996 and 2000, peaking in the year 2000, and rose by 32.1 percent in the first half of 2001. In

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[285] Apparent U.S. consumption increased by 8.1 percent in 1997 and by 3.0 percent in 1998, then decreased by 5.5 percent in 1999, before increasing by 4.3 percent in 2000. Apparent U.S. consumption was 10.4 percent higher in the first half of 2001 than in the first half of 2000. CR/PR at Table TUBULAR-C-6.

[286] Posthearing Remedy Brief of Boltex, National Flange, and Weldbend at 8.

[287] European Quality Flange Respondents' Remedy Posthearing Brief at 27.

[288] Awaji Sangyo's Posthearing Remedy Brief at 13 and n.21.

[289] Grant Prideco's Posthearing Remedy Brief, app. 2-A.

[290] CR/PR at Table TUBULAR-C-6. Domestic capacity was 4.6 percent lower in the first half of 2001, while apparent U.S. consumption increased by 10.4 percent. *Id.*

[291] CR/PR at Table TUBULAR-C-6.

[292] Prehearing Injury Brief of Mill, Trinity, and Tube Forgings at 16.

[293] INV-Y-180, Table G-22.

2000, Mexico was the largest import source and Canada was the third-largest.[294] Imports of fittings and flanges are subject to antidumping duty orders. The orders cover only a limited number products and, of those, only imports from a limited number of countries. The orders have been in place throughout the period examined in this investigation.[295] The orders only offset the margins of dumping. They did not preclude the surge in imports in 2000 and in 2001.

Reported capacity to produce pipe connection devices outside the United States increased throughout the period examined, rising from 260,796 short tons in 1996 to 311,770 short tons in 2000. Production, however, fluctuated markedly, greatly influenced by the level of internal consumption. As production weakened in 1999 and 2000, capacity utilization declined to as low as 52.2 percent in 1999, before recovering somewhat in 2000 to 58.4 percent. Capacity began to recover to more typical levels -- 70.4 percent -- in the first half of 2001.[296]

Capacity to produce pipe connection devices from sources outside the United States is projected to increase in 2001 and 2002 to 319,895 short tons and to 320,991 short tons, respectively. Similarly, production is projected to surpass the levels achieved during any of the years between 1996 and 2000. Projected increases in production, resulting from increases in internal consumption, exports to the United States, and exports to other markets, contribute to projected capacity utilization of 66.6 percent in 2001 and 66.7 percent in 2002.[297]

2. Industry Adjustment Plans

Pursuant to section 202(e)(5)(B)(ii) of the Trade Act, I have closely examined the adjustment plans submitted by U.S. producers and the commitments contained therein. Should import relief be granted, U.S. producers have submitted plans to improve efficiency (including productivity), reduce costs, and increase production capabilities (including both forging and machining). These plans call for capital investment in production equipment and training, consolidation of facilities, expanding product lines, and exploration of new business relationships that will increase speed to market.[298] The belated filing by Chamberlain Manufacturing Corporation, a munitions supplier and *** domestic producer of tool joints, contained no adjustment plan whatsoever.[299]

Several Commissioners requested information in posthearing submissions regarding the impact of U.S. producers' adjustment plans on domestic capacity.[300] Certain domestic producers provided useful

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[294] CR/PR at Table TUBULAR C-6.

[295] CR/PR at Table OVERVIEW-1.

[296] CR/PR at Table TUBULAR-36. I note that the data provided by foreign producers is significantly understated. *Compare* Table TUBULAR-36 (exports to the United States of *** short tons in 2000 *with* Table TUBULAR-8 (U.S. imports of 135,399 short tons in 2000).

[297] CR/PR at Table TUBULAR-36. Exports accounted for 53.1 - 62.1 percent of total shipments between 1996 and 2000, and are projected to account for 56.7 percent of total shipments in 2001 and 58.4 percent in 2002. *Id.*

[298] Specific adjustment plans include the following. The Committee on Pipe and Tube Imports, et al., submitted a list of commitments on behalf of four firms that intend to invest a combined *** to increase competitiveness over a four year period. The commitments include ***. Brief on industry commitments filed Oct. 29, 2001, by the Committee on Pipe and Tube Imports, et al., at 15-17.

***. Prehearing Remedy Brief of Mills, Trinity, and Tube Forgings, exh. 5, at 1-4.

***. Prehearing Remedy Brief of Boltex, National Flange and Fitting, and Weldbend at 14-18.

[299] *See* Chamberlain's submission of November 15, 2001.

[300] *See, e.g.*, Vice Chairman Okun's request (Remedy Hearing Transcript at 784) and Commissioner Devaney's request (Remedy Hearing Transcript at 767).

information on the impact of capacity on their proposed adjustments. ***. The combined additional capacity planned by these companies would add approximately *** short tons to domestic capacity.[301]

3. Recommended Relief

I have examined the different forms of relief that the Commission is authorized to recommend, to determine which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition. I find that increased tariffs will best address the serious injury to the fittings and flanges industry and would be most effective in facilitating positive adjustment of that industry to import competition.

a. Proposals of the Parties

Three domestic producers of fittings and flanges requested that the Commission recommend a remedy in the form of a tariff-rate quota for a four-year period, with an in-quota tariff of 23 percent ad valorem and an over-quota tariff of 50 percent ad valorem in the first year, with the quota amount based on average imports during 1993-1995.[302] Three domestic producers of butt-weld pipe fittings requested that the Commission recommend a combination of a quantitative restriction and a tariff on imports of butt-weld pipe fittings for a four-year period, with the quota based on average imports during 1993-1995 and a tariff of 37 percent ad valorem in the first year, to be phased down during the remedy period.[303] A domestic producer of tool joints requested that the Commission recommend a duty of at least 35-40 percent on imports of tool joints.[304] Respondents generally opposed relief. One respondent asserted that withdrawal of Generalized System of Preferences (GSP) benefits would provide an appropriate remedy,[305] and another suggested adjustment assistance measures.[306] An importer of tool joints requested that they be excluded from any remedy.[307]

b. Selection of Increased Tariffs

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy the serious injury that has been substantially caused by increased imports. I find, however, that increased tariffs will best address the serious injury to the fittings and flanges industry and would be most effective in facilitating positive adjustment of that industry to import competition. As described above, the domestic industry consists of U.S. producers manufacturing a wide range of products. The industry, moreover, is divided between integrated and non-integrated producers. The latter group of domestic producers is partially or wholly dependent upon outside sources for forgings, some of which are

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[301] Posthearing Remedy Brief of Boltex, National Flange and Fitting, and Weldbend at 3-4 n.5.

[302] Posthearing brief on remedy of Boltex Manufacturing Co., National Flange and Fitting Co., and Weldbend Corporation, at 2-3.

[303] Posthearing brief on remedy of Mills Iron Works, Inc., Trinity Fitting Group, Inc., and Tube Forgings of America, Inc., at 2-4.

[304] Posthearing brief on remedy of Chamberlain Manufacturing Corporation, at 9.

[305] Posthearing brief on remedy of Flanschenwerk Bebitz GmbH, et al., at 5.

[306] Posthearing brief on remedy of Awaji Sangyo (Thailand), at 6.

[307] Posthearing brief on remedy of Grant Prideco, at 1.

subject to this proceeding, other of which are not.[308] Thus, I find that an increase in tariff rates is particularly appropriate in this case, in order to restrain the significant growth in import volume and apparent underselling that has been a substantial cause of serious injury to the U.S. industry, without resorting to an absolute limit on imports.

I have considered other measures to remedy the serious injury posed by increased imports of fittings and flanges. As noted in my discussion of remedies for certain flat-rolled, long, and stainless steel products, quantitative restrictions can be a useful tool in addressing increased imports that are a substantial cause of serious injury. Such a remedy can provide stable market conditions by restricting imports to a given level. Given the diverse nature of the U.S. market for pipe connectors, however, I find that the flexibility of increased tariffs makes it a better remedy.

I also have considered a tariff-rate quota, which also offers a degree of flexibility in response to imports. In light of the rapid increase in import volume, frequently sold at substantially lower prices than comparable domestic products,[309] and the fluctuations in the U.S. market, I do not view a tariff-rate quota as the most appropriate form of remedy. Increased tariffs will reduce import levels through the price mechanism, while providing flexibility in a market that cannot be supplied in its entirety by domestic producers, some of which consume imported forgings in the production of finished products.

Finally, as discussed above, I have considered a range of options that do not include direct import remedies. While many of these options do hold out promise for improving the state of the domestic industry and its workers, non-import related options do not fully address the need to remedy the serious injury and facilitate positive adjustment to import competition because they do not provide a "time-out" for U.S. producers to implement their adjustment plans.

c. Increased Tariff Amount

Unlike the quantitative restrictions that I have recommended for certain flat, long, and stainless steel products, a tariff increase does not require the identification of a multi-year "representative period." In considering the appropriate amount of import relief under an increase in tariffs, however, I have taken into account a number of factors.

The domestic industry held 65.0-67.1 percent of the market in 1996-97. During these years, domestic producers operated at capacity utilization rates of 74.1-76.3 percent, and generated operating income margins of 7.7-8.9 percent.[310]

After 1997, the volume of imports increased markedly, and price underselling by imports became markedly more pronounced. The domestic industry saw its market share erode beginning in 1998, with attendant declines in capacity utilization. Its operating margins declined steadily into a loss position by 2000.[311]

The Commission's economic analysis indicates that a tariff increase that restores imports approximately to the relative market shares prevailing in 1996-97 would allow the domestic industry to increase prices modestly, increase sales quantities by noticeably, and generate substantial additional revenue.[312] Accordingly, I recommend an additional duty of 13 percent ad valorem on imports of fittings

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[308] *See, e.g.*, Posthearing Remedy Brief of Boltex, National Flange and Fitting, and Weldbend at 17-21, contending that fitting forgings, like flange forgings, should be excluded from any remedy.

[309] CR/PR at Table TUBULAR-61 (underselling by non-NAFTA sources in excess of *** percent; even greater margins of underselling by Mexican sources (in excess of *** percent).

[310] CR/PR at Table TUBULAR-C-6.

[311] CR/PR at Table TUBULAR-61 and TUBULAR-C-6.

[312] EC-Y-051 at TUBULAR-ALT-5-9.

and flanges to be phased down by three percentage points each year.[313] [314] Pursuant to section 203(e)(2), I find an increase in tariff rates in this amount would not exceed the amount necessary to remedy the serious injury that I have found to exist. Under the tariff-based remedy I am recommending, imports would continue to supply a large share of the U.S. market and would continue to be an important competitive force in the U.S. market.

d. Duration and Degressivity

I recommend that the increase in tariff rates be imposed for a three-year period. In so doing, I have carefully considered the nature of the adjustment plans submitted by U.S. producers, the domestic industry's relatively strong level of capital expenditures through 1998, and the level of operating income generated through 1998. I have further considered that the domestic industry is capital intensive in nature, but less so than most if not all of the other industries under consideration for remedy. Considering all of these factors, I find three years to be an appropriate duration for my proposed remedy.

Section 203(e)(5) requires that increased tariffs must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the level of increased tariffs decrease by 3 percentage points in each subsequent year that the tariffs are in effect. This rate of liberalization would permit a rate of growth in imports consistent with that demonstrated by apparent U.S. consumption in recent years, which has fluctuated in an upward trend.

e. Country Allocation

Because I am recommending increased tariffs, I do not propose administering the relief on a country-specific basis. As discussed below, however, I do propose excluding certain countries from the recommended remedy.

f. Exclusion of Israel and CBERA and ATPA Countries[315]

Having made affirmative findings under section 311(a) of the NAFTA Implementation Act with respect to imports from Canada and Mexico, I do not recommend that the President exclude Canada or Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel. In light of the modest level of imports from ATPA countries in

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[313] I have taken into account my recommendations for the exclusion of Israel, Jordan, and CBERA and ATPA countries. As I do not recommend including such imports in my remedy, I have adjusted the overall amount of imports to be included accordingly.

[314] Section 203(e)(3) provides that

> No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

[315] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. There have been virtually no imports of fittings and flanges from Jordan during the period of investigation. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to the tariff increase described above.

2000 (5 short tons), and the minor volume of imports from CBERA countries in 2000 (100 short tons) and from Israel in 2000 (326 short tons),[316] I do not recommend including such countries in any import relief.

g. Exclusion Requests

The Commission received numerous exclusion requests during the course of the investigation, including requests for the exclusion of certain forms of pipe connection devices. The Commission requested U.S. producers to provide detailed, product specific responses, including information regarding U.S. production volumes.[317] Based on my tariff-based remedy recommendation, all imports are subject to remedy, unless otherwise excluded. After careful consideration, therefore, I would recommend that the President grant an exclusion for tool joints (specifically, tool joints, whether or not forged, as provided for in HTS reporting numbers 8431.43.80.20 and 8431.43.80.40).

In making this recommendation, I have considered a number of factors. First, the U.S. market is highly dependent on imported tool joints, and has been throughout the period examined. According to estimates provided by Grant Prideco, imports accounted for *** percent of tool joint consumption in 1999 and *** percent of tool joint consumption in 2000.[318]

Second, U.S. production of tool joints is limited to two companies, Primex and Chamberlain. The former company has provided no data throughout this investigation. The latter company, which remained silent until after the Commission's remedy hearing, is a munitions manufacturer with the flexibility to produce tool joints.

Third, notwithstanding substantial capital investments on equipment that is not wholly dedicated to the production of munitions, and thus can be used to produce tool joints, Chamberlain's tool joint production can only be described as ***.[319]

To the extent possible, I have also considered additional product exclusion requests. While certain requests may have merit, because sufficient information was not provided, I am unable to fully evaluate the ability of the domestic industry to produce these products in commercially meaningful volumes.

4. Short and Long-Term Effects of the Recommended Action

I believe that the tariff increase that I am recommending will address the serious injury to the domestic fittings and flanges industry. I believe this remedy will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. This remedy also

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[316] CR/PR at Tables E-1 (ATPA), E-2 (CBERA), and E-3 (Israel).

[317] In addition to requests made to prior panels, *see also* Remedy Hearing Transcript at 784 and 916 (Vice Chairman Okun); 767 (Commissioner Devaney).

[318] Grant Prideco Posthearing Injury Brief at exh. 1. Over the period examined, tool joint consumption fluctuated between *** short tons and *** short tons. Imports fluctuated between *** short tons and *** short tons, and consistently accounted for *** percent or more of tool joint consumption. I have relied on Grant Prideco's data because they are a large consumer of tool joints; because no domestic tool joint manufacturer provided any data in the injury phase of this investigation; and because specific import data on tool joints was not systematically collected prior to 2001.

[319] Chamberlain's submission of November 15, 2001 at 5. The company indicates that it produced and sold *** pieces in 1996; *** pieces in 1997; *** pieces in 1998; *** pieces in 1999; and *** pieces in 2000. Notwithstanding its claims of injury, Chamberlain projects sales of *** pieces in 2001. *Id.* at 5.

does not exceed the amount necessary to remedy such serious injury or threat of serious injury, and should minimize the disruption to the market for fittings and flanges and consumer costs.

Based on 2000 data, I estimate that the recommended tariff on fittings and flanges will initially raise the price of the domestic product and the sales volumes and revenues of the domestic industry. At the same time, this proposal would ensure a substantial amount of competition in the U.S. market for fittings and flanges and pose little likelihood of supply problems for domestic consumers. This remedy will provide immediate relief in the form of increased production levels and improved market share and, to a lesser extent, increased domestic prices. This remedy will still permit imports of fittings and flanges, albeit at moderate duties that are successively lowered. I estimate that this remedy will reduce import market share to import market share levels in 1996-1999. In addition, there is sufficient unused domestic capacity to offset the projected reduction in imports. Finally, to the extent that any specialty grades of fittings and flanges are in short domestic supply, purchasers would still be able to obtain their products, albeit at the higher rates of duty.

While this remedy may result in some initial negative impact on end users of fittings and flanges, primarily in the form of modestly increased prices in the domestic market and some restrictions in import volumes, I believe this effect will be limited. The stabilized or increased prices of fittings and flanges will not significantly affect the natural gas, crude oil, construction, industrial, or transportation industries or consumers since fittings and flanges make up only a moderate to low percentage of the ultimate end use cost.[320] This remedy should also provide a modest protection or benefit to domestic industries that supply raw materials to the fittings and flanges industry, particularly seamless and welded pipe products for fittings and flanges, as a result of the expected increase in domestic fittings and flanges production.

It is not possible to predict market effects with precision following the initial year of relief. In general, I would expect that as prices increase, the domestic industry will be able to respond better to new market demands and to increase production as necessary. In addition, I would expect the domestic industry to be able to increase its ability to compete with imported fittings and flanges as it modernizes and upgrades its production facilities. After the initial year of relief, I expect imports to stay in a stable market share range closer to their average levels over 1996-2000.

5. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of appropriate relief, the recent operating loss experienced by the domestic fittings and flanges industry will likely continue. In particular, the continuing surge in import volumes will continue to depress and suppress or undersell domestic prices and further diminish market share, particularly if non-U.S. consumption remains sluggish and volumes continue to be diverted to the United States even in an environment of slowing demand growth. Thus, without appropriate relief, the fittings and flanges industry remains vulnerable to continued price underselling and revenue losses. If operating losses continue, the domestic industry will not be able to implement its proposed investments, thereby leaving it less viable and less able to compete with imports. Over the longer term, a significant portion of the industry would be forced to shut down. This assessment is based on the recent surge in imports of fittings and flanges, a surge which has captured significant market share from U.S. production even during a period of increasing demand. Such closings and partial closings will lead to increased layoffs of workers in the industry, with a significant impact on the local economy. Moreover, the continued reduction in the number of U.S. producers will adversely impact their customers through the loss of alternative sources for fittings and flanges in the U.S. market.

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[320] CR at TUBULAR-57 / PR at TUBULAR-45, and Remedy Memorandum at TUBULAR-10. While the report notes that some end uses have large cost shares, these end uses are not "ultimate" end uses in the sense of being a larger industry category.

VI. STAINLESS AND TOOL STEEL

A. Stainless Steel Bar

1. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act, I considered the following conditions of competition in the domestic and world markets, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for stainless steel bar.

a. Demand Conditions

Demand for stainless steel bar is driven by a range of industrial and other applications, including aerospace, automotive, chemical processing, dairy, food processing, pharmaceutical equipment, marine application, and other fluid handling industries.[321] The majority of market participants indicate that there are no known substitutes for stainless bar.[322]

Demand for stainless bar fluctuated somewhat but grew overall during the five full years of the period of investigation. Apparent consumption of stainless bar increased from 276.6 thousand short tons in 1996 to 294.4 thousand short tons in 1997 but declined to 280.3 thousand short tons in 1998 and 265.5 thousand short tons in 1999. In 2000, however, apparent consumption of stainless bar then increased by 22.1 percent, growing to 324.2 thousand short tons.[323] This level of consumption was 17.2 percent higher than in 1996.[324] As the overall economy declined in interim 2001, apparent consumption of stainless bar declined by 13 percent between interim 2000 and interim 2001.[325]

Although there is some disagreement about the extent of demand changes in the market during the next three years between the parties, they appear to agree generally that demand will continue to be depressed through the middle of 2002 but will then recover in 2003 and 2004. An economic consultant for the domestic producers projects that demand for stainless bar will be lower in 2002 than in 2001.[326] The consultant also predicts that demand will then grow in 2003 to the same general levels as 2001 and will grow further in 2004, but not to the levels seen in 2000.[327] An economic consultant for the European stainless bar producers agrees that demand for stainless bar will be negatively affected by the on-going recession through the middle of 2002 but asserts that there will be a recovery in late 2002 that will continue through 2003 and 2004.[328]

The price of stainless bar is directly affected by the price of nickel.[329] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their stainless bar products whenever the price of nickel reaches a certain level.[330] Generally, after declining

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[321] CR/PR at STAINLESS-2.

[322] EC-Y-046 at STAINLESS-6.

[323] CR/PR at Tables STAINLESS-67 and STAINLESS-C-4.

[324] CR/PR at Tables STAINLESS-67 and STAINLESS-C-4.

[325] CR/PR at Tables STAINLESS-67 and STAINLESS-C-4.

[326] Domestic Stainless Products Industry Remedy Posthearing Brief at Att. 1.

[327] Domestic Stainless Products Industry Remedy Posthearing Brief at Att. 1.

[328] 11/9/01 Remedy Hearing Transcript at 1165-66; Eurofer Remedy Posthearing Remedy Brief at 19-20.

[329] CR at STAINLESS-95-96 / PR at STAINLESS-70-71.

[330] *Id.*

during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through interim 2001.[331] The price of domestic stainless bar followed this trend somewhat during the period of investigation, with average unit values of domestic bar shipments and sales declining through the end of 1999 and recovering in 2000 and interim 2001.[332]

b. Domestic Supply Conditions

Although fifteen domestic firms reported producing stainless steel bar in 2000,[333] four firms accounted for the large majority of domestic production of stainless bar in 2000: Carpenter/Talley, Crucible Specialty Metals, AvestaPolarit, and Slater Steels Corp.[334] The domestic stainless bar industry became more concentrated during the period of investigation. In 1997, Carpenter Technology, the *** domestic producer of bar in 2000,[335] acquired Talley, the *** largest producer in 2000.[336] In addition, Empire Specialty Steel, the *** largest bar producer in 2000, shut down its stainless operations in June 2001.[337]

The industry's aggregate capacity level increased during the period of investigation, growing by 5.5 percent from 1996 to 2000.[338] Domestic capacity was 2.2 percent higher in interim 2001 than in interim 2000. While the industry overall increased its capacity to produce stainless bar during the period examined, its capacity is similar to the level of U.S. consumption in 2000.[339] Until 2000, the U.S. industry had sufficient capacity to supply the entire U.S. market, although U.S. producers require available capacity not only to meet the needs of the U.S. market but also export markets.[340] For the first time, apparent U.S. consumption exceeded nominal domestic capacity by 2.78 percent in 2000. In interim 2001, the domestic industry once again had sufficient capacity to supply the U.S. market, but this was because apparent consumption fell 13 percent between interim 2000 and interim 2001 and domestic capacity increased 2.2 percent between periods.[341]

Capacity utilization, however, declined steadily from 63.0 percent in 1996 to 52.1 percent in 1999 but increased to 55.8 percent in 2000.[342] Industry capacity utilization then fell from 59.5 percent to 49.6 percent between interim 2000 and 2001.[343] Thus, domestic stainless bar producers have substantial unused capacity with which they could increase production in the event of price changes or increased domestic demand.

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[331] *Id.*

[332] CR/PR at Tables STAINLESS-18, STAINLESS-87, & STAINLESS-C-4.

[333] CR/PR at Table STAINLESS-1.

[334] In 2000, these four firms accounted for 89.67 percent of reported domestic production of stainless bar. CR/PR at Table STAINLESS-1.

[335] Carpenter accounted for *** percent of reported domestic production of stainless bar in 2000. *Id.*

[336] Talley accounted for *** percent of reported domestic production of stainless bar in 2000. *Id.*

[337] CR/PR at Table OVERVIEW-11.

[338] CR/PR at Tables STAINLESS-18 & STAINLESS-C-4.

[339] CR/PR at Table STAINLESS-C-4.

[340] *Id.* Exports, however, represent only about 4 percent of domestic production in 2000.

[341] CR/PR at Tables STAINLESS-18 & STAINLESS-C-4.

[342] CR/PR at Tables STAINLESS-18 & STAINLESS-C-4.

[343] CR/PR at Tables STAINLESS-18 & STAINLESS-C-4.

c. Import Supply Conditions

During the period of investigation, there were imports of stainless bar from more than 40 countries, although not every country exported stainless bar to the United States in every year.[344] The quantity of imports of stainless bar from sources other than Mexico increased by 54 percent from 1996 to 2000 but fell by 17 percent between interim 2000 and interim 2001.[345] The record indicates that domestic and imported stainless bar are comparable in most respects.[346] Therefore, there is a reasonably high degree of substitutability between domestic and imported stainless steel bar.

The aggregate capacity of foreign producers of stainless bar in countries other than Mexico increased by 10.5 percent during the period examined. The capacity utilization of these producers increased from 74.2 percent in 1996 to 82.3 percent in 1998, declined to 77.2 percent in 1999, and then increased to 87.1 percent in 2000. Aggregate foreign capacity utilization increased from 89.2 percent to 90 percent in interim 2001.[347]

Capacity to produce stainless bar from sources outside the United States other than Mexico is projected to grow in both 2001 and 2002. Indeed, the projected level of capacity in 2002 (1.108 million short tons) will exceed levels reported during the period examined. With the exception of 2001, production levels also are projected to rise to their highest levels during the period examined (957 thousand short ton in 2002). These projected increases reflect the expectations of increases in shipments to their home markets and exports to markets other than the United States.[348]

Antidumping duty orders were imposed against imports of stainless bar from Brazil, India, Japan, and Spain in 1995.[349] Antidumping duty orders were imposed against imports of stainless steel angle from Japan, Korea, and Spain in May 2001.[350] While these orders are intended to offset dumping margins on sales of these imports, they did not limit the surge of imports that occurred during the latter part of the period. Investigations remain pending against stainless bar from France, Germany, Italy, Korea, Taiwan and the United Kingdom.[351]

2. Industry Adjustment Plans

Pursuant to section 202(e)(5)(B)(ii) of the Trade Act, I carefully considered the stainless steel bar industry's adjustment plan and the commitments contained therein.[352] Should import relief be granted, the domestic stainless bar industry plans to make substantial investments in its productive facilities in order to improve its innovation, efficiency, product quality, and overall cost competitiveness.[353] The industry asserts that these improvements will further strengthen its ability to compete with stainless bar

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[344] INV-Y-180 at Table G25.

[345] CR/PR at Tables STAINLESS-6 & STAINLESS-C-4.

[346] INV-Y-212 at 95; EC-Y-046 at Table STAINLESS 24.

[347] CR/PR at Table STAINLESS-45.

[348] CR/PR at Tables STAINLESS-45-46.

[349] CR/PR at Table OVERVIEW-1.

[350] CR/PR at Table OVERVIEW-1.

[351] The Commission made affirmative determinations in the preliminary phase of these investigations. *Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, Inv. Nos. 701-TA-413 (Preliminary) and 731-TA-913-918 (Preliminary), USITC Pub. 3395 (February 2001).

[352] There were no significant commitments submitted outside of those contained in the industry plan.

[353] Domestic Stainless Bar Industry Remedy Prehearing Brief Att. 1 at 2, 6-12. The investment, if the commitments are fulfilled, of the domestic stainless bar industry totals approximately ***. *Id.*

producers across the world.[354] The industry also states that it intends to develop new products and applications so as to increase demand for stainless steel bar in a number of end use applications.[355] As part of its adjustment plan, the industry notes that it supports, and will participate in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[356]

Several Commissioners requested information regarding the impact of stainless bar producers' adjustment plans on domestic capacity.[357] Domestic stainless bar producers provided no aggregate information on the impact of capacity on their proposed adjustments. While many of the commitments in the adjustment plan may increase capacity because of increased efficiencies, the domestic producers argue that they will not result in additional overall capacity increases.[358] Instead, the industry argues that the primary focus is in modernizing the facilities to increase efficiencies, thereby lowering its cost structure. Finally, the industry also argues that there is not overcapacity in the United States and that some of the recent trends, *e.g.*, consolidation, already have led to rationalization of the domestic stainless bar industry.[359] Indeed, respondents tend to agree that consolidation already has occurred in this industry.[360]

3. Recommended Relief

The above considerations lead me to recommend a plan of action involving temporary quantitative restrictions and international negotiations to achieve agreements to reduce worldwide excess or inefficient capacity. The common thread of these actions is to increase the financial resources available to the stainless steel bar industry in the short-term (over a three-year relief period) to enable companies to invest in increasing long-term efficiency and competitiveness, while at the same time achieving a cap on global overcapacity without eliminating imports from the U.S. market.

a. Proposals of the Parties

The domestic stainless bar producers request that the Commission recommend that the President impose a three-year quota and a one-year tariff on imports of stainless steel bar from non-NAFTA countries.[361] They argue that the period from 1993 to 1995 should be used as the representative period for the quota calculation[362] and propose that the quota for the first year of the remedy period be 69,512 short tons.[363] They also propose that the quota be increased to 71,597 short tons in the second year of the

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[354] Domestic Stainless Bar Industry Remedy Prehearing Brief Att. 1 at 6-12.

[355] *Id.* Att. 1 at 5-6.

[356] *Id.* Att. 1 at 2-5.

[357] *See, e.g.*, Vice Chairman Okun's request (11/09/01 Remedy Hearing Transcript at 1022) and Commissioner Hillman's request (11/09/01 Remedy Hearing Transcript at 1049-50).

[358] Domestic Stainless Products Industry Remedy Posthearing Brief at 72-75.

[359] *Id.*

[360] *See, e.g.*, Eurofer Remedy Posthearing Brief at 2.

[361] Domestic Stainless Bar Industry Remedy Prehearing Brief at 3-6. They recommend that Canada and Mexico be excluded from the quota program.

[362] *Id.* at 6-7.

[363] *Id.* at 3.

remedy period and 73,745 short tons in the third year of the remedy period.[364] They also suggest that the Commission recommend an additional tariff of 15 percent on imports during the first year of the period in order to allow the industry to raise prices immediately. Finally, the industry requests that the Commission recommend that the quota be administered on a quarterly basis[365] and that the first quarters' quota be adjusted downward to reflect possible import surges before imposition of the remedy.[366]

The USWA proposes that the Commission recommend a combination of a tariff and a quota on stainless bar imports. It recommends an increased tariff of 30 percent *ad valorem* on imports of stainless bar and that the Commission recommend a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[367] It proposes that the remedy extend for four years, that its proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[368]

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[369] Respondents contend that, if the Commission were to recommend import restrictions, the Commission should reject tariffs and adopt quotas as a remedy.[370] They argue that the quotas should be calculated based on the three most recent years of the period of investigation and should be country-specific.[371]

b. Selection of Import Quota

I have examined the different forms of relief that the statute authorizes the Commission to recommend, to determine which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition. I find that a quantitative restriction will best address the stainless bar industry's serious injury and would be most effective in facilitating positive adjustment of that industry to import competition.

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy the serious injury that has been substantially caused by increased imports. Several additional considerations lead me to recommend a quantitative restriction as the specific tool that would be most effective in remedying the serious injury and facilitating positive adjustment to import competition in the stainless bar industry.

First, as noted above, demand for stainless bar, as measured by apparent consumption, has been relatively stable between 1997 and 1999. Despite a sharp rise in 2000 and decrease in 2001, demand is expected to rebound in late 2002. Thus, a quantitative restriction based on historic import levels during this period would eliminate a potential source of market volatility (import surges) without diminishing import presence below normal levels.

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[364] *Id.*

[365] *Id.*

[366] *Id.* at 10.

[367] USWA Remedy Prehearing Brief at 27-29. In the alternative, it argues that the Commission use the two-year period 1996 to 1997 as the representative period. *Id.* at 29. With respect to this proposed period, I note that the statute provides that a quota should generally be calculated on the basis of a representative period of three years. 19 U.S.C. §2253(e)(4).

[368] USWA Remedy Prehearing Brief at 30.

[369] Usinor Remedy Prehearing Brief at 8-9; Eurofer Remedy Prehearing Brief at 19-20.

[370] Usinor Remedy Prehearing Brief at 12; Eurofer Remedy Posthearing Brief at 11-13.

[371] Usinor Remedy Prehearing Brief at 12-14; Eurofer Remedy Posthearing Brief at 13.

Second, the stainless bar market comprises a wide range of products. A quantitative restriction allows all market participants flexibility in both supply and sourcing decisions, permitting them to allocate resources in accordance to market signals.

Finally, a quantitative restriction offers a degree of certainty that cannot always be matched by other forms of import relief. The stainless bar market experienced instability in the form of a sharp increase in import volume as well as the closure of several domestic production facilities. The relative certainty of a quantitative restriction on imports will provide U.S. producers with a period of stability in which they can implement their various plans to adjust to import competition.

I have considered a range of options that do not include direct import remedies. I do not agree with respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. During the period of investigation, the industry's profitability levels, production levels, capacity utilization rates and market share have declined substantially. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy these declines. While many of non-import related options do hold out promise for improving the state of the domestic industry and its workers, they do not fully address the need to remedy the serious injury and facilitate positive adjustment to import competition because they do not provide a "time-out" for U.S. producers to implement their adjustment plans.

Finally, I note that no interested party advocated the use of tariffs alone for stainless steel bar.[372] Both the domestic industry and respondents argued that quantitative restrictions would serve this market the best if an import restrictive remedy were to be implemented.[373]

c. Quota Amount

Section 203(e)(4) provides that any quantitative restriction

> shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

The statute requires that any quantitative restriction should be based on average import levels "in the most recent 3 years that are representative of imports." The domestic stainless bar industry's proposed quota would limit imports during the first year of relief to a level nearly thirty percent lower than the level in 1996, which was the year in which imports were at their lowest levels of the period of investigation. The USWA's proposed quota would limit the volume of imports during the first year of the period of relief to a level six percent lower than that in 1996. On the other hand, the respondents' proposed quota would limit the volume of imports during the first year of the period of relief to a level higher than any time during the period of investigation except for 2000.

While I find that a quota is the most appropriate form of remedy, I have chosen a different representative period than that proposed by any of the parties for establishing the quota. I believe that

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[372] While both the domestic industry and the USWA advocated the use of additional tariffs, their primary focus for type of relief was on quantitative restrictions.

[373] *See, e.g.,* Domestic Stainless Products Industry Remedy Posthearing Brief at 6-8; 11/9/01 Remedy Hearing Transcript at 1171-72, 1178 (Mr. Cameron for the Korean industry); *Id.* at 1169 (Mr. Simon for Eurofer); *Id.* at 1171 (Mr. deKeiffer for the German industry); *Id.* at 1178-79 (Mr. Cunningham for AvestaPolarit Oy).

1997-1999 are the most recent three years that are representative of imports of stainless bar.[374] Apparent consumption varied slightly over this period (ranging from 265,000 short tons to 294,000 short tons). Moreover, import levels remained fairly stable and well below import levels of 2000.

Bar Apparent Consumption[375]

1996	1997	1998	1999	2000	1st Half 2000	1st Half 2001
276,600	294,392	280,280	265,452	324,173	176,320	153,366

Bar Import Levels[376]

1996	1997	1998	1999	2000	1st Half 2000	1st Half 2001
97,928	114,999	110,765	106,591	150,592	83,443	69,179

In determining the appropriate level of relief, I considered the economic model traditionally used by the Commission which uses a range of assumptions of supply and demand conditions. The Commission traditionally uses the most recent full year data in its analysis. Thus, while I used full year 2000 data, I recognize that some changes in capacity have occurred. Moreover, I recognize that declines have occurred in both imports and demand in 2001, which would seem to offset one another.

The Commission's economic analysis estimates that this quota level will increase substantially the domestic industry's sales revenues and sales volumes over 2000 levels.[377] The economic analysis estimates that a quota that restores imports approximately to the relative market shares prevailing in 1997-1999 would allow the domestic industry to return to reasonable operating profits as well as provide the domestic industry necessary financial resources to invest in increasing long-term efficiency and competitiveness.[378]

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[374] It would be inappropriate to include 2000 in the "representative" period because this was the year in which the significant surge in imports occurred, which was a substantial cause of the domestic industry's serious injury. Based on the structure of the statute, I cannot conclude that this elevated, injurious level of imports is "representative." To include such imports might suggest an inconsistency between the injury determination and remedy recommendation because "representative" levels of imports should not be a substantial cause of serious injury. Moreover, I conclude that the clause "unless the President finds that the importation of a different quantity or value is clearly justified" in section 203(e)(4) is an exception to the general rule that the minimum quantitative restriction level be the "most recent 3 years that are representative of imports." Such an exception authorizes the President to set different quantitative restrictions, including a lower level, when conditions justify such action.

[375] CR/PR at Table STAINLESS-C-4.

[376] *Id.*

[377] EC-Y-051 at Table STAINLESS 24.

[378] *Id.* On the other hand, the Commission's economic analysis estimates that the industry's quota proposal would have a much more substantial negative effect on both consumer costs and on net welfare benefits than the remedy I have chosen. *Compare* EC-Y-046 at Table STAINLESS-33 with EC-Y-051 at Table STAINLESS-24. Finally, the respondents' proposed quota is too liberal as it is calculated using 2000 import levels, the year in which imports surged to their highest levels during the period of investigation. The Commission's economic analysis estimates that the respondents' quota proposal would have little effect in returning the industry a non-injurious

Accordingly, I recommend that any quota initially be established in the amount of 109,440 short tons for stainless bar imports from all non-excluded countries during the first year of the remedy period.[379] Pursuant to section 203(e)(2), I find that a quota in this amount would not exceed the amount necessary to remedy the serious injury that I have found to exist. Under the quota I am recommending, imports would continue to supply a large share of the U.S. market and would continue to be an important competitive force in the U.S. market.

d. Duration and Degressivity

I recommend that the period of relief should last for three years. The domestic stainless bar industry requested this duration to allow the industry sufficient time to make the necessary capital investments and adjust to import competition.[380] I further recommend that the President administer the quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

Section 203(e)(5) requires that quotas must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the quota should be expanded by three percent in each subsequent year that it is in effect. This rate of increase would allow for a reasonable rate of growth in imports taking into consideration the recent decline in demand and the projections that demand will not improve until toward the end of next year, at the earliest. Moreover, it would further encourage the industry to adjust to import competition. Finally, a minimal increase in the quota level would provide stability while addressing the excess capacity overseas and their planned expansions.

e. Country Allocation

Having made affirmative findings with respect to imports of stainless bar from Canada under section 311(a) of the NAFTA Implementation Act, section 312(d) requires that any action proclaiming a quantitative restriction shall permit the importation of a quantity of the article that is not less than the quantity of such article imported during the most recent period that is representative of imports of such article, with allowance for reasonable growth. Having found that 1997-1999 is the representative period for stainless bar imports, I recommend that the President allocate no less than 14,875 short tons of stainless bar imports from Canada during the first year of the remedy period. Furthermore, based on my recommended rate of degressivity, I recommend that after the first year the quota for Canada should be expanded by three percent in each subsequent year that it is in effect.

Within the overall remaining quota (the first year amount would total 94,565 short tons), I recommend that the President establish country-specific allocations (other than those specifically

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condition. *Compare* EC-Y-051 at Table STAINLESS-30 with EC-Y-051 at Table STAINLESS-24.

[379] I have taken into account my recommendations for the exclusion of Mexico, Israel, Jordan, and CBERA and ATPA countries. As I do not recommend including such imports in my remedy, I have adjusted the overall amount of imports to be included accordingly. I also have taken into account the pendency of antidumping duty and countervailing duty investigations on stainless bar from France, Germany, Italy, Korea, Taiwan and the United Kingdom. These investigations, however, cover only a portion of the total stainless bar and light shapes products that my remedy recommendations must address, thus allowing the respective suppliers some flexibility in terms of their product offerings in the United States. Accordingly, I did not adjust the overall amount of imports to be covered by my proposed remedy.

[380] Domestic Stainless Bar Industry Remedy Prehearing Brief at 7-8.

excluded from the recommended action). The one exception to this country-specific allocation should be for the European Union because the industry in the EU is highly integrated. In making any such specific allocations, I believe that it would be appropriate for the President to take into account any disproportional growth and impact of imports.

f. Exclusion of Mexico, Israel, and CBERA and ATPA Countries[381]

Having made a negative finding under section 311(a) of the NAFTA Implementation Act with respect to imports from Mexico, I recommend that the President exclude Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel. The Commission's findings and recommendations in this case do not apply to these countries. Specifically, imports from Israel were slightly more than 0.1 percent of total imports in 2000. Imports from Caribbean Basin countries were less than 0.4 percent of total imports for 2000. There were no reported importations in 2000 of stainless bar from the Andean countries.[382] None of those countries is known to be significant producers or exporters of stainless bar.

g. Exclusion Requests

The Commission received numerous exclusion requests during the course of the investigation, including requests for the exclusion of certain forms of stainless bar. The Commission requested U.S. producers to provide detailed, product specific responses, including information regarding U.S. production volumes.[383] Based on my quantitative restriction remedy recommendation, the requested excluded products can enter the United States under the quota levels. Moreover, as indicated above, I recommend that the President implement a short-supply mechanism. Therefore, I would not recommend that the President grant any stainless bar exclusion requests.

However, if the President implements a remedy different than the one I propose (*i.e.*, tariffs or tariff-rate quotas), I note that the domestic stainless bar industry supplied the Commission with substantial information;[384] and based on this information, I would not recommend that the President grant any stainless bar exclusion requests.

4. Short and Long-Term Effects of the Recommended Action

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[381] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. There have been no imports of stainless steel bar from Jordan during the period of investigation. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to the quota described above.

[382] EC-Y-046 at Table STAINLESS-1.

[383] *See, e.g.*, Vice Chairman Okun's request (11/09/01 Remedy Hearing Transcript at 1098) and Commissioner Devaney's request (11/09/01 Remedy Hearing Transcript at 1003-04).

[384] The domestic stainless bar industry appears to have addressed all of the exclusion requests except for one submitted by Hoesch Hohenlimburg GmbH for hot-extruded stainless steel profiles. As the industry has addressed adequately all of the other exclusion requests, this appears to be an oversight. Domestic Stainless Products Industry Remedy Posthearing Brief Att. 6 (Bar products at 1-4).

The quantitative restriction that I am recommending will address the serious injury to the domestic stainless bar industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

My quota-based remedy is intended to reduce import volumes to non-injurious levels and to limit the effects of underselling by imports during the period of relief. By doing so, my remedy will restore the production levels, prices, market share and profitability of the industry to a reasonable level so that the industry will be able to continue modernizing its productive facilities and bringing its capacity back to a healthier level of utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. While I recognize the limitations of any economic model used to predict likely market effects of a quantitative restriction, the model does provide a rough approximation of effects. Based on 2000 industry and trade data, I estimate that, during the first year of relief, my recommended quota would result in a small to moderate increase in domestic prices, a much more significant increase in domestic sales volumes, and a substantial increase in the industry's overall sales.[385] I also note that the quota would have a much more significant effect on import prices than domestic prices and a substantial impact on import volumes as well.[386] Accordingly, I believe that the significant declines in import volumes resulting from the quota will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition, *i.e.*, funding capital improvements, during the period of relief.

Moreover, as I have previously discussed, my recommended quota would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. In this regard, more than forty percent of stainless bar purchasers noted that they had difficulty obtaining supply of certain stainless bar products from domestic producers during the period of examination.[387] The use of a quota would allow these purchasers to obtain such products from import sources. However, in the event of short supply, the recommended short-supply mechanism would address their concerns.

I recognize that my recommended quota would result in a negative impact on end users of stainless bar, primarily in the form of reduced import volumes and increased prices in the domestic market. However, I believe that this effect will be limited somewhat by the small expected increase in domestic stainless bar prices, which will minimize the impact of the quota on purchasers of domestic stainless steel bar.[388] The largest price impact will be felt by end users who purchase imports because I estimate that import prices will increase much more significantly than domestic prices during the period of relief. Although I estimate that the quota will increase overall consumer costs during the first year of the period of relief, this cost is offset by the benefits to the industry from increased prices and volumes of sales.

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[385] EC-Y-051 at Table STAINLESS 24.

[386] *Id.*

[387] EC-Y-046 at STAINLESS-8-9 & Table STAINLESS–18.

[388] The stainless bar industry recognizes the importance of ensuring that its customer are supplied with the product that they need, whether the source be from domestic or foreign producers, when it selected the quota-form of import relief. Andrew Mcelwee, Vice-President, Bar Business Group, Carpenter Technology Corporation testified that the stainless bar "industry, unlike the carbon steel products, has a very high level of import penetration and if we were to put a very high tariff on, that may or may not be exclusionary. If there were to be implemented a very high level of tariff, that may exclude some imports from ever being able to be brought into the country. And we don't want to see our customers suffer as a result of a lack of supply for those products." 11/09/01 Remedy Hearing Transcript at 1041-42.

5. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of relief, the domestic industry's condition will continue to deteriorate seriously. Imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of additional domestic stainless bar facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue depressing the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

In the absence of relief, the declines in the industry's sales revenues and profitability levels also would make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive. Moreover, any prolonged decline in the competitiveness of domestic stainless bar producers also would likely impact adversely their principal customers due to an ensuing reduction in the number of alternative sources for stainless steel bar in the U.S. market.

B. Stainless Steel Rod

1. Conditions of Competition

Pursuant to section 202(e)(5)(B)(iv) of the Trade Act, I considered the following conditions of competition in the domestic and world markets, and likely developments affecting such conditions during the next several years, in evaluating the various remedy options for stainless steel rod.

a. Demand Conditions

Demand for stainless steel rod is driven primarily by the production of stainless steel wire but it also is fabricated into various downstream products, like industrial fasteners, springs, medical and dental instruments, automotive parts, and welding electrodes.[389] The large majority of market participants indicate that there are no known substitutes for stainless steel rod.[390]

Demand for stainless rod remained essentially stable during the period of investigation. Apparent consumption of stainless rod was *** short tons in 1996, *** short tons in 1997, *** short tons in 1998 and 1999, and *** short tons in 2000.[391] As the overall economy declined in interim 2001, apparent consumption of stainless rod also declined, falling by *** percent between interim 2000 and interim 2001.[392]

Although there is some disagreement about the extent of demand changes in the market during the next three years between the parties, they appear to agree generally that demand will continue to be depressed through the middle or end of 2002. An economic consultant for the domestic industry projects that demand for stainless rod will increase in 2002, 2003, and 2004 but that these levels will all be lower

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[389] CR/PR at STAINLESS-3.

[390] EC-Y-046 at Table STAINLESS-6.

[391] CR/PR at Tables STAINLESS-68 & STAINLESS-C-5.

[392] CR/PR at Tables STAINLESS-68 & STAINLESS-C-5.

than 2000.[393] An economic consultant for the European stainless rod producers asserts that demand for stainless products, including rod, will be negatively affected by the on-going recession through the middle of 2002 but that there will be a recovery in late 2002 that will continue through 2003 and 2004.[394]

The price of stainless rod is directly affected by the price of nickel.[395] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their stainless rod products whenever the price of nickel reaches a certain level.[396] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first few quarters of 2000. Nickel prices fell thereafter, declining through interim 2001.[397] The price of domestic stainless rod generally followed this trend during the period of investigation, with the average unit values of domestic rod shipments and sales declining through the end of 1999, recovering in 2000, and then declining again in interim 2001.[398]

b. Domestic Supply Conditions

The domestic stainless rod industry is concentrated. Only four domestic firms reported producing stainless steel rod in 2000.[399] Moreover, in 1997, Carpenter Technology, the dominant domestic producer of stainless rod during the period of investigation,[400] purchased Talley, the *** largest producer of stainless rod during the period.[401] In addition, Empire Specialty Steel, the *** largest rod producer in 2000, shut down its stainless rod operations in June 2001.[402] With the acquisition of Talley by Carpenter in 1997 and the exit of Empire from the market, Carpenter/Talley remains the only significant domestic producer of stainless rod in the market.

The industry's aggregate capacity level increased during the period of investigation, growing by *** percent from 1996 to 2000.[403] Domestic capacity was *** percent higher in interim 2001 than in interim 2000.[404] While the industry overall increased its capacity to produce stainless rod during the period examined, its capacity is similar to the level of U.S. consumption in 2000.[405] Throughout the five-full years of the period of investigation, the U.S. industry has never had sufficient capacity to supply the entire U.S. market.[406] However, after increasing capacity by *** percent in 1999, apparent U.S. consumption exceeded nominal domestic capacity by only *** percent. It was only in interim 2001, that the domestic industry had sufficient capacity to supply the U.S. market, but this was because apparent

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[393] Domestic Stainless Products Industry Remedy Posthearing Brief at Att. 1.

[394] 11/9/01 Remedy Hearing Transcript at 1165-66; Eurofer Remedy Posthearing Brief at 19-20.

[395] CR at STAINLESS-95-96 / PR at STAINLESS-70-71.

[396] *Id.*

[397] *Id.*

[398] CR/PR at Tables STAINLESS-19, STAINLESS-88, & STAINLESS-C-5.

[399] CR/PR at Table STAINLESS-1.

[400] Carpenter accounted for *** percent of reported domestic production of stainless rod in 2000. *Id.*

[401] Talley accounted for *** percent of reported domestic production of stainless rod in 2000. *Id.*

[402] CR/PR at Table OVERVIEW-11.

[403] CR/PR at Tables STAINLESS-19 & STAINLESS-C-5.

[404] CR/PR at Tables STAINLESS-19 & STAINLESS-C-5.

[405] CR/PR at OVERVIEW-25-27; CR/PR at Table STAINLESS-C-5.

[406] CR/PR at Table STAINLESS-C-5.

consumption fell *** percent between interim 2000 and interim 2001 and domestic capacity increased *** percent between periods.[407]

Capacity utilization, however, declined steadily from *** percent in 1997 to *** percent in 1999, and then to *** percent in 2000.[408] Capacity utilization also declined between interim periods, dropping from *** percent to *** percent.[409] Thus, domestic stainless rod producers have *** unused capacity with which they could increase production in the event of price changes or increased domestic demand.

c. Import Supply Conditions

During the period of investigation, there were imports of stainless rod from more than 30 countries, although not every country exported stainless rod in every year.[410] The quantity of imports of stainless rod from sources other than Canada and Mexico increased by 36 percent from 1996 to 2000 but fell by 31 percent between interim 2000 and interim 2001.[411] The record indicates that purchasers generally perceive domestically produced and imported stainless rod to be comparable in most respects, which indicates that they are substitutable.[412] The level of substitutability is reduced somewhat by the significant degree of captive consumption of stainless rod by the domestic industry.[413]

The aggregate capacity of foreign producers of stainless rod from sources other than Mexico and Canada increased by 16.5 percent during the period of investigation. The capacity utilization rates of these producers increased from 70.8 percent in 1996 to 83.7 percent in 1997 and remained essentially stable thereafter during the period, with capacity utilization being 84.3 percent in 2000 and 82.2 percent in interim 2001.[414]

Capacity to produce stainless rod from sources outside the United States other than Canada and Mexico is projected to decline in 2001 (978 thousand short tons) from 2000 levels (1.138 million short tons). Capacity then is projected to grow again in 2002 (1.072 million short tons), which will exceed levels reported during the period examined except for 2000. Production levels, however, are projected to decline to their lowest levels since 1996 (767 thousand short ton in 2002). These projected declines reflect the expectations of global decreases in shipments to their home markets and exports the United States and to markets other than the United States.[415]

Antidumping and countervailing duty orders were imposed against imports of stainless steel rod from India in 1993, Brazil and France in 1994, Italy, Japan, Korea, Spain, Sweden, and Taiwan in 1998.[416] While these orders are intended to offset subsidies or dumping margins on sales of these imports, they did not limit the surge of imports that occurred during the latter part of the period of investigation.

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[407] CR/PR at Tables STAINLESS-19 & STAINLESS-C-5.

[408] *Id.*

[409] *Id.*

[410] INV-Y-180 at Table G26.

[411] CR/PR at Tables STAINLESS-7 & STAINLESS-C-5.

[412] INV-Y-212 at 96.

[413] *Id.*

[414] CR/PR at Table STAINLESS-47.

[415] *Id.*

[416] CR/PR at Table OVERVIEW-1.

2. Industry Adjustment Plans

Pursuant to section 202(e)(5)(B)(ii) of the Trade Act, I carefully considered the stainless steel rod industry's adjustment plan and the commitments contained therein.[417] Should import relief be granted, the domestic stainless rod industry plans to make substantial investments in its productive facilities in order to improve its innovation, efficiency, product quality, and overall cost competitiveness.[418] The industry asserts that these improvements will further strengthen its ability to compete with stainless rod producers across the world.[419] The industry also states that it intends to develop new products and applications so as to increase demand for stainless steel rod in a number of end use applications.[420] As part of its adjustment plan, the industry notes that it supports, and will participate in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[421]

Several Commissioners requested information regarding the impact of stainless rod producers' adjustment plans on domestic capacity.[422] Domestic stainless rod producers provided no aggregate information on the impact of capacity on their proposed adjustments. While many of the commitments in the adjustment plan may increase capacity because of increased efficiencies, the domestic producers argue that they will not result in additional overall capacity increases.[423] Instead, the industry argues that the primary focus is in modernizing the facilities to increase efficiencies, thereby lowering their cost structure. Finally, the industry also argues that there is not overcapacity in the United States and that some of the recent trends, *e.g.*, consolidation, already have led to rationalization of the domestic stainless rod industry.[424] Indeed, respondents tend to agree that consolidation already has occurred in this industry.[425]

3. Recommended Relief

The above considerations lead me to recommend a plan of action involving temporary quantitative restrictions and international negotiations to achieve agreements to reduce worldwide excess or inefficient capacity. The common thread of these actions is to increase the financial resources available to the stainless steel rod industry in the short-term (over a three-year relief period) to enable companies to invest in increasing long-term efficiency and competitiveness, while at the same time achieving a cap on global overcapacity without eliminating imports from the U.S. market.

a. Proposals of the Parties

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[417] There were no significant commitments submitted outside of those contained in the industry plan.

[418] Domestic Stainless Rod Industry Remedy Prehearing Brief Att. 1 at 2, 6-7. The investment, if the commitments are fulfilled, of the domestic stainless rod industry total approximately ***. Domestic Stainless Rod Industry Remedy Prehearing Brief Att. 1 at 6-7.

[419] Domestic Stainless Rod Industry Remedy Prehearing Brief Att. 1 at 6-12.

[420] *Id.* at 5-6.

[421] *Id.* at 2-5.

[422] *See, e.g.*, Vice Chairman Okun's request (11/09/01 Remedy Hearing Transcript at 1022) and Commissioner Hillman's request (11/09/01 Remedy Hearing Transcript at 1049-50).

[423] Domestic Stainless Products Industry Remedy Posthearing Brief at 72-75.

[424] *Id.*

[425] *See, e.g.*, Eurofer Remedy Posthearing Brief at 2.

The domestic stainless rod producers request that the Commission recommend that the President impose a three-year quota and a one-year tariff on imports of stainless steel rod from non-NAFTA countries.[426] They contend that the period from 1993 to 1995 should be used as the representative period for its quota calculation[427] and propose that the quota for the first year of the period of relief be 50,210 short tons.[428] They also propose that the quota be increased to 51,716 short tons in the second year of the remedy period and 53,268 in the third year of the remedy period.[429] They also suggest that the Commission recommend an additional tariff of 15 percent on imports of stainless rod during the first year of the period in order to allow the industry to raise prices immediately.[430] Finally, the stainless rod industry requests that the Commission recommend that the quota be administered on a quarterly basis and that the first quarters' quota be adjusted downward to reflect any possible imports surges before imposition of the remedy.[431]

The USWA also proposes that the Commission recommend a combination of a tariff and a quota on imports of stainless steel rod. It recommends an increased tariff of 30 percent *ad valorem* on imports of stainless rod and a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[432] It proposes that the remedy extend for four years, that its proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[433]

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[434] If the Commission were to recommend import restrictions, they assert, the Commission should reject tariffs and adopt quotas as a remedy.[435] They argue that the quotas should be calculated based on the three most recent years of the period of investigation and should be country-specific.[436]

b. Selection of Import Quota

I have examined the different forms of relief that the statute authorizes the Commission to recommend, to determine which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition. I find that a quantitative restriction will best address the stainless rod industry's serious injury and would be most effective in facilitating positive adjustment of that industry to import competition.

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[426] Domestic Stainless Rod Industry Remedy Prehearing Brief at 2-4.

[427] *Id.* at 6-7.

[428] *Id.* at 3.

[429] *Id.*

[430] *Id.* at 8-9.

[431] *Id.* at 9-10.

[432] USWA Remedy Prehearing Brief at 27-29. In the alternative, it argues that the Commission use the two-year period 1996 to 1997 as the representative period. *Id.* at 29. With respect to this proposed period, I note that the statute provides that a quota should generally be calculated on the basis of a representative period of three years. 19 U.S.C. §2253(e)(4).

[433] USWA Remedy Prehearing Brief at 30.

[434] Usinor Remedy Prehearing Brief at 8-11; Eurofer Remedy Prehearing Brief at 20.

[435] Usinor Remedy Prehearing Brief at 12; Eurofer Remedy Posthearing Brief at 13-16.

[436] Usinor Remedy Prehearing Brief at 12-14; Eurofer Remedy Posthearing Brief at 14-16.

As described earlier in section II of these views, a quantitative restriction can be a useful tool to remedy the serious injury that has been substantially caused by increased imports. Several additional considerations lead me to recommend a quantitative restriction as the specific tool which would be most effective in remedying the serious injury and facilitating positive adjustment to import competition in the stainless rod industry.

First, as noted above, demand for stainless rod, as measured by apparent consumption, has been relatively stable during the period, with the exception of 1997. Despite a sharp decrease in 2001, demand is expected to rebound in late 2002. Thus, a quantitative restriction based on historic import levels during this period would eliminate a potential source of market volatility (import surges) without diminishing import presence below normal levels.

Second, the stainless rod market comprises a wide range of products. A quantitative restriction allows all market participants flexibility in both supply and sourcing decisions, permitting them to allocate resources in accordance to market signals.

Finally, a quantitative restriction offers a degree of certainty that cannot always be matched by other forms of import relief. The stainless rod market experienced instability in the form of a sharp increase in import volume as well as the closure of a major domestic production facility. The relative certainty of a quantitative restriction on imports will provide U.S. producers with a period of stability in which they can implement their various plans to adjust to import competition.

I have considered a range of options that do not include direct import remedies. I do not agree with respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. During the period of investigation, the industry's profitability levels, production levels, capacity utilization rates and market share have declined dramatically. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy these declines. While many of non-import related options do hold out promise for improving the state of the domestic industry and its workers, they do not fully address the need to remedy the serious injury and facilitate positive adjustment to import competition because they do not provide a "time-out" for U.S. producers to implement their adjustment plans.

Finally, I note that no interested party advocated the use of tariffs alone for stainless steel rod.[437] Both the domestic industry and respondents argued that quantitative restrictions would serve this market the best if an import restrictive remedy were to be implemented.[438]

c. Quota Amount

Section 203(e)(4) provides that any quantitative restriction

> shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

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[437] While both the domestic industry and the USWA advocated the use of additional tariffs, their primary focus for type of relief was on quantitative restrictions.

[438] *See, e.g.*, Domestic Stainless Products Industry Remedy Posthearing Brief at 6-8; 11/9/01 Remedy Hearing Transcript at 1171-72, 1178 (Mr. Cameron for the Korean industry); *Id.* at 1169 (Mr. Simon for Eurofer); *Id.* at 1171 (Mr. deKeiffer for the German industry); *Id.* at 1178-79 (Mr. Cunningham for AvestaPolarit Oy).

The statute requires that any quantitative restriction should be based on average import levels "in the most recent 3 years that are representative of imports." The domestic stainless rod industry's proposed quota would limit imports during the first year of relief to a level nearly twenty percent lower than the level in 1996, which was the year in which imports were at their lowest levels of the period of investigation. The USWA's proposed quota would limit the volume of imports during the first year of the period of relief to a level below that of any year of the period of investigation. On the other hand, the respondents' proposed quota would limit the volume of imports during the first year of the period of relief to a level higher than any time during the period of investigation except for 1997 and 2000.

While I find that a quota is the most appropriate form of remedy, I have chosen a different representative period than that proposed by any of the parties for establishing the quota. I believe that 1996, 1998-1999 are the most recent three years that are representative of imports of stainless rod.[439] Apparent consumption did not vary much over this period (ranging from *** short tons to *** short tons). I found 1997 is not appropriate because it represents a high consumption year and if one were to annualize consumption for 2001, it would fall well below any previous year. Moreover, import levels were fairly stable and well below import levels of 1997 and 2000.

Rod Apparent Consumption[440]

1996	1997	1998	1999	2000	1st Half 2000	1st Half 2001
***	***	***	***	***	***	***

Rod Import Levels[441]

1996	1997	1998	1999	2000	1st Half 2000	1st Half 2001
60,503	78,264	61,439	65,882	82,344	45,647	31,365

In determining the appropriate level of relief, I considered the economic model traditionally used by the Commission which uses a range of assumptions of supply and demand conditions. The Commission traditionally uses the most recent full year data in its analysis. Thus, while I used full year 2000 data, I recognize that some changes in capacity have occurred. Moreover, I recognize that declines have occurred in both imports and demand in 2001, which would seem to offset one another.

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[439] It would be inappropriate to include 2000 in the "representative" period because this was the year in which the significant surge in imports occurred, which was a substantial cause of the domestic industry's serious injury. Based on the structure of the statute, I cannot conclude that this elevated, injurious level of imports is "representative." To include such imports might suggest an inconsistency between the injury determination and remedy recommendation because "representative" levels of imports should not be a substantial cause of serious injury. Moreover, I conclude that the clause "unless the President finds that the importation of a different quantity or value is clearly justified" in section 203(e)(4) is an exception to the general rule that the minimum quantitative restriction level be the "most recent 3 years that are representative of imports." Such an exception authorizes the President to set different quantitative restrictions, including a lower level, when conditions justify such action.

[440] CR/PR at Table STAINLESS-C-5.

[441] *Id.*

The Commission's economic analysis estimates that this quota level will increase substantially the domestic industry's sales revenues and sales volumes over 2000 levels.[442] The economic analysis estimates that a quota that restores imports approximately to the relative market shares prevailing in 1996, 1998-1999 would provide needed volume and price relief to the industry and provide the domestic industry financial resources to invest in increasing long-term efficiency and competitiveness.[443]

Accordingly, I recommend that any quota initially be established in the amount of 62,573 short tons for stainless rod imports from all non-excluded countries during the first year of the remedy period.[444] Pursuant to section 203(e)(2), I find that a quota in this amount would not exceed the amount necessary to remedy the serious injury that I have found to exist. Under the quota I am recommending, imports would continue to supply a large share of the U.S. market and would continue to be an important competitive force in the U.S. market.

d. Duration and Degressivity

I recommend that the period of relief should last for three years. The domestic stainless rod industry requested this duration to allow the industry sufficient time to make the necessary capital investments and adjust to import competition.[445] I further recommend that the President administer the quota amounts on a quarterly basis. To the extent that supply shortages occur for products unavailable or produced in extremely limited quantities in the United States, I recommend that the President implement a short-supply mechanism.

Section 203(e)(5) requires that quotas must be phased down at "regular intervals" during the period that the relief is in effect. Therefore, I recommend that after the first year the quota should be expanded by three percent in each subsequent year that it is in effect. This rate of increase would allow for a reasonable rate of growth in imports taking into consideration the recent decline in demand and the projections that demand will not improve until toward the end of next year, at the earliest. Finally, it would further encourage the industry to adjust to import competition.

e. Country Allocation

Within the overall quota, I recommend that the President establish country-specific allocations (other than those specifically excluded from the recommended action). The one exception to this country-specific allocation should be for the European Union because the industry in the EU is highly integrated. In making any such specific allocations, I believe that it would be appropriate for the President to take into account any disproportional growth and impact of imports.

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[442] EC-Y-051 at Table STAINLESS 7.

[443] *Id.* On the other hand, the Commission's economic analysis estimates that the industry's quota proposal would have a much more substantial negative effect on both consumer costs and on net welfare benefits than the remedy I have chosen. *Compare* EC-Y-051 at Table STAINLESS 29 with EC-Y-051 at Table STAINLESS 7. Finally, the respondents' proposed quota is too liberal as it is calculated using 2000 import levels, the year in which imports surged to their highest levels during the period of investigation. The Commission's economic analysis estimates that the respondents' quota proposal would have less effect in returning the industry a non-injurious condition. *Compare* EC-Y-051 at Table STAINLESS 30 with EC-Y-051 at Table STAINLESS 7.

[444] I have taken into account my recommendations for the exclusion of Canada, Mexico, Israel, Jordan, and CBERA and ATPA countries. As I do not recommend including such imports in my remedy, I have adjusted the overall amount of imports to be included accordingly.

[445] Domestic Stainless Rod Industry Remedy Prehearing Brief at 7-8.

f. Exclusion of Canada, Mexico, Israel, and CBERA and ATPA Countries[446]

Having made a negative finding under section 311(a) of the NAFTA Implementation Act with respect to imports from Canada and Mexico, I recommend that the President exclude Canada and Mexico from any relief action. The Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, and the U.S.-Israel Free Trade Agreement Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from beneficiary Caribbean Basin or Andean countries or from Israel. The Commission's findings and recommendations in this case do not apply to these countries. Specifically, imports from Israel were insignificant throughout the period (in 2000 only two tons were imported from Israel). Imports from Caribbean Basin countries were less than 0.3 percent of total imports for 2000. There were no reported importations throughout the period of stainless rod from the Andean countries.[447] None of those countries is known to be significant producers or exporters of stainless rod.

g. Exclusion Requests

The Commission received numerous exclusion requests during the course of the investigation, including requests for the exclusion of certain forms of stainless rod. The Commission requested U.S. producers to provide detailed, product specific responses, including information regarding U.S. production volumes.[448] Based on my quantitative restriction remedy recommendation, the requested excluded products can enter the United States under the quota levels. Moreover, as indicated above, I recommend that the President implement a short-supply mechanism. Therefore, I would not recommend that the President grant any stainless rod exclusion requests.

However, if the President implements a remedy different than the one I propose (*i.e.*, tariffs or tariff-rate quotas), I note that the domestic stainless rod industry supplied the Commission with substantial information;[449] and based on this information, I would not recommend that the President grant any stainless rod exclusion requests.

4. Short and Long-Term Effects of the Recommended Action

The quantitative restriction that I am recommending will address the serious injury to the domestic stainless rod industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

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[446] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, *Steel*, to the President. There have been no imports of stainless steel wire rod from Jordan during the period of investigation. To the extent that section 221(a) of that Act applies to this investigation, I recommend that such imports not be subject to the quota described above.

[447] EC-Y-046 at Table STAINLESS-1.

[448] *See, e.g.*, Vice Chairman Okun's request (11/09/01 Remedy Hearing Transcript at 1098) and Commissioner Devaney's request (11/09/01 Remedy Hearing Transcript at 1003-04).

[449] The domestic stainless rod industry appears to have addressed all of the exclusion requests. Domestic Stainless Products Industry Remedy Posthearing Brief Att. 6 (Rod products at 1).

My quota-based remedy is intended to reduce import volumes to non-injurious levels and to limit the effects of underselling by imports during the period of relief. By doing so, my remedy will restore the production levels, prices and market share of the industry to a reasonable level so that the industry will be able to continue modernizing its productive facilities, adding new products, and bringing its capacity back to a healthier level of utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. While I recognize the limitations of any economic model used to predict likely market effects of a quantitative restriction, the model does provide a rough approximation of effects. Based on 2000 industry and trade data, I estimate that, during the first year of relief, my recommended quota would result in a small to moderate increase in domestic prices, a much more significant increase in domestic sales volumes, and a substantial increase in the industry's overall sales.[450] I also note that the quota would have a much more significant effect on import prices than domestic prices and that it would have a more significant impact on import volumes as well.[451] Accordingly, I believe that the significant declines in import volumes resulting from the quota will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition, *i.e.*, funding capital improvements, during the period of relief.

Moreover, as I have previously discussed, my recommended quota would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. Thirty-six percent of stainless rod purchasers noted that they had difficulty obtaining supply of certain stainless rod products from domestic producers during the period of examination[452] and that Carpenter/Talley is the sole significant domestic producer of stainless rod. The use of a quota would allow these purchasers to obtain such products from import sources. Moreover in the event of short supply, the recommended short-supply mechanism would address their concerns.

I recognize that my recommended quota would result in a negative impact on end users of stainless rod, primarily in the form of reduced import volumes and increased prices in the domestic market. However, I believe that this effect will be limited somewhat by the small expected increase in domestic stainless rod prices, which will minimize the impact of the quota on purchasers of domestic stainless steel rod. The largest price impact will be felt by end users who purchase imports because I estimate that import prices will increase much more significantly than domestic prices during the period of relief. Although I estimate that the quota will increase overall consumer costs during the first year of the period of relief, this cost is offset by the benefits to the industry from increased prices and volumes of sales.

5. Short and Long-Term Effects of Not Taking the Recommended Action

In the absence of relief, the domestic industry's condition will continue to deteriorate seriously. Imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of additional domestic stainless rod facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue depressing the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

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[450] EC-Y-051 at Table STAINLESS 7.

[451] *Id.*

[452] EC-Y-046 at STAINLESS-8-9 & Table STAINLESS–18.

In the absence of relief, the declines in the industry's sales revenues and profitability levels also would make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive. Moreover, any prolonged decline in the competitiveness of domestic stainless rod producers also would likely impact adversely their principal customers due to an ensuing reduction in the number of alternative sources for stainless steel rod in the U.S. market.

SEPARATE VIEWS ON REMEDY OF COMMISSIONER LYNN M. BRAGG

STEEL
Inv. No. TA-201-73

I. FINDINGS AND RECOMMENDATIONS

For the reasons set forth below, I recommend the following action, which I find will address the serious injury or threat of serious injury[1] to certain domestic steel industries and be most effective in facilitating the efforts to adjust to import competition while not unduly burdening the U.S. economy.

Given the severely weakened condition of many domestic steel producers, with an unprecedented number of recent bankruptcies,[2] I am recommending relief that will provide much needed breathing room for adjustment and, I believe, will complement the President's efforts to address concerns regarding global overcapacity and production.

I believe the recommended increased duties provide the most effective, efficient, and equitable balance between competing interests in the U.S. economy. Regarding domestic supply, my remedy recommendations will most effectively address the serious injury or threat of serious injury to the domestic steel industries and efficiently facilitate efforts by domestic producers to make a positive adjustment to import competition. Regarding domestic demand, my remedy recommendation will temporarily adjust import prices without having, as noted above, an undue impact on domestic consumers or being preclusive of specialty imports required by downstream industries. In short, my recommendations would result in modest, but critical and timely price increases for all covered products in the U.S. market, which will in turn marginally increase revenues for the domestic industries to enable them to implement adjustment plans without unduly increasing the costs to steel purchasers and the U.S. economy as a whole.

I also have provided a remedy recommendation which is administratively feasible and minimizes the potential for circumvention and product-shifting.

(1) I recommend that the President impose **a duty**, in addition to the current rate of duty, for a four-year period on imports of carbon and alloy steel imports and for a three-year period on imports of stainless and tool steel that are within the scope of this investigation, as follows:

Flat Products (including slabs, cut-to-length plate, hot-rolled sheet and strip, cold-rolled sheet and strip, corrosion resistant flat products, and tin mill products):

40 percent *ad valorem* in the first year of relief;
38 percent *ad valorem* in the second year of relief;
36 percent *ad valorem* in the third year of relief; and
31 percent *ad valorem* in the fourth year of relief.

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[1] Stainless steel wire products is the only domestic industry subject to the remedy phase of this investigation for which I found a threat of serious injury.

[2] CR and PR at Table OVERVIEW-11.

Long Mill Products (including hot bar, cold bar, and rebar):

35 percent *ad valorem* in the first year of relief;
33 percent *ad valorem* in the second year of relief;
31 percent *ad valorem* in the third year of relief; and
26 percent *ad valorem* in the fourth year of relief.

Tubular Products (including welded tubular other than OCTG, and fittings, flanges, and tool joints):

30 percent *ad valorem* in the first year of relief;
28 percent *ad valorem* in the second year of relief;
26 percent *ad valorem* in the third year of relief; and
21 percent *ad valorem* in the fourth year of relief.

Stainless and Tool Steel Flat and Long Products (including stainless bar, stainless rod, and tool steel):

25 percent *ad valorem* in the first year of relief;
20 percent *ad valorem* in the second year of relief; and
15 percent *ad valorem* in the third year of relief.

Stainless Wire[3]

15 percent *ad valorem* in the first year of relief;
10 percent *ad valorem* in the second year of relief; and
5 percent *ad valorem* in the third year of relief.

Stainless Fittings and Flanges

30 percent *ad valorem* in the first year of relief;
25 percent *ad valorem* in the second year of relief; and
20 percent *ad valorem* in the third year of relief.

(2) Based on my negative injury findings under section 311(a) of the NAFTA Implementation Act, with respect to imports from Canada of carbon and alloy flat products, carbon and alloy long products, stainless flat and long products, and stainless wire products, as well as imports from Mexico of carbon and alloy long products, carbon and alloy welded tubular other than OCTG, stainless and tool steel flat and long

[3] I note for the President's consideration respondents' argument that imports from Canada of stainless wire produced from stainless rod sourced from a non-Canadian supplier should be treated as wire from Canada. Given that the data relied upon by the Commission, based on official import statistics, treated the stainless wire as sourced from Canada, although I relied upon such data, I also considered the alternative of excluding such non-Canadian sourced stainless wire in my analysis.

products, and stainless wire, I recommend that such imports not be subject to the increased duties.[4]

(3) Based on my affirmative injury findings under section 311(a) of the NAFTA Implementation Act, with respect to imports from Canada of carbon and alloy welded tubular other than OCTG, carbon and alloy fittings, flanges, and tool joints, and stainless fittings and flanges,[5] as well as imports from Mexico of carbon and alloy flat products, carbon and alloy fittings, flanges, and tool joints, and stainless fittings and flanges, I recommend that such imports be subject to the increased duties.[6]

(4) I further recommend that the increased duties not apply to imports of covered steel entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, the U.S.-Israel Free Trade Agreement Act, or the U.S.-Jordan Free Trade Area Implementation Act.[7] [8]

(5) In the consideration of administrative efficiency and past Commission experience, these remedy recommendations do not address the issue of specific product exclusions. Nonetheless, I recommend that the President review the record regarding the issues presented by the interested parties to the U.S. Trade Representatives' Trade Policy Staff Committee.[9] My remedy recommendation for tariffs applies across a broad category of products; tariffs, unlike quotas and tariff-rate quotas, do not operate to exclude products or to encourage circumvention or product shifting.

(6) I also indicate my support for the President's pursuit of international negotiations to address the underlying causes of the increase in imports, such as global overcapacity and

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[4] See, Separate Views on Injury of Commissioner Lynn M. Bragg for additional explanation of my negative injury findings under section 311(a) of the NAFTA Implementation Act.

[5] Given that three Commissioners reached affirmative injury findings with respect to stainless fittings and flanges and that two of these Commissioners also reached affirmative NAFTA findings, I provide my NAFTA recommendations with respect to these products in the event the President elects to adopt the affirmative injury finding as the Commission determination.

[6] See, Separate Views on Injury of Commissioner Lynn M. Bragg for additional explanation of my affirmative injury findings under section 311(a) of the NAFTA Implementation Act.

[7] It is unclear whether the Commission is required to make a finding with respect to Jordanian imports in this investigation, due to the fact that the effective date of the provision is nearly two months after the end of the injury phase (October 22, 2001). Nonetheless, given that the U.S.-Jordan Free Trade Area Implementation Act is effective December 17, 2001, two days before the Commission is scheduled to report its findings and recommendations in this investigation to the President, and based on the available information on the record, I find that imports of covered steel products from Jordan are not a substantial cause of serious injury or threat thereof to the domestic industries. The exclusion of Jordan from the analysis does not change the recommended injury findings.

[8] I note for the President's consideration respondents' argument that developing country WTO members should be excluded from any remedy action where the volume of these countries' imports is less than 9 percent of total imports. This finding appears to be mandated under the WTO Safeguards Agreement but is not specifically provided for in U.S. law.

[9] Although I have reviewed each of the numerous exclusion requests for specialty products, I make no recommendation on this issue. I note that the Office of the U.S. Trade Representative has established a mechanism to consider product exclusion requests. 66 Fed. Reg. No. 208, at 54,321-24 (Oct. 26, 2001).

production, as well as implement any other action authorized under law that is likely to facilitate positive adjustment to import competition, including Trade Adjustment Assistance to aid the numerous dislocated workers of the U.S. steel industries.

II. RECOMMENDED RELIEF

A. INTRODUCTION

Having determined that increased imports are a substantial cause of serious injury or threat of serious injury to the domestic industries, the Commission is required, pursuant to section 202(e)(1) of the Trade Act of 1974 ("Trade Act") (19 U.S.C. § 2252(b)), to recommend action to the President that will address the serious injury or threat of serious injury to the given domestic industries and be effective in facilitating the efforts of the industries to make a positive adjustment to import competition.

Given the Commission's findings in the injury phase of this investigation, I am precluded by law from recommending a remedy for each of the steel products included in my domestic like product and domestic industry definitions. For example, in the injury phase, I determined that increased imports were a substantial cause of serious injury to the carbon and alloy flat products industry, which includes slabs, cut-to-length plate, hot-rolled sheet and strip, cold-rolled sheet and strip, grain-oriented electrical steel ("GOES"), corrosion resistant flat products, and tin mill products. However, in this remedy phase, as a result of the Commission majority's more limited injury findings, my remedy recommendation for this industry is limited to slabs, cut-to-length plate, hot-rolled sheet and strip, cold-rolled sheet and strip, corrosion resistant flat products, and tin-mill products, and does not include GOES.

I recognize that differences exist between my injury findings and remedy recommendations, thus raising an issue as to whether there is an appropriate level of symmetry between my injury findings and these remedy recommendations.[10] Importantly, I find that even the maximum remedy I am authorized by U.S. law to recommend to the President would be insufficient to address the level of serious injury I found to exist for some of my defined domestic industries, as well as the product groupings covered at this stage of the proceedings.

I further point out that I did not limit my analysis to the needs of the covered domestic industries. Rather, I also considered the effect of my proposed remedies on consumers, and adjusted the remedy levels accordingly to ensure that the given remedy would not impose an undue burden on the U.S. economy. In this context, I note that consumers enjoyed the benefits of falling steel prices throughout much of the period of investigation during a time when prices would have been expected to increase as a result of the upturn in the business cycle over most of the period.[11] Accordingly, each of the remedies I have recommended is less than what I believe could be imposed under U.S. law but nonetheless appropriate given the competing interests of domestic producers and consumers. My methodology therefore retains an appropriate level of symmetry between my injury and remedy findings.

In deciding the form and amount of relief to recommend, I also took into account the factors enumerated in section 202(e)(5) of the Trade Act, including: the serious injury or threat of serious injury

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[10] I note I raised this issue at the remedy hearings, thus providing the interested parties the opportunity to discuss the issue on the record either as hearing testimony or as a written response to hearing questions in posthearing submissions. Remedy Hearing Tr. at 590.

[11] Arguably, over the period of investigation, the decline in U.S. market prices resulting from increased imports allowed consumers to benefit at the expense of domestic steel producers, given that prices domestic producers received for their products would be expected to have been higher as a result of improvements in the business cycle. See infra Section III.A *Market Conditions* for additional discussion on the role of the business cycle in these proceedings.

I found to exist; the objectives and actions specified in proposed adjustments outlined by domestic producers; information available to the Commission concerning market conditions in domestic and world markets; and likely developments affecting such conditions during the period for which action is requested. I further considered the evidentiary basis for differing domestic like product and domestic industry definitions, the varying degrees of serious injury evident throughout the U.S. steel industry as a whole, the impact of different forms of relief on the industries I have identified, and the administrative feasibility of implementing a given action.

B. ANALYSIS

1. GENERAL ISSUES RELEVANT TO ALL RECOMMENDED IMPORT RELIEF

In developing my remedy recommendations, I considered the evidentiary basis for my injury determinations in this investigation and emphasized multiple levels of analysis in formulating my remedy recommendations. First, I relied on the breadth of the products covered by this investigation and the grouping of these products into four general categories by the President and the Senate Finance Committee. Next, I considered the remedy in the context of my like product analysis, which incorporated a "class of products" approach. Finally, I examined the remedy in the context of each of the thirty-three individual product groupings for which the Commission collected data, in order to ensure the thoroughness of my analysis.

In order to maintain the broadest flexibility for the President, my recommendations are not only workable in the context of either a broad or a narrow like product determination, but they also account for the relative degree of serious injury for each of the domestic industries defined in the injury phase. In particular, I note that domestic producers of carbon and alloy flat products clearly sustained a higher degree of injury than carbon and alloy long, carbon and alloy tubular, or stainless and tool steel producers. In this context, domestic production operations for flat products represent the largest concentration of domestic productive resources in this investigation, and therefore require the greatest reprieve from import competition. This point is particularly important because it underscores the broad, yet divergent levels of injury sustained by the domestic industries over the period of investigation, and accordingly, the need for a viable recommendation that would address the severity and degree of the domestic industries' serious injury, or threat thereof.

The initial and essential goal of my recommended remedy for each of the domestic producers is to significantly improve profitability to reasonable levels as timely as possible. The domestic producers presented the Commission adjustment plans that generally address the need to first stem the given domestic industries' operating losses. Furthermore, the domestic producers' hearing testimony and responses to the Commissioners' hearing questions, indicate that the source of funds for domestic industries' improvement in the short-term can only be derived from cash flow as most domestic producers' current financial condition precludes meaningful access to debt markets or the ability to raise capital through the issuance of equity shares. This heightens the importance of an effective remedy recommendation to focus on temporarily applying increased duties to imports. Only in the long-term, as operations and industries' performance improve, will credit sources become available to fund further improvements.

I further note that my remedy recommendations also complement the domestic industries' adjustment proposals that include individual company commitments to institute capital improvements for maintenance and enhancement of product quality, modernization through research and development, and increasing competitiveness of the facilities at issue. Accordingly, I recommend a four-year relief period for the carbon and alloy industries and a three-year relief period for the stainless and tool steel industries. The two periods of relief reflect the differences in the level of performance and business cycles for carbon and alloy steel producers and stainless and tool steel producers, respectively. Each period

provides time necessary for self-proposed and self-implemented investment projects outlined in the domestic producers' adjustment plans, including necessary project approval, securing of financing, installment programs, and even rationalization and consolidation plans.

In addition, I note that the Carribean Basin Economic Recovery Act, the Andean Trade Preference Act, the U.S.-Israel Free Trade Agreement Act, and the U.S.-Jordan Free Trade Area Implementation Act require the Commission to state whether and to what extent its findings and recommendations apply to an article that is the subject of an affirmative determination under section 202 of the Trade Act when imported from Caribbean Basin beneficiary countries, Andean beneficiary countries, Israel, or Jordan.[12] The record indicates that imports of steel products from these countries are either nonexistent or negligible. Accordingly, I recommend that the increased duties not apply to imports of steel products entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, the U.S.-Israel Free Trade Agreement, or the U.S.-Jordan Free Trade Area Implementation Act. I further note that the recommended exclusion of imports from these countries from my injury analysis would not change my injury findings.

2. SELECTION OF A TEMPORARY INCREASED DUTY FOR ALL COVERED IMPORTS

When formulating my remedy recommendations, I considered the administrative feasibility and the possibility of circumvention for various forms of import relief. To begin, I examined the different forms of relief that the Commission is authorized to recommend in this investigation[13] and the actual effect of various remedies prescribed in previous 201 investigations.[14] I find that a tariff applied to all covered domestic products is administratively efficient and avoids the potential for remedy circumvention and product-shifting. Given the vast number of countries and specialized products affected by the remedy, not to mention the unprecedented volume and value of trade in these products, any remedy must be administratively feasible. A tariff does not create the need or administrative burden for micro-managed implementation or monitoring global fairness on a quarterly or country-by-country basis.

Although a tariff does not directly restrict the quantity of imports from the market, a tariff does diminish the risk of a massive flow of goods into many U.S. ports that would be nearly impossible to expect accurate Customs tracking and implementation. Tariffs also provide a revenue benefit directly to the U.S. government, in contrast to quotas which arguably provide a benefit to the foreign producers who receive the quota rents, e.g., higher profits as a result of the higher prices. Finally, a tariff of a certain level will result in the same price and quantity effects as a quota or tariff-rate quota, without the risks of administrative infeasibility and circumvention.

For all covered steel industries, a tariff is the most administratively straightforward, efficient, and effective way to provide the domestic industries with import relief.[15] A tariff is more likely than a quota

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[12] 19 U.S.C. §§ 2112, 2703(e)(2), and 3202(d)(2).

[13] I have considered the imposition of a duty, tariff-rate quota, quantitative restriction, one or more appropriate adjustment measures, and any combination of the actions as the appropriate remedy pursuant to 19 U.S.C. § 2252(e)(2).

[14] *Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999), exemplifies a situation in which a tariff-rate quota remedy provided no relief to the given domestic industry.

[15] As the Commission noted in *Wheat Gluten*, a simple tariff increase generally is preferred over tariff-rate quotas and quantitative restrictions because a simple tariff increase tends to be less distortive of trade and is easier to administer. *Views of the Commission on Remedy, Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (Mar. 1998), at I-26. In my view, the Commission's interim review of the operation of that remedy and other recent section 201 remedies affirms this preference.

or a tariff-rate quota to have a meaningful effect on the performance of the domestic industries' prices and profits, and to have a binding effect during market fluctuations, as tariff relief tends to be more responsive to changes of supply and demand. In this investigation, the operation of the business cycle is apparent and strong, therefore heightening the need for any remedy to retain the ability to accommodate market fluctuations, which clearly characterize competition in these markets.[16] A tariff also provides an incentive to reduce foreign capacity, even though, for the short-term, there is a limited short supply risk in this low demand environment because domestic producers have sufficient capacity to satisfy U.S. demand. In the event producers are unable to meet demand, a tariff does not prohibit imports.

3. SELECTION OF A BALANCED METHODOLOGY FOR THE REMEDY RECOMMENDATIONS

Based upon the Commission's economic modeling, for nearly every tariff level authorized by U.S. law, the effect on domestic producers' prices, quantity of sales, revenue levels, and market share is extremely limited in the short-term, particularly in the important context of the current depressed condition of the U.S. economy. My remedy recommendations therefore seek to provide the maximum opportunity for the domestic producers to adjust to import competition in the shortest possible time frame, without having an undue impact on domestic consumers of the imported products. Accordingly, my remedy recommendations balance these competing interests by directly addressing the most important cause of serious injury, i.e., the increased volume of lower-priced imports, through the imposition of tariffs adjusted to reflect consumer interests.

III. IMPLEMENTATION OF THE RECOMMENDED RELIEF

A. MARKET CONDITIONS

1. DEMAND CONDITIONS AND THE BUSINESS CYCLE

Steel is produced in four broad categories, e.g., flat, long, tubular, and stainless and tool steel, as well as in various grades and specifications. While there are some differences between domestic and imported covered steel products and there may be some special types of certain steel that U.S. producers do not manufacture, there is nevertheless a high degree of substitutability between covered steel from the United States and from import sources.

Apparent U.S. consumption for each of the covered classes of products I have identified increased moderately from 1996 to 2000. However, from interim (January to June) 2000 to interim 2001, corresponding trends for all the product groupings subject to the remedy phase of this investigation declined. There have also been various demand swings in the business cycles throughout the period of investigation. In 1998, for example, many of the product categories were experiencing an upturn in the business cycle, with domestic producers expected to experience gains in profitability during these upturns. However, domestic producers did not realize such profitable gains. Rather, increased U.S. demand was satisfied to a large extent by imports entering the United States at historical levels. Imports also forced prices in the U.S. market lower, resulting in declining domestic prices and falling revenue. As a result, imports largely gained U.S. market share at the expense of domestic producers during a critical point of the business cycle.

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[16] See infra Section III.A. (Market Conditions) discussing further the impact of the business cycle on the performance of the domestic industries.

The impact of the opportunities lost during the cycle upswing not only had an immediate impact to the domestic industries by virtue of lost sales and resulting lost revenues, but also had lingering, carry-over effects on the domestic industries as the cycle turned lower. For example, in interim 2001, as U.S. demand significantly weakened during a downturn in the business cycle, imports continued to enter the U.S. market and maintained significant market share. At the same time, the domestic industries experienced their worst performance levels of the period, as evidenced by the unprecedented number of bankruptcies and sharply declining profits. Therefore, trends in demand and the timing of imports are relevant and important in this investigation in order to thoroughly understand the importance of fluctuations in the market and the strength of the business cycle's impact on the performance of the domestic industries.

2. DOMESTIC SUPPLY CONDITIONS

Despite the growth in apparent U.S. consumption between 1996 and 2000, and the decline in demand between interim 2000 and interim 2001, decreased revenues forced U.S. producers to idle significant production facilities, including the closing of plants and curtailment of production operations, e.g., production worker lay-offs, shift reductions, and an inability to replace the aging workers or appropriately train a skilled workforce.[17] In addition, domestic producers experienced a significant underutilization of capacity between 1996 and 2000. Between the interim periods, although capacity utilization slightly recovered, domestic production declined. In addition, as a ratio to total shipments, U.S. producers' inventories of covered steel products continually increased from 1996 to 2000, and rose again between interim periods. Furthermore, domestic capacity for many of the covered domestic industries exceeded total average demand throughout the period of investigation.

3. IMPORT SUPPLY CONDITIONS

As apparent U.S. consumption grew modestly between 1996 and 2000, total imports of steel surged into the U.S. market at an even greater growth rate.[18] Similarly, as U.S. demand declined between the interim periods of 2000 and 2001, imports only modestly declined, but continued to sustain critical market share. It is therefore the persistence and timing of the import supply, as the cycle trended downward, that eventually overwhelmed the domestic industries and resulted in imports being a substantial cause of the domestic industries' serious injury or threat of serious injury. Notwithstanding the downturn of the business cycle and the decline in U.S. demand, imports continued to enter the U.S. market, captured significant share of the U.S. market at the expense of the domestic producers, and as a result, the domestic industries performed at their worst levels.[19] Failure to remedy this injury by increasing prices and preventing a continued increase in import volume will only result in even more severe injury sustained by domestic steel producers.

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[17] CR and PR at Table OVERVIEW-11.

[18] CR and PR at Table FLAT-C-1-5, C-7-8, LONG-3-5, TUBULAR-C-4-5, STAINLESS-C-2-7, C-9 & C-12.

[19] CR and PR at Table FLAT-C-1-5, C-7-8, LONG-3-5, TUBULAR-C-4-5, STAINLESS-C-2-7, C-9 & C-12.

B. SHORT- AND LONG-TERM EFFECTS OF THE RECOMMENDED REMEDIES

The increased duties I recommend will provide the level of relief that is necessary to address the serious injury or threat of serious injury to the domestic steel industries and facilitate efforts by the domestic industries "to make a positive adjustment to imports competition and provide greater economic and social benefits than costs."[20]

Given the severely weakened condition of the domestic steel industries, with an unprecedented number of recent bankruptcies, I recommend a relief that will provide much needed breathing room for adjustment and, I believe, will complement the President's efforts to address concerns regarding global overcapacity and production. In my view, these recommended increased duties provide the most effective, efficient, and equitable balance between competing interests in the U.S. economy. Regarding domestic supply, my remedy recommendations will most effectively address the serious injury or threat of serious injury to the domestic steel industries and efficiently facilitate efforts by domestic producers to make a positive adjustment to import competition. Regarding domestic demand, my remedy recommendation will temporarily adjust import prices without having, as noted above, an undue impact on domestic consumers or being preclusive of specialty imports required by downstream industries. In short, my recommendations would result in modest price increases and import volume control for all covered products in the U.S. market, which will in turn marginally increase revenues for the domestic industries so that they may be able to implement adjustment plans without unduly increasing the costs incurred by steel purchasers and the U.S. economy as a whole.

The primary challenge facing the domestic industries is to regain profitability and to engage in substantial capital investments to improve competitiveness for each industry as a whole. Accordingly, for each of the covered products, the tariff levels are expected to result in price increases sufficient to offset margins of underselling and encourage modest domestic price increases, and at the same time controlling import volumes. The temporarily increased duties will permit domestic producers to earn slightly increased revenues through a combination of increased prices and sales volumes, although not to the degree sought by the domestic producers. The increased sales volume should lead to increased cost-efficiency for domestic producers, without having an undue impact on downstream industries and customers. I further recommend that the increased duties be reduced over the course of the relief period, reflecting the anticipated improvement in the competitiveness of the domestic industries.

In particular, for carbon and alloy steel producers, I view the first three years of tariff protection to be the most critical in providing the domestic carbon and alloy steel industries the opportunity to effectuate their adjustment plans. Accordingly, I recommend that the increased duties for carbon and alloy covered products be staged down annually by 2 percentage points in year two, by 2 percentage points in year three, and by 5 percentage points in year four. For stainless producers, I view each of the three years of tariff relief of equal importance to the industries' adjustment plans. Accordingly, I recommend that the various duties on stainless products be staged down annually by 5 percentage points.

C. SHORT- AND LONG-TERM EFFECTS OF NOT TAKING THE RECOMMENDED ACTION

In the absence of the relief that I recommend, I believe that imports will continue to capture a significant and increasing share of the U.S. market, resulting in a continuing decline in capacity utilization and the efficiency of domestic producers, as well as continued price suppression and depression in the U.S. steel market. Such conditions would continue to depress the profitability of domestic producers, thereby forcing domestic industries to react to additional plant closures and employee layoffs as the only recourse to stemming current operating losses. Steel production facilities

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[20] 19 U.S.C. § 2253(a)(1)(A).

are substantial operations that are an important component of their local economies and communities, as indicated by the record from the Commission's field hearing in Merrillville, Indiana, which demonstrated the devastating realities of numerous plant closures and the staggering impact of job losses on local communities. Therefore, any additional partial shut-down or plant closings will have the same significantly devastating impact on the communities in which such facilities are located.

In addition, the likely conditions resulting in the absence of my recommended relief would likely make it difficult, if not impossible, for the domestic industries to undertake all necessary capital investments to improve product quality and efficiency required for domestic producers to either remain competitive or improve their competitiveness. Finally, any prolonged decline in the competitiveness of domestic steel producers would also likely impact adversely their consumers, due to a reduction in the number of alternative sources for steel in the U.S. market, particularly to those consumers with specialty requirements and defense-related needs.

The implementation of relief is also an important national security consideration. Recent events reinforce that the security of the United States depends upon maintaining a viable U.S. steel industry as a whole. During a time of national emergency, when the country must turn to the domestic steel industries on short notice to support a war effort, the domestic industries must be able to respond rapidly to meet domestic demand for military equipment as well as for domestic infrastructure. Failure to implement relief for the entire U.S. steel industry could compromise an essential core element of our invaluable industrial base as well as implicate our national security.

VIEWS OF COMMISSIONER MARCIA E. MILLER ON REMEDY WITH RESPECT TO TIN MILL PRODUCTS

Remedy Recommendation

Having made an affirmative determination with respect to imports of tin mill products, I recommend the following actions which will address the serious injury I have found to exist and which will be the most effective in facilitating the efforts of the domestic industry producing tin mill products to make a positive adjustment to import competition:

- That the President impose an additional tariff, for a four-year period, on imports of tin mill products that are the subject of this investigation. The additional tariff would be at the rate of 20 percent *ad valorem* in the first year of relief and be reduced to 17 percent *ad valorem* in the second year of relief; 14 percent *ad valorem* in the third year of relief; and 11 percent *ad valorem* in the fourth year of relief;

- That the President continue to pursue international negotiations with the governments of all countries that supply tin mill products aimed at reducing inefficient global overcapacity to produce tin mill products;

- Having made a negative finding with respect to imports of tin mill products from Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the additional tariff described above;

- Having made an affirmative finding with respect to imports of tin mill products from Canada under section 311(a) of the NAFTA Implementation Act, that such imports be subject to the additional tariff;

- That the additional tariff not apply to imports of tin mill products from Israel, or to any imports of tin mill products entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act;[1] and,

- That the following three types of tin mill products be excluded from any remedy action:

  - tin free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains almost none of the following environmental hormones: BADGE (BisPhenol -- A Di-glycidyl Ether), BFDGE (BisPhenol – F Di-glycidyl Ether) and BPA (BisPhenol – A);

  - electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform

[1] To the extent that section 211(a) of the U.S.-Jordan Free Trade Area Implementation Act applies to this investigation, I recommend that the additional tariff not apply to imports of tin mill products from Jordan.

pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15-20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension; and,

- tin free steel in gauges 55 lb. Base box to 110 base box, single reduced, continuously annealed, in widths equal or exceeding 40 inches.

I find that the actions described above will not exceed the amount necessary to remedy the serious injury found to exist.

Description of Recommended Relief

The two-part plan of action I recommend with respect to imports of tin mill products – a temporary additional tariff and the pursuit of international negotiations to achieve agreements to reduce inefficient excess global capacity – is identical to my remedy recommendation with respect to imports of certain carbon flat-rolled steel. The largest producers of tin mill products also make other types of certain carbon flat-rolled steel, and any adjustment plans they have submitted include tin mill products along with all other certain carbon flat-rolled steel products. My views with respect to the rationale for selecting a tariff remedy, the form and duration of the tariff increase, the industry's adjustment plans, international negotiations, the short and long-term effects of the remedy and of not taking the recommended action, and other steps to facilitate the industry's positive adjustment to import competition are the same for tin mill products as for certain carbon flat-rolled steel products, which are contained in the Views of the Commission on Remedy and are not repeated here.

The relevant conditions of competition to my remedy recommendation are stated above with respect to my injury and causation findings. The Commission's economic analysis shows that an additional tariff of 20 percent *ad valorem* will result in a substantial increase in the domestic industry's sales revenues and sales volumes during the first year of relief. The estimated revenue increases are expected to help the industry regain some level of profitability as well as provide it the necessary financial resources to invest in increasing long-term efficiency and competitiveness. The recommended phase-down will encourage the industry to implement its adjustment plan, including consolidation and further rationalization, expeditiously.[2]

The recommended tariff increase is expected to result in a small to moderate increase in domestic prices. The increases in both the sales price and quantity of imports are expected to be substantial.[3] The significant declines in import volumes expected from the tariff increase will help the domestic industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period. In addition, for purchasers that may have difficulty obtaining certain tin mill products from domestic sources, the recommended remedy will not result in the exclusion of imports from the domestic market.

While the additional tariff will restrict import volumes somewhat, to levels below the surge levels, the projected impact on consumers appears to be moderate. Any initial negative impact on end-users in the form of reduced import volumes and increased prices will be limited somewhat by the small expected increase in domestic tin mill prices, which will minimize the impact of the tariff on domestic

[2] EC-Y-50 at 13.

[3] EC-Y-50 at 13.

purchasers. The largest price impact will be on end-users who purchase imports, since import prices are estimated to increase more significantly than domestic prices during the period of relief. Although an increase in overall consumer costs is estimated to result from the tariff during the first year of relief, this cost is offset by benefits to the industry from increased prices and volumes of sales.[4]

Exclusions

Having made a negative finding with respect to imports of tin mill products from Mexico under section 311(a) of the NAFTA Implementation Act for the reasons set forth in my injury views, I recommend that the President exclude imports from Mexico from any remedy action. Having made an affirmative finding with respect to such imports from Canada, I recommend that the President include imports from Canada in any remedy action. I also recommend that the President not include imports from Israel and from beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act in any remedy action.[5] The only imports of tin mill products from these countries during the period of investigation were small and sporadic.

I also recommend that three types of tin mill products be excluded from any remedy action on the basis that these three products are not produced, nor capable of being produced, domestically in commercially significant quantities and the domestic industry does not object to their exclusion. The three products are:

- tin free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains almost none of the following environmental hormones: BADGE (BisPhenol – A Di-glycidyl Ether), BFDGE (BisPhenol – F Di-glycidyl Ether) and BPA (BisPhenol – A);

- electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15-20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension; and,

- tin free steel in gauges 55 lb. Base box to 110 base box, single reduced, continuously annealed, in widths equal or exceeding 40 inches.

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[4] EC-Y-50 at 13.

[5] The U.S.-Jordan Free Trade Area Implementation Act became effective on December 17, 2001, two days before submission of this report on our findings and recommendations in investigation No. TA-201-73, Steel, to the President. There have been no imports of tin mill products from Jordan during the period of investigation, and they are therefore not a substantial cause of serious injury or threat of serious injury. Therefore, to the extent that section 221(a) of the Jordan FTA applies to this investigation, I recommend that such imports not be subject to the additional tariff described above.

SEPARATE VIEWS OF COMMISSIONER DENNIS M. DEVANEY ON REMEDY

During the remedy phase of this investigation, both the domestic and foreign producers tackled the issues of how to provide relief to a beleaguered industry that has seen bankruptcies, levels of profitability well below average for the manufacturing sector, and stock valuations in the penny stock range. By the end of these hearings, both sides found themselves in the "candor stage" of the investigation where they were working to find a fair solution. As I stated in my injury analysis, it is important to send a strong remedy recommendation, so that the President has the maximum amount of leverage during the Multilateral Steel Negotiations.

There are strong differences between our market-driven society and other more statist-oriented countries. As a general principle, U.S. businesses seek to lower government restrictions to international trade and allow corporations to compete without government intervention. Unfortunately, our domestic steel industry has been driven into the ground by steel imports from countries which provide government aid, control their steel industry directly, and have built up a world steel capacity far beyond world demand. Our domestic producers despite being the most efficient in the world are suffering serious injury. Thus, I have recommended relief that will serve to temporarily staunch the hemorrhaging in a wounded industry in order to give it the time it needs to return to its former competitiveness.

I. CARBON AND ALLOY FLAT PRODUCTS

A. Findings and recommendations

For the reasons set forth below, I recommend the following actions with respect to certain flat-rolled steel products. I find that these actions would address the serious injury I have found to exist and would be most effective in facilitating the efforts of the domestic industry producing these products to make a positive adjustment to import competition:

For certain flat rolled steel products I recommend:

(1) That the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of flat products that are the subject of the remedy phase of this investigation of 40% *ad valorem*, being reduced to 38% *ad valorem* in the second year of relief, 36% *ad valorem* in the third year of relief and 31% *ad valorem* in the fourth and final year of relief.

(2) Having made a negative finding with respect to imports from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty; and

(3) That the increase in duty described above apply to imports of flat products from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of flat products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

B. Discussion

I have found one domestic industry producing a class of articles similar to the imports of flat-rolled steel products.

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions within the near future, when evaluating the various remedy options for flat-rolled steel products. I note at the outset that the injury to the steel industry has been ongoing for a period of at least five years. I further realize that steel producers do not operate in a vacuum, unaware of the world around them and the economic situation as it exists. Producers, both foreign and domestic react to the requests of the President, the filing of anti-dumping cases and even to the announcements regarding these actions. It would be absurd to believe that the announcement, by the President, of a Steel 201 investigation would not lead foreign producers to moderate their shipment and pricing behaviors.

As noted earlier, domestic demand for flat-rolled products rose throughout the period, declining only in the interim 2001 period.[1] Demand was higher at the end of the period than it was at the beginning of the period.[2] However in interim 2001, demand fell off rather abruptly. In response to this increase in demand, domestic producers expanded their capacity. Import presence in the market was at a peak in 1998, fell off somewhat after that and continued to fall into the interim 2001 period. The correlation between the presence of imports in the market and low prices is easy to demonstrate, and has been demonstrated effectively by the domestic industry. From 1996 to 1999 demand increased every year. During that same period the average unit value fell.[3] Imports finally withdrew from the market when falling demand caused prices to fall even further. When the price rises again, these imports will return if possible.

As an important portion of the demand /supply equation, imports were at their highest when demand was also highest, thereby causing prices to remain lower than they otherwise would have been. This lowering of prices during the peak of the business cycle was perniciously injurious to the industry. It reduced profits at the time, preventing the retirement of debt and the accumulation of capital to allow the industry to pursue the infrastructural work it needs to remain competitive. Because it could neither retire debt nor prepare to reinvest in maintenance and capital improvements the industry has fallen even further behind due to the current economic downturn. The inability of the industry to accumulate sufficient resources to weather the low end of the business cycle has been disastrous.

2. Industry Adjustment Plans

I carefully considered the adjustment plans submitted by the domestic flat-rolled steel industry. The industry states that it plans an effort aimed at consolidation, modernization, debt reduction and capital investments needed to maintain current capacity and lower costs. The industry asserts that these measures will allow it to restructure and strengthen its ability to compete with imports.

Specifically, the industry is committed to a 50/50 plan whereby the increased revenues due to the remedy will be split between capital improvements and debt reduction, thereby increasing efficiency and lowering costs.[4] The industry has also committed to a period of restructuring and rationalization.[5] The industry has already taken steps which signal the beginning of this restructuring program. USX and Bethlehem have announced talks on the acquisition of Bethlehem by USX. Other firms have also

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[1] CR and PR at Table FLAT-C-1

[2] CR and PR at Table FLAT-C-1.

[3] CR and PR at Table FLAT-C-1

[4] Combined Domestic Producers Adjustment Brief, Vol. II at 3.

[5] Combined Domestic Producers Adjustment Brief, Vol. II at 21-26.

announced intentions to restructure. By pursuing a program of consolidation, modernization and debt reduction, combined with capital expenditures to restore efficiency, the domestic industry will be strengthened and better able to withstand import competition in the future.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quantitative restrictions(quotas), tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. As I have stated previously, the form of remedy that I have chosen seeks to address the ongoing injury that has occurred over a number of years, and not just in the most recent period. I have determined that increased tariffs would provide the flat-rolled steel industry which was found to be injured with the most appropriate form of relief while minimizing costs to consumers and avoiding disruptions of supply.

Recommendations of the Parties. The domestic industry proposes a variety of relief including a 40% *ad valorem* tariff, subject to a minimum tariff of $100.00 per ton subject to the proviso that the tariff not exceed 50% *ad valorem*;[6] or a 50% *ad valorem* tariff.[7] Not surprisingly, the foreign industry generally proposes remedies beginning with trade adjustment assistance,[8] or a quota set to 1997 import levels.[9]

I find that the 50% tariff proposed by the domestic industry and the USWA would exceed the amount necessary to prevent or remedy serious injury. If the President imposes tariffs at a 50% rate, as much as 70% of import quantity would be excluded from the United States.[10] In view of the differential between U.S. demand and domestic capacity, that level of relief is economically dangerous. On the other hand, trade adjustment assistance will not aid the industry and a quota set at the high levels of 1997, when the import presence was at its peak, will have no preclusive effect and hence, will provide no relief to the domestic industry.

Overall I find that the most effective remedy will be the tariffs I proposed above.

Short and Long Term Effects of Recommended Relief. The tariff increase that I am recommending will address the serious injury to the domestic flat-rolled products industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

The tariff is intended to reduce import volumes to non-injurious levels, while maintaining import access to the market. The 40 percent duty increase would restore U.S. prices to levels that would justify the capital expenditure that the industry needs to improve its competitiveness. It would likewise allow the industry to pursue a program of debt retirement and capital accumulation.

This relief will restore production levels, prices, and profitability of the industry to a reasonable level so that the industry will be able to continue modernizing its productive facilities. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced

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[6] Domestic Producers Prehearing Remedy Brief at 5.

[7] Minimill 201 Coalition Prehearing Remedy Brief at 9-10; USWA Prehearing Brief on Remedy at 24.

[8] EC-Y-06 at Table FLAT-3.

[9] EC-Y-06 at Table FLAT-3.

[10] EC-Y-046 at FLAT-21-27.

import underselling. I believe that, during the first year of relief, the remedy will result in a small increase in the domestic price, a moderate increase in domestic quantity and a somewhat larger increase in industry revenues.[11] I note that the remedy would impact import prices much more significantly than it will domestic prices with a substantial impact on import volumes as well.[12] Accordingly, I believe that the significant declines in import volumes resulting from the tariff will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period of relief.

The remedy would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. The use of a tariff would allow purchasers to obtain imports at a level which the domestic market can sustain, and which will provide protection should domestic demand increase rapidly. Domestic consumers will face a small increase in the cost of steel, however the negative effects of this increase will be compensated for by the benefit to the industry.

Short and Long Term Effects of Not Taking the Recommended Action. In brief, failure to take the recommended action will be catastrophic to the domestic flat-rolled industry. If prices and profits do not rise, the rate of bankruptcy within the industry will accelerate. Companies unable to raise the capital necessary to make needed investments will fail. It is important to note that virtually all of the domestic producers of flat rolled products fall into this category. The inability to generate reasonable profits will cause the integrated producers to fail, which will lead to accelerated imports of downstream products, which will lead to even further reductions in price. This freefall price reduction will impact the non-integrated producers and cause similar difficulties. It was particularly telling that the minimills and integrated steel companies presented an united front in their presentations to the Commission and asserted that import pricing is the core cause of the injury to the domestic industry.

II. CARBON AND ALLOY LONG PRODUCTS

A. Findings and recommendations

For the reasons set forth below, I recommend the following actions with respect to certain carbon and alloy long products. I find that these actions would address the serious injury I have found to exist and would be most effective in facilitating the efforts of the domestic industry producing these products to make a positive adjustment to import competition:

For certain carbon and alloy long products I recommend:

(1) That the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of carbon and alloy hot rolled bar, cold-finished bar, and rebar that are the subject of the remedy phase of this investigation of 35% *ad valorem*, being reduced to 33% *ad valorem* in the second year of relief, 31% *ad valorem* in the third year of relief and 26% *ad valorem* in the fourth and final year of relief.

(2) Having made a negative finding with respect to imports from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty; and

(3) That the increase in duty described above apply to imports from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of flat

[11] EC-Y-046 at FLAT 21-27.

[12] EC-Y-046 at FLAT 21-27.

products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

B. Discussion

I have found one domestic industry producing a class of articles similar to the imports of carbon and alloy long steel products, so I have made a consistent recommendation for carbon and alloy hot rolled bar, cold-finished bar, and rebar.

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions within the near future, when evaluating the various remedy options for long products. I note again that the injury to the steel industry has been ongoing for a period of at least five years.

Domestic demand for carbon and alloy bar rose throughout the period, declining only between 1998 and 2000, and between interim 2000 and 2001.[13] Demand was higher at the end of the period than it was at the beginning of the period.[14] Demand for rebar grew throughout the period of investigation.[15] In response to this increase in demand, domestic producers tried to expand or at least maintain their capacity.[16] Again as in flat-rolled products, demand was increasing, price was falling.[17] Imports grew dramatically during the period of investigation, and withdrew only when demand dropped but still maintained or grew their market share.[18] Imports grew well beyond any demand increases, thus taking significant amounts of market share from domestic producers and causing prices to remain depressed.[19] The inability of the industry to accumulate sufficient resources to weather the low end of the business cycle has been disastrous.

2. Industry Adjustment Plans

I carefully considered the adjustment plans submitted by the domestic long products industry. The industry states that it plans an effort aimed at consolidation, modernization, debt reduction and capital investments needed to maintain current capacity and lower costs. The industry will use the additional revenue to replace aged equipment, enhance productivity, and improve product quality. This period of relief will allow these producers to research new steel making technologies, and repay debt so that future income streams can be devoted to capital improvements instead of debt service.

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[13] CR and PR at Tables L-C-3 and L-C-4.

[14] CR and PR at Tables L-C-3 and L-C-4.

[15] CR and PR at Table L-C-5.

[16] CR and PR at Tables L-C-3 to L-C-5.

[17] CR and PR at Tables L-C-3 to L-C-5.

[18] CR and PR at Tables L-C-3 to L-C-5.

[19] CR and PR at Tables L-C-3 to L-C-5.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quantitative restrictions(quotas), tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. As I have stated previously, the form of remedy that I have chosen seeks to address the ongoing injury that has occurred over a number of years, and not just in the most recent period. I have determined that increased tariffs would provide the long products industry which was found to be injured with the most appropriate form of relief while minimizing costs to consumers and avoiding disruptions of supply.

Recommendations of the Parties. The domestic industry and the USWA propose a 50% *ad valorem* tariff.[20] Not surprisingly, the foreign industry proposes remedies beginning with trade adjustment assistance,[21] or a quota set to 1997 import levels.[22]

I find that the 50% tariff proposed by the domestic industry and the USWA would exceed the amount necessary to prevent or remedy serious injury. If the President imposes tariffs as high as 50% as much as 64% of bar import quantity and 84 percent of rebar quantity would be excluded from the United States.[23] In view of the differential between U.S. demand and domestic capacity, that level of relief is economically dangerous. On the other hand, trade adjustment assistance will not aid the industry and a quota set at the low levels of 1997, when the import presence was surging, would be an ineffectual trade restraint instead of a remedy.

Overall I find that the most effective remedy will be the tariffs I proposed above.

Short and Long Term Effects of Recommended Relief. The tariff increase that I am recommending will address the serious injury to the domestic long products industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

The tariff is intended to reduce import volumes to non-injurious levels, while maintaining import access to the market. The 35 percent duty increase would restore U.S. prices to levels that would justify the capital expenditure that the industry needs to improve its competitiveness.

This relief will restore the production levels, prices, and profitability of the industry to a reasonable level so that the industry will be able to continue modernizing its productive facilities, adding new product lines, and bringing recent capacity increases to full utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. In this regard, I estimate that, during the first year of relief, the remedy would result in a small to moderate increase in domestic prices, a much more significant increase in domestic sales volumes, and a
substantial increase in the industry's overall sales.[24] I also note that the remedy would have a much more significant effect on import prices than domestic prices and a substantial impact on import volumes

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[20] EC-Y-06 at Table LONG-16.

[21] EC-Y-06 at Table LONG-16.

[22] EC-Y-06 at Table LONG-16.

[23] EC-Y-046 at Table LONG-25.

[24] EC-Y-046 at Table LONG-22.

as well.[25] Accordingly, I believe that the significant declines in import volumes resulting from the tariff will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period of relief.

The remedy would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. The use of a tariff would allow purchasers to obtain imports at a level which the domestic market can sustain, and which will provide protection should domestic demand increase rapidly.

Short and Long Term Effects of Not Taking the Recommended Action. In brief, failure to take the recommended action will be highly detrimental to the domestic long products industry. If prices and profits do not rise, the rate of bankruptcy within the industry will accelerate. Companies unable to raise the capital necessary to make needed investments will fail. The inability to generate reasonable profits will cause further erosion of the domestic industry's ability to invest in infrastructure, restructure and above all, to compete.

III. CARBON AND ALLOY TUBULAR PRODUCTS

A. Findings and recommendations

For the reasons set forth below, I recommend the following actions with respect to certain carbon and alloy tubular products. I find that these actions would address the serious injury I have found to exist and would be most effective in facilitating the efforts of the domestic industry producing these products to make a positive adjustment to import competition:

For certain carbon and alloy tubular products I recommend:

(1) That the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of carbon and alloy welded non-OCTG pipe and tube and fitting, flanges, and tool joints of 30% *ad valorem*, being reduced to 28% *ad valorem* in the second year of relief, 26% *ad valorem* in the third year of relief and 21% *ad valorem* in the fourth and final year of relief.

(2) Having made a negative finding with respect to imports from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the additional duty; and

(3) That the increase in duty described above apply to imports of flat products from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of flat products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

B. Discussion

While I have found two domestic industries producing a class of articles similar to the imports of welded non-OCTG pipe and tube and fittings, flanges, and tool joints, I find that one consistent remedy recommendation should be made given that certain fittings are made from welded pipe and tube.

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[25] EC-Y-046 at Table LONG-22.

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions within the near future, when evaluating the various remedy options for tubular products.

Domestic demand grew for welded non-OCTG tubular products from 1996 to 1999, dropping in 2000 to a level which was still above 1998 levels.[26] As I discussed in my injury opinion, demand for fittings grew between 1996 and 2000, except for the period between 1998 and 1999.[27] In response to this increase in demand, welded non-OCTG and fittings producers expanded their capacity.[28] But again as demand was increasing, price was falling.[29] As I discussed previously, the correlation between the presence of imports in the market and price suppression and depression is clear from the import trends. Imports continued to surge over demand increases, grabbing market share and lowering prices. The lower prices have prevented the domestic industry from being able to maintain economic health, and caused attrition amongst the surviving producers.

2. Industry Adjustment Plans

I carefully considered the adjustment plans submitted by the domestic tubular industry. The industry states that it plans an effort aimed at consolidation, modernization, debt reduction and capital investments needed to maintain current capacity and lower costs. During the period of relief, the industry will start or finish capital spending to improve efficiency, expand their range of product offerings, and re-train their labor force. This also includes improving or reactivating idle capacity. After the adjustment plans have been implemented, the domestic industry will be more capable of competing with imports.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quantitative restrictions(quotas), tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. I have determined that increased tariffs would provide the tubular industry which was found to be injured with the most appropriate form of relief while minimizing costs to consumers and avoiding disruptions of supply. Overall I find that the most effective remedy will be the tariffs I proposed above.

Short and Long Term Effects of Recommended Relief. The tariff increase that I am recommending will address the serious injury to the domestic tubular industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

The tariff is intended to reduce import volumes to non-injurious levels, while maintaining import access to the market. The 30 percent duty increase would restore U.S. prices to levels that would justify the capital expenditure that the industry needs to improve its competitiveness.

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[26] CR and PR at Tables T-C-4 and T-C-6.

[27] CR and PR at Tables T-C-4 and T-C-6.

[28] CR and PR at Tables T-C-4 and T-C-6.

[29] CR and PR at Tables T-C-4 and T-C-6.

This relief will restore the production levels, prices, and profitability of the industry to a reasonable level so that the industry will be able to continue modernizing its productive facilities, adding new product lines, and bringing recent capacity increases to full utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. In this regard, I estimate that, during the first year of relief, the remedy would result in a small to moderate increase in domestic prices, a much more significant increase in domestic sales volumes, and a substantial increase in the industry's overall sales.[30] I also note that the remedy would have a much more significant effect on import prices than domestic prices and a substantial impact on import volumes as well.[31] Accordingly, I believe that the significant declines in import volumes resulting from the tariff will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period of relief.

The remedy would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. The use of a tariff would allow purchasers to obtain imports at a level which the domestic market can sustain, and which will provide protection should domestic demand increase rapidly.

Short and Long Term Effects of Not Taking the Recommended Action. Failure to take the recommended action would cause the domestic industry to be decimated. Producers of tubular products have seen their operating margins disappear over the years. If prices and profits do not rise, bankruptcy within the industry will be highly prevalent. Many of these producers are small corporations which would disappear within even the short term. The larger producers would simply be using their base assets just to survive. In the long term, there would be no remaining domestic producers of these tubular products.

IV. STAINLESS AND TOOL STEEL PRODUCTS

A. Findings and Recommendations[32]

For the reasons set forth below, I recommend the following actions with respect to stainless steel bar and light shapes ("stainless steel bar"), stainless steel rod, tool steel, stainless steel wire, and stainless steel fittings and flanges. I find that these actions would address the serious injury I have found to exist and would be most effective in facilitating the efforts of the domestic industries producing these products to make a positive adjustment to import competition:

For stainless steel bar, stainless steel rod, tool steel and stainless steel wire , I recommend:

(1) That the President impose quantitative restrictions for a three year period in the amount equal to the respective average quantities during the period of 1996 to 1998, which I find to be the most recent representative period prior to the surge of imports, in the first year of the quota. The quantitative restriction should be liberalized to increase 3 percent per annum for the second and third years. These quantitative restrictions should be

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[30] EC-Y-046 at Table T-9. EC-Y-046 at Table T-10.

[31] EC-Y-046 at Table T-9. EC-Y-046 at Table T-10.

[32] The Commission as a whole has found serious injury caused by increased imports of stainless steel bar and stainless steel rod. Chairman Koplan, Commissioner Bragg, and myself have also found that industries producing tool steel, stainless steel wire, and stainless steel fittings and flanges are seriously injured by increased imports. The President may treat this finding by three Commissioners as an affirmative determination.

administered on a quarterly, HTS-specific, and country-by-country basis. In addition, a 15 percent *ad valorem* duty increase should be placed on these products during the first year of the quantitative restriction;

(1) Having made a negative finding with respect to imports from Canada[33] and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports not be subject to the quantitative restriction or the additional duty; and

(2) That the quantitative restriction and duty increase for stainless steel bar, stainless steel rod, tool steel, and stainless steel wire not apply to imports from Israel, Jordan, beneficiary countries under the Caribbean Basin Economic Recovery Act, or beneficiary countries from the Andean Trade Preference Act.

For stainless steel fittings and flanges, I recommend:

(1) That the President impose quantitative restrictions for a four year period in the amount equal to the average quantity during the period of 1996 to 1998, which I find to be the most recent representative period prior to the surge of imports, in the first year of the quota. The quantitative restriction should be liberalized to increase 2 percent per annum for the second, third, and fourth years. These quantitative restrictions should be administered on a quarterly, HTS-specific, and country-by-country basis;

(2) Having made affirmative findings with respect to imports of stainless steel rod from Canada[34] and Mexico[35] under section 311(a) of the NAFTA Implementation Act, that such imports be subject to the quantitative restriction described above; and

(3) That the quantitative restriction not apply to imports of stainless steel rod from Israel or Jordan, or to any imports of stainless steel rod entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

I find that the actions described above will not exceed the amount necessary to remedy the serious injury I find to exist.[36]

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[33] The Canadian stainless steel wire producers raised the issue that according to the NAFTA rules of origin, stainless steel wire is classified to be of country of origin where its stainless steel wire rod is produced. The domestic producers who have commented on this issue do not object to classifying Canadian stainless steel wire according to where the wire is actually drawn for purposes of this investigation. Posthearing Brief of Greening Donald and Central Wire.

[34] The Government of Canada has made a request to exclude Canadian fittings and flanges, because they are primarily large diameter fittings, and do not compete with the domestic industry. Government of Canada Request for Exclusion.

[35] ***

[36] I also recommend that the President continue the recently initiated international negotiations to address the underlying causes of the increases in imports such as global overcapacity, that the Secretary of Labor and the Secretary of Commerce give expedited consideration to workers and domestic firms for adjustment assistance, and that the President undertake legislative action to address certain conditions in the industry for these products.

(continued...)

B. Stainless Steel Bar, Stainless Steel Rod, Tool Steel, and Stainless Steel Wire

In my analysis of the domestic industry and classes of articles, I have found one domestic industry of stainless semi-finished steel, stainless steel plate, stainless steel bar, stainless steel rod, and tool steel. Given this finding, I have made a consistent recommendation for stainless steel bar, stainless steel rod, and tool steel. While the production processes of stainless steel wire differed from bar, rod and tool steel, I believe a similar method of relief should be applied to stainless steel wire, because stainless steel rod is the feedstock for stainless steel wire. This consistency will prevent distortive effects on the stainless steel wire market due to changes in the market for stainless steel rod.

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions within the near future, when evaluating the various remedy options for stainless steel bar, stainless steel rod, tool steel, and stainless steel wire.

a. Demand Conditions

Demand grew throughout the period of investigation but fluctuated from 1997 to 1999 for stainless steel bar and from 1998 to 1999 for stainless steel rod.[37] Apparent U.S. consumption between 1996 and 2000 for bar, rod, tool steel, and wire grew by *** percent.[38] As the overall economy declined in 2001, apparent consumption declined by *** percent between interim 2000 and interim 2001.[39]

Although there is some disagreement about the extent of demand changes in the market during the next three years between the parties, they appear to agree generally that demand will continue to be depressed through the middle of 2002 but will then recover in 2003 and 2004. An economic consultant for the domestic producers projects that demand will be lower in 2002 than in 2001.[40] The consultant also predicts that demand will then grow in 2003 to the same general levels as 2001 and will grow further to levels above the 2001 levels in 2004.[41] An economic consultant for the European stainless steel producers agrees that demand for stainless steel bar will be negatively affected by the on-going recession through the middle of 2002 but asserts that there will be a recovery in late 2002 that will continue through 2003 and 2004.[42]

The price of these four products is directly affected by the price of nickel.[43] To account for fluctuations in the cost of nickel, stainless steel producers impose a surcharge on the price of their

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[36] (...continued)
During the hearing, both foreign and domestic producers noted how previous stainless steel negotiations were very close to reaching an agreement in 1992. Remedy Transcript at 1182, 1183, 1205, & 1206 (Testimony of Mr. Cameron, Mr. Cunningham, & Mr. Hartquist).

[37] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7.

[38] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7.

[39] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7.

[40] Domestic Stainless Steel Industry Posthearing Remedy Brief at Att. 1.

[41] Domestic Industry Posthearing Remedy Brief at Att. 1.

[42] Stainless Steel Remedy Hearing Tr. at 1165-66; Eurofer Posthearing Remedy Brief at 19-20.

[43] CR at ST-95-95. PR at ST-70-71.

stainless steel bar products whenever the price of nickel reaches a certain level.[44] Generally, after declining during the first three years of the period of investigation, nickel prices increased significantly throughout 1999 and the first half of 2000. Nickel prices fell thereafter, declining through interim 2001.[45]

Lastly, there are few purchasers who reported substitutes for stainless steel rod, bar, tool steel, and wire in their end uses.[46] The few substitutes that were cited are galvanized wire; alloy, aluminum, and titanium bar; alloy products; high-tech polymers and plastics; and carbon steel products.[47]

b. Domestic Supply Conditions

Four firms accounted for the large majority of domestic production of stainless steel bar in 2000: ***.[48] Moreover, this market segment became more concentrated during the period of investigation. In 1997, ***, the largest domestic producer of bar in 2000,[49] acquired ***, the fifth largest producer in 2000.[50] In addition, Empire Specialty Steel, the *** largest bar producer in 2000, shut down its stainless steel operations in June 2001.[51]

The domestic stainless steel rod market segment is also concentrated. Only four domestic firms reported producing stainless steel rod in 2000.[52] Further, in 1997, ***, the dominant domestic producer of stainless steel rod during the period of investigation,[53] purchased ***, the second largest producer of stainless steel rod during the period.[54] In addition, ***, the third largest rod producer in 2000, shut down its stainless steel rod operations ***.[55] At the same time, *** recently brought online a new rod processing facility capable of producing *** tons.[56] With the acquisition of *** and the exit of *** from the market, Carpenter/Talley and Charter Wire are the only significant domestic producers of stainless steel rod. Both the tool steel and wire market segments remain unconcentrated.[57]

The aggregate capacity level increased from 1996 to 2000.[58] Capacity for bar, rod, tool steel, and wire was *** percent higher , *** percent higher , *** percent higher, and *** percent lower,

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[44] CR at ST-95-95. PR at ST-70-71.

[45] CR at ST-95-95. PR at ST-70-71.

[46] INV-EC-046 at Table ST-6.

[47] INV-EC-046 at ST-13.

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[51] ***

[52] CR and PR at Table ST-1.

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[56] Stainless Steel Remedy Transcript at 1209 (Testimony of Mr. Hartquist).

[57] CR and PR at Table ST-1.

[58] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7.

respectively, in interim 2001 than in interim 2000.[59] Capacity utilization declined from 1996 for bar, rod, and tool steel.[60] It fell from its high in 1998 to 2000 for wire.[61]

c. Import Supply Conditions

During the period of investigation, there were imports from over 40 different countries, although not every country exported to the United States in every year.[62] The record indicates that domestic and imported stainless steel products are comparable in most respects.[63] I therefore find that there is a reasonably high degree of substitutability between the domestic product and imports.

2. Industry Adjustment Plans

I carefully considered the adjustment plans submitted by the stainless steel industry. The domestic industry states that it plans to make substantial investments in its productive facilities in order to improve its innovation, efficiency, product quality, and overall cost competitiveness.[64] The industry asserts that these improvements will further strengthen its ability to compete with foreign producers across the world.[65] The industry also states that it intends to develop new products and applications so as to increase demand for stainless steel bar in a number of end use applications.[66] As part of its adjustment plan, the industry notes that it supports, and will participate in, any efforts by the President to remove structural impediments to a fair market environment, including the reduction of excess and inefficient capacity and the elimination of government subsidy programs supporting inefficient foreign capacity.[67] By improving efficiency, lowering costs, and expanding product lines, the industry's proposed investments should strengthen the domestic industry and make it better able to withstand import competition in the future.

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[59] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7.

[60] CR and PR at Tables ST-C-4, ST-C-5, and ST-C-6.

[61] CR and PR at Tables ST-C-7.

[62] INV-Y-180 at Table G25, G26, G27, and G28.

[63] CR at ST-89, PR at 64.

[64] Domestic Stainless Steel Bar Prehearing Brief at Att. 1, pp. 6-12. Domestic Stainless Steel Rod Prehearing Brief at Att. 1, pp. 6-8. Domestic Tool Steel Prehearing Brief at Att. 1, pp. 5-8. Domestic Stainless Steel Wire Prehearing Brief at Att. 2, pp. 6-10.

[65] Domestic Stainless Steel Bar Prehearing Brief at Att. 1, pp. 6-12. Domestic Stainless Steel Rod Prehearing Brief at Att. 1, pp. 6-8. Domestic Tool Steel Prehearing Brief at Att. 1, pp. 5-8. Domestic Stainless Steel Wire Prehearing Brief at Att. 2, pp. 6-10.

[66] Domestic Stainless Steel Bar Prehearing Brief at Att. 1, pp. 5-6. Domestic Stainless Steel Rod Prehearing Brief at Att. 1, pp. 5-6. Domestic Tool Steel Prehearing Brief at Att. 1, page 5. Domestic Stainless Steel Wire Prehearing Brief at Att. 2, pp. 5-6.

[67] Domestic Stainless Steel Bar Prehearing Brief at Att. 1, pp. 2-5. Domestic Stainless Steel Rod Prehearing Brief at Att. 1, pp. 2-5. Domestic Tool Steel Prehearing Brief at Att. 1, pp. 2-5. Domestic Stainless Steel Wire Prehearing Brief at Att. 2, pp. 2-4.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quantitative restrictions(quotas), tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of each. As I have stated previously, the form of remedy that I have chosen seeks to address the ongoing injury that has occurred over a number of years, and not just in the last few years. I have determined that quotas in combination with tariffs would provide the domestic stainless steel bar, stainless steel rod, tool steel, and stainless steel wire industries with the most appropriate form of relief but would also minimize costs to consumers and disruption of supply.

Proposals of the Parties. The domestic stainless steel producers request that the Commission recommend that the President impose a three- year quota and a one-year tariff on imports of stainless steel bar, rod, tool steel, and wire from non-NAFTA countries.[68] They argue that the period from 1993 to 1995 should be used as the representative period for the quota calculation[69] and propose that the quota for the first year of the remedy period for stainless steel bar, rod, tool steel, and stainless steel wire be 69,512 tons, 50,210 tons, 53,540 tons, and 21,858 tons, respectively.[70] They also propose that the quota be increased by 3 percent for the second and third years of the recommended relief period.[71] They also suggest that the Commission impose an additional tariff of 15 percent on imports during the first year of the period in order to allow the industry to raise prices immediately.[72] Finally, the industry requests that the Commission recommend that the quota be administered on a quarterly, HTS-specific, and country-by-country basis[73] and that the first quarters' quota be adjusted downward to reflect possible imports surges before imposition of the remedy.[74]

The United Steelworkers Association proposes that the Commission recommend a combination of tariffs and a quota on stainless steel imports.[75] They recommend an increased tariff of 30 percent *ad valorem* on imports and that the Commission recommend a quota based on the amount of imports during the period from July 1, 1994 to June 30, 1997.[76] They propose that the remedy extend for four years, that their proposed tariffs be reduced at a rate of 5 percent per year, and that the quota be adjusted to account for growth in consumption plus one percent per year.[77]

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[78] Respondents contend that, if the Commission is inclined to recommend import restrictions, the Commission should reject tariffs and

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[68] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[69] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[70] Domestic Stainless Steel Industry Posthearing Remedy Brief at 14.

[71] Domestic Stainless Steel Industry Posthearing Remedy Brief at 6.

[72] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[73] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[74] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[75] USWA Posthearing Remedy Brief at 1.

[76] USWA Posthearing Remedy Brief at 1.

[77] USWA Posthearing Remedy Brief at 1.

[78] Usinor Prehearing Remedy Brief at 8-9.

adopt quotas as a remedy.[79] They argue that the quotas should be calculated based on the three most recent years of the period of investigation.[80]

I find that the remedies proposed by the domestic industry and the USWA would exceed the amount necessary to prevent or remedy serious injury. First, both proposals would significantly limit the volume of stainless steel bar, rod, tool steel, and wire imports that could enter the country if imposed. The domestic industry's proposed quota would limit imports during the first year of relief to a level over ten percent lower than the level in 1996, which was the year in which imports were at their lowest levels of the period of investigation.[81] The price effects of the USWA's proposed 30 percent duty increase would be well beyond the average unit value drop in imports, and the four year period would extend the limitation on the volume of imports into a period when demand is predicted to rebound.[82]

I also do not agree with respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. During the period of investigation, the industry's profitability levels, production levels, capacity utilization rates and market share have declined substantially. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy these declines.

I believe that some form of quota-based relief is necessary to provide the industry with a substantial upgrade to its production, sales, price and profitability levels during the period of relief. This upgrading is necessary to allow the industry to make the capital improvements required to help it regain its footing in this marketplace. In addition, a quota system if properly administered offers a more predictable market environment than just a tariff. Given the high levels of market concentration in the stainless steel bar and rod market segments, a tariff would offer little to no relief to the domestic industry, because it would fail to address the need to lower imports to non-injurious levels unless set to prohibitive levels. In addition, the effects of movements in the nickel market could offset a tariff-only remedy. Finally, a concern by the domestic industry with a tariff-only remedy is that this tariff could be simply absorbed by the importers.[83]

Recommended Relief. I recommend that the President impose quantitative restrictions for a three year period in the amount equal to the respective average quantities during the period of 1996 to 1998, which I find to be the most recent representative period[84] prior to the surge of imports, in the first year of the quota. Thus in the first year of relief, imports of stainless steel bar, stainless steel rod, tool steel, and stainless steel wire would be set to an aggregate level for non-NAFTA countries of 92,103 tons, 66,732 tons, 58,477 tons, and 25,807 tons, respectively. The quantitative restriction should be liberalized to allow a further 3 percent import quantity per annum for the second and third years. These quantitative restrictions should be administered on a quarterly, HTS-specific, and country-by-country basis. In addition, a 15 percent *ad valorem* duty increase should be placed on these products during the first year of the quantitative restriction

Although the industry has taken steps in the planning of its adjustment efforts, it is clear that it will take some time for the industry to modernize and update its current facilities, bring new equipment and capacity fully on line, and develop and market new product lines.

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[79] Usinor Prehearing Remedy Brief at 11-13.

[80] Usinor Prehearing Remedy Brief at 9-11.

[81] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7.

[82] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7. Domestic Industry Posthearing Remedy Brief at Att. 1.

[83] Remedy Hearing Transcript at 1008 (Testimony of Mr. Hartquist).

[84] Under 19 U.S.C. § 2253(e)(4), any action proclaiming a quantitative restriction shall be based in the most recent three years that are representative of imports of such article.

Having made a negative finding under section 311(a) of the NAFTA Implementation Act with respect to imports of stainless steel bar, rod, tool steel, and wire from Canada and Mexico, I recommend that the President not subject Canada and Mexico to any relief action.

I also recommend that the President exclude from any remedy imports of stainless steel bar, rod, tool steel, and wire from Israel, Jordan, and beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Imports from these countries all accounted for a small or non-existent percentage of total imports and had a minimal market share during the period of investigation.

Short and Long-Term Effects of the Recommended Remedy. The quota and tariff increase that I am recommending will address the serious injury to the domestic stainless steel bar industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

The quantitative restriction is intended to reduce import volumes to non-injurious levels. In all four market segments, the most recent surge in imports was from 1999 to 2000.[85] I do not consider these years to be representative, because the surge quantities are distortive, and the overall economy was in a boom condition. Therefore, the three most recent representative years are 1996, 1997, and 1998. By administering these quotas on an HTS-specific and country-by-country basis, the potential problems with short supply can be avoided. The domestic industry has stated its commitment to making sure that this program would be properly administered.[86] In addition, the 15 percent duty increase would restore U.S. prices to levels that would justify the capital expenditures that the industry needs to improve its competitiveness.[87]

This relief will restore the production levels, prices, and profitability of the industry to a reasonable level so that the industry will be able to continue modernizing its productive facilities, adding new product lines, and bringing recent capacity increases to full utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. In this regard, I estimate that, during the first year of relief, the remedy would result in a small increase in domestic prices, a much more significant increase in domestic sales volumes, and a substantial increase in the industry's overall sales.[88] I also note that the remedy would have a much more significant effect on import prices than domestic prices and a substantial impact on import volumes as well.[89] Accordingly, I believe that the significant declines in import volumes resulting from the quota and tariff will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period of relief.

The remedy would provide the industry with positive benefits but would not result in the exclusion of imports from the domestic market. The use of a quota would allow purchasers to still obtain some levels of imports. I believe that the effects of tariffs beyond the first year may be unpredictable in this market.

Initially, the quota and tariff would result in a negative impact on end users, primarily in the form of reduced import volumes and increased prices in the domestic market. However, I believe that this effect will be limited somewhat by the small expected increase in domestic stainless steel prices, and offset by the increase in domestic quantity. The largest price impact will be felt by end users who

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[85] CR and PR at Tables ST-C-4, ST-C-5, ST-C-6, and ST-C-7.

[86] Remedy Hearing Transcript at 1008 (Testimony of Mr. Hartquist).

[87] Domestic Stainless Steel Industry Posthearing Remedy brief at 17.

[88] EC-Y-051 at ST-14.

[89] EC-Y-051 at ST-14.

purchase solely imports since I estimate that import prices will increase much more significantly than domestic prices during the period of relief. Although I estimate that the remedy will increase overall consumer costs during the first year of the period of relief, this cost is offset by the benefits to the industry from increased prices and volumes of sales.

Short and Long-Term Effects of Not Taking the Recommended Action. In the absence of relief, I believe that the domestic industry's condition will continue to deteriorate seriously. I believe that imports will continue to capture an increasing share of the U.S. market, which will result in continued declines in the industry's market share, sales volume, production and profitability levels. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers, and may result in the closing of additional domestic facilities. Moreover, in the absence of relief, imports will continue to suppress and depress prices in the domestic market. All of the foregoing will be likely to continue destroying the profitability of domestic producers, thereby serving as an impetus for further contraction, both in terms of production and employment, in the domestic industry.

In the absence of relief, the declines in the industry's sales revenues and profitability levels would also make it difficult, if not impossible, for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive. In the long term, the domestic industry could be further reduced by potential bankruptcies as it loses its competitiveness. Any prolonged decline in the competitiveness of domestic producers would also likely impact their principal customers adversely due to reduction in the number of alternative sources for stainless steel in the U.S. market.

C. Stainless Steel Fittings and Flanges

1. Conditions of Competition

I considered the following conditions of competition in the domestic market, and likely developments affecting such conditions during the next several years, when evaluating the various remedy options for stainless steel fittings and flanges.

a. Demand Conditions

Demand for stainless steel fittings generally grew during the period of investigation.[90] Apparent U.S. consumption of fittings increased by *** percent between 1996 and 2000, growing from *** tons in 1996 to *** in 2000.[91] However, as the overall economy declined in 2001, demand for stainless steel fittings declined by *** percent between interim periods, falling from *** tons in interim 2000 to *** in interim 2001.[92] Like other stainless steel products, the price of stainless steel fittings is directly affected by the price of nickel.[93]

[90] CR and PR at Tables ST-75 and ST-C-12.

[91] CR and PR at Tables ST-75 and ST-C-12.

[92] CR and PR at Tables ST-75 and ST-C-12.

[93] CR at ST-95-96. PR at ST-70-71.

b. Domestic Supply Conditions

The industry's aggregate capacity level decreased during the period of investigation by *** percent from 1996 to 2000.[94] Domestic capacity was steady between interim 2000 and interim 2001.[95] The industry's capacity utilization rate declined from *** percent in 1997 to *** percent in 2000.[96] Capacity utilization also declined between interim periods, dropping from *** percent to *** percent between interim periods.[97] In light of these capacity utilization levels, I find that domestic stainless steel fittings producers have been unable to maintain capacity that can be used to increase production in the event of price changes or increased domestic demand.

c. Import Supply Conditions

During the period of investigation, there were imports of stainless steel fittings from over 40 different countries, although not every country exported in every year.[98] The record indicates that purchasers generally perceive domestically-produced and imported stainless steel fittings to be comparable in most respects, which indicates that they are reasonably substitutable.[99]

2. Industry Adjustment Plans

I also carefully considered the adjustment plans submitted by Gerlin and the other domestic producers of stainless steel fittings and flanges. These producers state that they plan to make substantial investments in their productive facilities in order to improve their innovation, efficiency, product quality, and overall cost competitiveness.[100] One of the primary aspects of these improvements includes the automation of their operations, in order to compete with the lower labor rates that foreign producers enjoy.[101] For example, ***[102]***[103] I have considered the amount of time required to make these capital improvements in deciding the duration of my recommended relief.

3. Recommended Relief

The statute authorizes the Commission to recommend several forms of import relief, including tariffs, quotas, tariff rate quotas, and adjustment measures, as well as a combination of these remedies. In determining which of these forms would be most effective in remedying the serious injury and facilitating positive adjustment to import competition, I have examined closely the costs and benefits of

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[94] CR and PR at Tables ST-75 and ST-C-12.

[95] CR and PR at Tables ST-75 and ST-C-12.

[96] CR and PR at Tables ST-75 and ST-C-12.

[97] CR and PR at Tables ST-75 and ST-C-12.

[98] INV-Y-180, Table G33- Stainless Steel Fittings.

[99] INV-Y-046 at ST-31.

[100] Gerlin Prehearing Remedy Brief at 11. Flowline, Gerlin, and Shaw Alloy Piping Prehearing Remedy Brief at Attachment 1.

[101] Committee on Pipe and Tube Imports Posthearing Remedy Brief at 4.

[102] ***

[103] ***

each. I have determined that quotas will provide the domestic stainless steel fittings industry with the most appropriate form of relief.

Proposals of the Parties. Some of the domestic stainless steel producers request that the Commission recommend that the President impose a three- year quota and a one-year tariff on imports of stainless steel fittings from all countries.[104] They contend that the period from 1993 to 1995 should be used as the representative period for its quota calculation[105] and propose that the quota for the first year of the period of relief be 16,513 short tons.[106] They also propose that the quota increase by 3 percent per annum in the second and third years of the remedy period.[107] They also suggest that the Commission impose an additional tariff of 15 percent on imports of stainless steel fittings during the first year of the period in order to allow the industry to raise prices immediately.[108] Finally, these producers request that the Commission recommend that the quota be administered on a quarterly basis and that the first quarters' quota be adjusted downward to reflect any possible imports surges before imposition of the remedy.[109]

The United Steelworkers Association also proposes that the Commission recommend a tariff of 30 percent *ad valorem* on imports of stainless steel fittings and flanges.[110] They propose that the remedy extend for four years, that their proposed tariffs be reduced at a rate of 5 percent per year.[111]

Gerlin has proposed a four-year tariff-rate quota ("TRQ").[112] In-quota imports from all countries except Mexico would be subject to their current rate of duty.[113] In-quota imports from Mexico should be assessed on an *ad valorem* basis.[114] The imports entering above the quota amount would be subject to a 50 percent duty increase.[115] The quota amount would be set to the average of 1993 to 1995.[116] Additionally, they argue that flange forgings should be excluded from relief, because non-integrated producers would be cut off from this raw material if these products were subject to the TRQ.[117]

The Committee on Pipe and Tube Imports proposes a four year quota using the base period of 1996 to 1998. This quota would be increased by 2 percent per annum for the second, third, and fourth years. The quota would be administered on a quarterly and HTS-specific basis. They also argue that non-NAFTA countries should either be exempt from the quota or start at the average quantity of the years 1999 and 2000.

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[104] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[105] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[106] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[107] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[108] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[109] Domestic Stainless Steel Industry Posthearing Remedy Brief at 5-6.

[110] USWA Posthearing Remedy Brief at 1.

[111] USWA Posthearing Remedy Brief at 1.

[112] Gerlin Posthearing Remedy Brief at 2-3.

[113] Gerlin Posthearing Remedy Brief at 2-3.

[114] Gerlin Posthearing Remedy Brief at 2-3.

[115] Gerlin Posthearing Remedy Brief at 2-3.

[116] Gerlin Posthearing Remedy Brief at 3-6.

[117] Gerlin Posthearing Remedy Brief at 17-21.

Respondents argue that the Commission should not recommend any restrictive remedies against imports and that relief should be limited to trade adjustment assistance.[118] If the Commission is inclined to recommend import restrictions, they assert, the Commission should reject tariffs and adopt quotas as a remedy.[119] They argue that the quotas should be calculated based on the three most recent years of the period of investigation.[120]

I do not agree with respondents that it would be appropriate to recommend only trade adjustment assistance for the industry. During the period of investigation, the industry has seen its profitability levels, production levels, capacity utilization rates and market share decline dramatically. Trade adjustment assistance alone would not provide the amount or type of assistance that would remedy these declines.

I also do not agree that the remedies proposed by some of domestic producers, Gerlin, and the USWA would address the type of serious injury that the industry faces. Given the high levels of average unit prices, it is doubtful that adequate tariffs could be imposed without causing excessive negative effects on the consumer market. In addition, the price differential between some of the imports and the domestic products are beyond 50 percent.[121] As with other stainless steel products, prices are also affected by movements in the nickel market which could offset any tariff-based relief. I find that the only adequate remedy would be as the Committee on Pipe and Tube Imports has recommended in the form of a quota.

Recommended Relief. I recommend that the President impose quantitative restrictions for a four year period in the amount equal to the average quantity during the period of 1996 to 1998, which I find to be the most recent representative period prior to the surge of imports, where the aggregate amount would be 21,514 tons for the first year. The quantitative restriction should be liberalized to allow a further 2 percent import quantity per annum for the second, third, and fourth years. These quantitative restrictions should be administered on a quarterly, HTS-specific, and country-by-country basis. In my view, these levels of relief will help stabilize volumes and prices in the stainless steel fittings market, provide the industry with the requisite volume and price relief, and increase industry profitability levels in order to make the capital expenditures to allow positive adjustment.

The duration of time needed to make capital improvements and reclaim inefficient capacity will be a number of years. I recognize that relief of more than three years duration will require the Commission to conduct a mid-course review under section 204(a)(2) of the Trade Act. Such an investigation would provide the Commission with an opportunity to formally review, among other things, the progress of the industry in implementing its plan. It would also provide the President, after receiving the Commission's report, with the opportunity to adjust relief if it is no longer warranted or if the relief was ineffective to make a positive adjustment to import competition.

Having made an affirmative finding under section 311(a) of the NAFTA Implementation Act with respect to imports of stainless steel fittings from Canada and Mexico, I feel bound to recommend that the President subject imports from Canada and Mexico to the quota. But the President should take into account the arguments made by the Government of Canada and Maass Flange Corporation during the remedy stage of this investigation.[122]

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[118] European Flange Producers Posthearing Remedy Brief at 6-7.

[119] European Flange Producers Posthearing Remedy Brief at 8-10.

[120] European Flange Producers Posthearing Remedy Brief at 10-15

[121] *See* Stainless Injury Transcript at 2206(Testimony of Mr. Van Noord)(stating that "import prices were 50 to 60 percent lower" than his raw material costs).

[122] *See infra*, note 2 and 3.

I also recommend that the President exclude from any remedy imports of stainless steel fittings from Israel, Jordan, and beneficiary countries under the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Imports from these countries accounted for a small or non-existent percentage of total imports and had a minimal share of the domestic market during the period of investigation.

Short and Long-Term Effects of the Recommended Remedy. The quota that I have recommended will address the particular serious injury to the domestic stainless steel fittings industry and will be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. It also does not exceed the amount necessary to remedy such serious injury.

The remedy is intended to reduce import volumes to non-injurious levels. By doing so, the remedy will restore the production levels and prices of the industry to a reasonable level during the period of relief so that the industry will be able to continue modernizing its productive facilities, adding new product lines, and bringing recent capacity increases to full utilization. The remedy will provide immediate relief to the industry primarily in the form of increased production levels and improved market share and, to a lesser extent, in the form of increased domestic prices and reduced import underselling. In this regard, I estimate that, during the first year of relief, the recommended quota would result in a small increase in domestic prices, a much more significant increase in domestic sales volumes, and a substantial increase in the industry's overall sales.[123] I also estimate that the quota would have a more significant effect on import prices than domestic prices and that it would have a more significant impact on import volumes as well.[124] Accordingly, I believe that the significant declines in import volumes will help the industry increase its sales revenues substantially and allow it to make significant adjustments to import competition during the period of relief.

Moreover, the remedy would provide the industry with significant positive benefits, and still allow imports to enter into the domestic market.

I recognize that the recommended quota would result in an initial negative impact on end users of stainless steel fittings, primarily in the form of reduced import volumes and increased prices in the domestic market. However, I believe that this effect will be limited somewhat by the small expected increase in domestic stainless steel fittings prices, and by the fact that the quota will be administered both on an HTS-specific and country-by-country basis. The largest price impact will be felt by end users of only imports since I estimate that import prices will increase. Although I estimate that the quota will increase the aggregate cost to consumers, this cost will be offset by the benefits to the industry from increased prices and volumes of sales.

Short and Long-Term Effects of Not Taking the Recommended Action. In the absence of relief, I believe that the domestic industry's condition will continue to deteriorate seriously. While operating margins have maintained a slight profit, this industry is on the verge of entering into a period of significant losses. Additionally, given the size of the corporations that comprise this industry, many producers will likely enter into bankruptcy. I believe that imports will continue to capture an increasing share of the U.S. market. The resulting production declines will cause a continuing decline in the capacity utilization rates and efficiency of domestic producers. In the absence of relief, imports will continue to suppress and depress prices in the domestic market.

In the absence of relief, the declines in the industry's sales revenues and profitability levels would also make it difficult for the domestic industry to undertake the capital investments to modernize equipment and improve product quality that are necessary for domestic producers to remain competitive.

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[123] EC-Y-051 at Table ST-33.

[124] EC-Y-051 at Table ST-33.

Any prolonged decline in the competitiveness of domestic stainless steel fittings producers would also adversely impact their principal customers by reducing the number of viable sources available, thus causing a ripple effect throughout the U.S. market.

V. EXCLUSION REQUESTS

The Commission received large amounts of evidence on exclusion requests over the course of this investigation in the form of direct testimony and filings by interested parties. In addition, the United States Trade Representative has also accepted submissions of such requests from interested parties. I believe that in the interests of presenting the President with the best recommendation I can give him, and based on the evidence presented to me, I should recommend those products which I believe should be excluded from the remedy determination due to their position as unique niche products or ones that are domestically unavailable products. I have determined that several specialty or niche products should be excluded from the recommended remedy for the class of products to which they would otherwise belong.

A. Carbon and Alloy Flat-rolled Steel Products

Battery Quality Steel Band:

This product is not produced in the U.S., and no U.S. producer has qualified to produce it. In addition, it is covered by the recent hot rolled steel Title VII action. To the extent it competes with the domestic industry, tariff restrictions are already in place.

Hot rolled Bearing Quality Steel:

This product is not produced in the U.S., and no U.S. producer is capable of producing this product. It has been excluded from previous cases, with the consent of the domestic industry.

Hot rolled Dual Phase Steel:

This product is not produced in the U.S., and no U.S. producer is capable of producing this product. It has been excluded from previous cases with the consent of the domestic industry.

Tin free steel laminated with polyester film:

This product is not produced in the U.S., and no U.S. producer is capable of producing this product. It has been excluded from previous cases.

Electrolytically tin coated steel:

This product is not produced in the U.S., and no U.S. producer is capable of producing this product. It has been excluded from previous cases.

Continuously-annealed, tin free steel in gauges of 55 lbs:

This product is not produced in the U.S., and no U.S. producer is capable of producing this product. It has been excluded from previous cases.

B. Carbon and Alloy Long Products

Ball Bearing Steel:

This product is not produced in the U.S., and no U.S. producer is capable of producing this product. This products spans various HTS numbers among carbon and alloy long, tubular, and stainless steel product categories.

Hot rolled Bar for Track Shoes(Track Bar):

This product is not produced in the U.S., and no U.S. producer has qualified to produce it.

Ripper Shanks:

This product is not produced in the U.S., and no U.S. producer has qualified to produce it.

C. Stainless Steel Products

SF20T and DSR16FA Leaded Wire:

This product is not produced in the U.S., and no U.S. producer has qualified to produce it. The domestic industry has consented to exclusion of this product.

COMMISSIONER

Appendix A

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

December 19, 2001

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20500

Dear Mr. President:

It has been a privilege and honor to serve as a Republican Commissioner on the U.S. International Trade Commission during this first year of your presidency. I particularly appreciated the opportunity to be part of the decisional process at the USITC during the Section 201 investigation of the steel industry that you initiated on June 5, 2001.

I hope the Commission's recommendations and my accompanying personal views which are being forwarded to you today will prove helpful in your efforts to address the economic crisis facing the domestic steel industry, a crisis predominantly caused by overcapacity in world steel markets and by unfairly traded steel imports.

In carrying out my constitutional responsibilities, I owe special thanks to Governor Engler and the Republican members of the Michigan Congressional delegation and to Senator Rick Santorum and Representatives Melissa Hart, Bob Ney, and Phil English who were major contributors to the Commission's hearings in the steel cases and supporters of mine during the USITC appointment process. As you know, enforcement of U.S. trade laws is not a partisan issue and the input of members of Congress from both parties has been extremely helpful to the Commission's deliberations.

If I can be of any assistance to you or the administration in the future, please call on me.

Best personal regards.

Sincerely,

Dennis M. Devaney

Dennis M. Devaney

Appendix B

For immediate release
December 19, 2001

For further information contact
Commissioner Dennis Devaney
(202-205-5990)
(202-309-1726) Cell

BACKGROUND PRESS RELEASE TO ACCOMPANY THE TRANSMISSION OF THE U.S. INTERNATIONAL TRADE COMMISSION'S REPORT TO PRESIDENT BUSH IN INVESTIGATION NO. TA-201-73.

1. 12/19/2001 release, 2. 12/19/2001 letter to President Bush from Commissioner Dennis Devaney, 3. 12/7/2001 release.

The United States International Trade Commission, a bipartisan agency conducted ten days of hearings, received voluminous evidence, and spent countless hours reviewing the data and information submitted to the Commission by interested parties in its Section 201 investigation of the steel industry. The statutory test which we are mandated to apply to the facts gathered in this type of case is to determine if imports are a substantial cause of injury to the domestic steel industry. On October 22, 2001, the Commission unanimously held that imports of steel are a substantial cause of injury with respect to steel which in the year 2000 represented 74 per cent of the imports under investigation. Today, we are forwarding our formal remedy recommendations to the President which flesh out the views that were outlined during our meeting of December 7, 2001.

Our report represents the first step in the President's efforts to insure the continued existence of a viable domestic steel industry particularly in the wake of the renewed national security and infrastructure concerns created by the terrorist attacks on America. President Bush has also instructed the United States Trade Representative, the Secretary of Commerce, and the Secretary of the Treasury to undertake negotiations with foreign governments to eliminate inefficient and excess capacity in worldwide steel markets. The President also tasked these individuals with beginning negotiations to create new rules that will eliminate market distorting practices that have contributed to the current situation under the auspices of the OECD. Reports from Paris about the OECD meeting indicate that a potential agreement to cut worldwide overcapacity may be reached contingent on the President's final decision in the 201 investigation.

These reports underscore the importance of providing a strong recommendation to the President. By doing so in this independent investigation, we will enhance his ability to pursue his steel initiative from a position of strength during the negotiations. This will also insure that our trading partners understand the critical circumstances facing the U.S. steel industry. America has been and is the most open and free market in the world, a market which the USITC has found is being severely injured by surging imports of foreign steel.

The EU Commissioner for trade, Pascal Lamy, reacting to our decision on December 7, 2001 said in a speech to the British Steel association "(T)he US steel industry needs to put its own house in order. This should not be done at the expense of those who have already done so." As Mr. Lamy knows, there are significant historic differences in how the steel industries developed and in current market practices in the environments in which the U.S. steel industry operates as compared to EU steel manufacturers and to steel producers in the territories of other trading partners such as Russia, Ukraine, China, Japan, India, and Brazil. Many countries with which the United States competes in world steel markets pay for worker health care, retirement, and other social costs by direct governmental support of the individual worker whereas U.S. companies generally shoulder those costs themselves. Two examples of divergent cost practices in different parts of the world from the recently completed -more-investigation sharply illustrate this point. During a plant visit to Bethlehem Steel's Sparrows Point facility, as part of the 201 investigation, a Bethlehem executive told me of his visit with his opposite number from a comparable plant in China. Each of the plants produced flat rolled products including tin mill goods and shipped approximately 3.6 million tons of steel each year. The Bethlehem plant employed approximately 3800 employees in August, 2001. The Chinese plant employed approximately 38,000. Obviously, there are marked differences in wage costs in China and the U.S., but how can anyone fairly suggest that the American steel plant and its workers are inefficient in that

context? In other testimony, a different American steel executive described his visit to a plant in the Ukraine at a time when energy costs in the United States were spiking. He asked the plant manager what the plant's costs for natural gas were. The Ukraine manager initially stared blankly and the U.S. executive assumed that there had been a translation problem. When the question was repeated, the Ukrainian official responded that the plant received its natural gas from a state owned utility nearby and thus natural gas was not a cost of production in his pricing decisions.

In fact, as Department of Commerce Undersecretary Grant Aldonas said during the Paris OECD meeting, the U.S. industry has "put its house in order" over the past twenty years. U.S. steel companies have shed 64 per cent of their workforce. Inefficient plants have been closed, new business models, and new technologies have been adopted, and the productivity of steelworkers in the United States is now among the best in the world. Indeed, during the 1980's and 1990's, the U.S. steel industry underwent massive restructuring and reorganization investing well over $50 billion in plant modernization. Employment in the industry continues to decline and during the pendency of this Section 201 investigation, another 27,000 jobs were lost. Rather than being a heavy handed "threat" as some commentators have suggested, the ITC's findings represent a conclusion based on the evidence in the record, following an open and transparent process, and a bipartisan conclusion of injury by six independent Commissioners of a quasi-judicial agency.

At the end of the day, President Bush's initiation of this investigation was clearly the right decision for both practical and policy reasons. There is no real question that enforcement of trade remedy laws that have been enacted by the legislative branch of our government is fully consistent with the obligations of the United States under the WTO safeguard agreement. There is also no serious question that the responsibility of an ITC Commissioner is to interpret and enforce U.S. trade remedy laws as enacted by the Congress. The constitutional responsibility is clearly not to act as some kind of global legislator.

For those of us who believe that free trade raises economic standards throughout the world and helps to build foundations for the growth of freedom and democratic institutions, steel cases raise difficult economic questions, but enforcement of U.S. law by public officials of the United States government is never a difficult decision.

President Bush has a deserved reputation as someone who believes in free trade. He also understands that our trade remedy laws must be enforced. For someone like myself who returned to Washington from Detroit, Michigan, it is not at all difficult to appreciate the concerns of the citizens of Michigan, Ohio, Pennsylvania, Indiana, West Virginia and other parts of the American heartland which have been home to the U.S. steel industry for more than 100 years. President Bush and those of us who have been involved in this historic 201 investigation clearly appreciate that this is not some simplistic contest between "free trade" and "protectionism". Instead, it represents a principled debate between competing social and political values, each of which has a legitimate right to be heard. Fortunately, the debate occurs in the context of a legal framework that recognizes the complexity of the arguments and the issues. The President's final determination will be of critical significance to the health of a core industry in America and abroad at a time when our country and the world are at war with terrorists.

Appendix C

Statement of Commissioner
Dennis M. Devaney on
Remedy Recommendations in
Steel TA-201-73

On October 22, 2001 the Commission unanimously determined that increased imports of subject steel products are a substantial cause of serious injury to domestic industries producing steel. Therefore, my statutory responsibilities as a Commissioner of the USITC, call for me, pursuant to section 202(e)(1) of the Trade Act of 1974, to recommend to the President, such action as will address the serious injury to the domestic industries and which will be most effective in facilitating the efforts of the domestic industries to make positive adjustments to import competition. I make these recommendations after reviewing the presentation of voluminous evidence over the course of seven days of injury hearings and three days of remedy hearings, in addition to literally thousands of pages of briefs filed by the parties.

Section 202(e)(5) of the Trade Act enumerates factors to be considered in determining the form and the amount of relief to be recommended. In reaching my decision, I considered all of these factors, including the nature of the serious injury I found to exist; information available to the Commission concerning market conditions in domestic and world markets; likely developments affecting such conditions during the period for which action is requested. I have also considered the significant idling of productive facilities in the domestic steel industry, the inability of a significant number of domestic firms to carry out production operations at a reasonable level of profit, the significant level of unemployment and underemployment within the domestic industry and the inability of domestic producers to raise capital in the marketplace because of the injury caused by imported steel.

I therefore, am recommending to the President that he take the following actions in order to address the serious injury to the domestic industries found by the Commission. I find that these recommendations will most effectively facilitate the efforts of the industries to make a positive adjustment to import competition:

As to Carbon and Alloy Flat Products:

1.) I recommend that the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of flat products that are the subject of the remedy phase of this investigation as follows: 40 percent *ad valorem* in the first year of relief; 38 percent *ad valorem* in the second year of relief; 36 percent *ad valorem* in the third year of relief and 31 percent *ad valorem* in the fourth year of relief;

2.) Having made negative findings with respect to imports of flat products from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

3.) I recommend that the increase in duty described above apply to imports of flat products from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of flat products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Carbon and Alloy Long Products:

1.) I recommend that the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of carbon bar and rebar as follows: 35 percent *ad valorem* in the first year of relief; 33 percent *ad valorem* in the second year of relief; 31 percent *ad valorem* in the third year of relief and 26 percent *ad valorem* in the fourth year of relief;

2.) Having made negative findings with respect to imports of carbon bar and rebar from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

3.) I recommend that the increase in duty described above apply to imports of carbon bar and rebar from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of long products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Carbon and Alloy Tubular Products:

1.) I recommend that the President impose a duty, in addition to the current rate of duty, for a four year period, on all imports of tubular products that are the subject of the remedy phase of this investigation as follows: 30 percent *ad valorem* in the first year of relief, 28 percent *ad valorem* in the second year of relief, 26 percent *ad valorem* in the third year of relief, and 21 percent *ad valorem* in the fourth year of relief;

2.) Having made negative findings with respect to imports of tubular products from both Mexico and Canada under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended increase in the duty;

3.) I recommend that the increase in duty described above apply to imports of tubular products from beneficiary countries under the Caribbean Basin Economic Recovery Act, but not apply to imports of tubular products from beneficiary countries under the Andean Trade Preference Act, imports from Jordan or imports from Israel.

As to Stainless Steel Products except Fittings and Flanges:

1) I recommend that the President impose quotas in the amount equal to the respective average quantities during the period 1996 to 1998, which I find to be the most recent representative period, on imports of stainless steel bar, stainless steel rod, tool steel, and stainless steel wire for a three year period. In addition, I recommend that during the first year of the quotas, a 15 percent *ad valorem* duty be placed on these products. I recommend that the quota be administered on a quarterly and country-by-country basis;

2) Having made a negative finding with respect to these products from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports not be subject to the recommended quotas and duty increases;

3) I recommend that this quota and duty increase apply to stainless bar imports from beneficiary countries under the Carribean Basin Recovery Act, but not apply to imports entered from beneficiary countries under the Andean Trade Preference Act, imports from Jordan, or imports from Israel. These quotas and duty increases should not apply to imports of stainless steel rod, tool steel or stainless steel wire from Israel, Jordan, beneficiary countries under the Carribean Basin Recovery Act, or beneficiary countries under the Andean Trade Preference Act.

As to Stainless Steel Fittings and Flanges:

1.) I recommend that the President impose a quota in the amount equal to the average quantity during the period 1996 to 1998, which I find to be the most recent representative period, on imports of stainless steel fittings and flanges for a four year period. I recommend that the quota be administered on a quarterly and country-by-country basis;

2.) Should the President determine that the Commission reached an affirmative determination with respect to stainless steel fittings and flanges from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, I recommend that such imports be subject to the quota recommended.

3.) I recommend that this quota not apply to imports from Israel, Jordan, beneficiary countries under the Carribean Basin Recovery Act, or beneficiary countries under the Andean Trade Preference Act.

Further, the Commission has taken large amounts of evidence on exclusion requests over the course of this investigation, and the United States Trade Representative has gathered information regarding such requests. I therefore believe it helpful to the President and USTR to make a recommendation regarding these requests. I have determined that several specialty or niche products should be excluded from the remedy recommended for the product category to which they belong. I will include in my written views to be submitted to the President on December 19, 2001 a description of those products.

Finally, some representatives of the integrated steel industry suggested that the revenues collected by the above remedies be distributed in a manner, agreed to by the President and the industry, so as to assist the industry in its announced commitment to restructure and reorganize. It is not clear that this recommendation falls within the purview of Section 202(e). The President clearly has the power to consider innovative approaches to remedy. I am also cognizant that there is a split within the domestic industry as to the desirability of such an approach. I believe that the "legacy" costs issue must be addressed in some forum in order to overcome this serious obstacle to industry consolidation in the integrated segment of the steel industry. In view of the Congressional vote yesterday to expand Trade Adjustment Assistance eligibility, I also believe that Trade Adjustment Assistance should be utilized to facilitate the restructuring to which the industry has committed.

I will forward my complete views on remedy to the President on December 19, 2001.

STATEMENT TO THE MEDIA
COMMISSIONER DENNIS M. DEVANEY
DECEMBER 7, 2001

It has been an honor to serve, for the last eleven months, as a Republican appointee to the United States International Trade Commission, during the administration of President George W. Bush, whom I supported actively, and early, during his campaign for the Presidency. I believe that one of the great strengths of this agency is its bi-partisan structure.

I believe that bi-partisan structure highlights the significance of the unanimous, 6-0 affirmative vote that the United States steel industry is being injured by foreign imports. I also note that this is the only instance of the President and the Congress requesting an investigation of this type. The President, in particular, has made the restoration of market forces to world steel markets and the elimination of practices that harm our steel industry and workers a goal of his administration.

This investigation represents only one part of a three step initiative of the President to support the American steel industry in the face of fifty years of foreign government intervention in the market and direct, governmental, financial support for foreign steel industries. President Bush has instructed the United States Trade Representative, the Secretary of Commerce, and the Secretary of the Treasury to undertake negotiations with foreign governments to eliminate inefficient, excess profits in the worldwide steel industry. The President has also the same three individuals with opening negotiations on creating rules to eliminate market-distorting subsidies that have led to the current situation in the first place.

My approach to this investigation has been shaped by the form of the industry itself. Steel is made in a continuous process from start to finish. At the time raw ore is turned into molten steel the final shape of that ore is determined. From slabs right on through to corrosion-resistant steel, or even tubular products, the final form of the steel is determined before the ore enters the furnace.

I believe that it is extremely important to send the strongest recommendation possible to President Bush, in order to give him the maximum flexibility that global negotiations require. This will also insure that our trading partners understand the critical circumstances facing the U.S. steel industry, the most open and free market in the world, a market which is being critically injured by imports of foreign steel manufactured in a non-competitive way. That strong recommendation will also send a message of support and hope to 170,000 steel workers who, as American citizens are entitled to the protection of our laws, as are those from other industries we have supported in the past.

Furthermore, if we send a weak recommendation to the President, the remedy would likely make matters worse, papering over the problems in the industry, leaving a weak industry still ripe for the overproducers elsewhere in the world to continue to solve their problems at our expense. Unless we can push foreign steel industries into examining their own problems, we will continue to suffer injury from predatory penetration of our markets by others.

The testimony we have heard during this investigation and the evidence we have examined, particularly in view of the terrorist attacks of September 11, underscore the importance of maintaining a strong, viable U.S. steel industry.