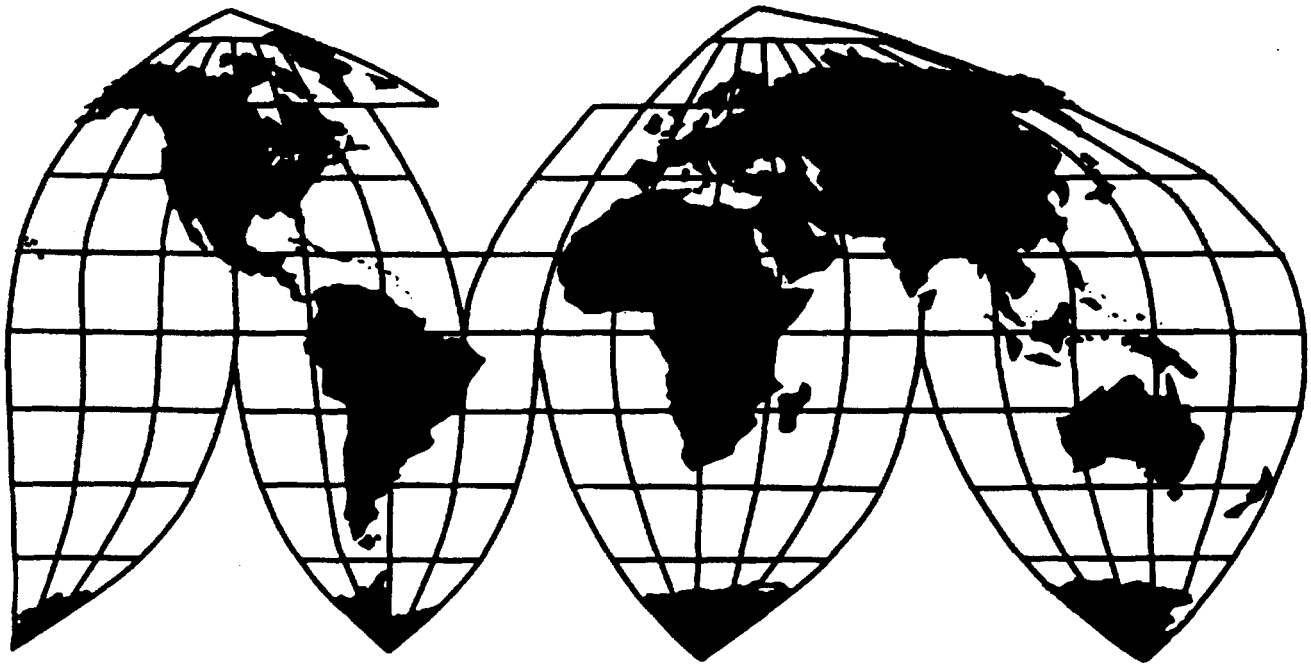
Blast Furnace Coke From China and Japan

Investigations Nos. 731-TA-951-952 (Preliminary) (Remand)

Publication 3619 **August 2003**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Deanna Tanner Okun, Chairman
Jennifer A. Hillman, Vice Chairman
Marcia E. Miller
Stephen Koplan

Robert A. Rogowsky
Director of Operations

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

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

Blast Furnace Coke From China and Japan

Investigations Nos. 731-TA-951-952 (Preliminary) (Remand)

Publication 3619

August 2003

On August 10, 2001, the Commission determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of blast furnace coke from China and Japan that were allegedly sold in the United States at less than fair value ("LTFV").[1] [2]

Those preliminary determinations were appealed to the U.S. Court of International Trade. On May 20, 2003, the Court remanded the Commission's negative determinations for further proceedings in accordance with its Opinion. The Court ordered that if the Commission concludes on remand that negative determinations continue to be warranted, it should revisit its conclusions with respect to its attenuated competition finding, and provide additional explanation on twelve specific issues set out in the Court's Opinion.[3]

On remand, the Commission again found that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of blast furnace coke from China and Japan that were allegedly sold in the United States at LTFV. Pursuant to the Court's Order, the Commission has provided the additional explanation required by the Court in an appendix ("Appendix") entitled "Commission's Response to the Court's Order for Additional Explanation."

---

[1]Blast Furnace Coke from China and Japan, Inv. Nos. 731-TA-951-952, USITC Pub. 3444 (Aug. 2001) ("Preliminary Determinations").

[2]Chairman Deanna Tanner Okun has not participated in these investigations. Commissioner Lynn M. Bragg and Commissioner Marcia E. Miller found in their original determinations that there was a reasonable indication that an industry in the United States was materially injured by reason of subject imports from China and Japan, and filed Dissenting Views.

[3]Committee for Fair Coke Trade et al v. United States, Court No. 01-00826, Slip Op. 03-56 (May 20, 2003).

VIEWS OF THE COMMISSION ON REMAND

By Opinion and Order dated May 20, 2003,[1] Judge Richard K. Eaton of the U.S. Court of International Trade (the "Court") remanded the Commission's preliminary negative determinations in Blast Furnace Coke from China and Japan[2] for further consideration. Based on the record[3] in these investigations, the Commission finds on remand that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of blast furnace coke from China and Japan that are allegedly sold in the United States at less than fair value ("LTFV").[4] [5]

I. BACKGROUND

In August 2001, the Commission determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of blast furnace coke from China and Japan. Those preliminary determinations were appealed to the U.S. Court of International Trade. On May 20, 2003, the Court remanded

---

[1]Committee for Fair Coke Trade et al v. United States, Court No. 01-00826, Slip Op. 03-56 (May 20, 2003) ("Opinion").

[2]Blast Furnace Coke from China and Japan, Inv. Nos. 731-TA-951-952 (Preliminary) (August 2001) (USITC Pub. 3444). Citations to the public version of the original preliminary determinations are cited as "USITC Pub. 3444." Citations to the confidential version of the original preliminary determinations are cited as "Confidential Preliminary Determinations."

[3] The Commission was not ordered to reopen the original record in these investigations, and did not do so.

[4]Chairman Deanna Tanner Okun has not participated in these investigations.

[5]Commissioner Marcia E. Miller continues to find that there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports from China and Japan, for the reasons stated in her original Views, incorporated herein by reference. See Dissenting Views of Commissioner Marcia E. Miller, USITC Pub. 3444 at 27-32. She therefore does not join in these Views on Remand.

the Commission's negative determinations for further proceedings in accordance with its Opinion. The Court ordered us to revisit our preliminary determinations.[6] In accordance with the Court's Opinion, we have re-examined the original record and our previous determinations. Based on our reconsidered findings with respect to volume, price, impact, and our consideration of the statutory threat factors, we again find that there is no reasonable indication of material injury or threat of material injury on the record before us. Specifically, we find no correlation between the level of subject import volume and domestic prices in the U.S. market, nor do we find a correlation between the level of subject imports and the financial condition of the domestic industry. In light of the lack of a causal connection in these investigations between subject imports and the condition of the domestic industry, we also find no threat of material injury by reason of the subject imports.

II. COURT'S REQUEST FOR ADDITIONAL INFORMATION

The Court's Opinion states that should the Commission conclude that negative determinations continue to be warranted, the Commission must provide additional explanation on twelve specific issues set out in the Court's Opinion. We have provided this additional information in the attached Appendix.[7]

We have reexamined and reaffirm our finding of attenuated competition, but we emphasize that it was only one factor among many we considered in reaching our negative injury determinations. We would have reached the same conclusion that the domestic industry is not

---

[6]Committee for Fair Coke Trade et al v. United States, Court No. 01-00826, Slip Op. 03-56 (May 20, 2003) ("Opinion").

[7]See attached Commission's Response to the Court's Order for Additional Explanation.

materially injured or threatened with material injury by reason of the subject imports independently of the attenuated competition that we found. We discussed it initially in our cumulation analysis, which was not challenged on appeal, and in our pricing analysis, to lend further support to our finding of a lack of adverse pricing effects.[8] Finally, it was one of many factors that was discussed in our threat of material injury analysis.[9] [10]

Given the Court's Opinion and Order, we have reconsidered whether there is attenuated competition between subject imports and the domestic like product. Attenuated competition does not refer to a lack of direct competition between subject imports and the domestic product. Rather, attenuated competition indicates competition that has reduced force or effect. We conclude once again that this competition is attenuated based on several factors.

One factor in our finding of attenuated competition is that most sales of domestically

---

[8]After concluding that there was "a lack of significant adverse price effects by the subject imports," we relied on the concentration of subject imports at certain plants to "confirm" our primary pricing analysis. Confidential Preliminary Determinations at 25-26.

[9]We discussed the concentration of subject imports at *** as one of several conditions of competition that supported our finding of no threat of material injury. Other relevant conditions of competition included the domestic producers' contractual commitments, the high rate of capacity utilization experienced by the domestic industry, and the supply deficit. Confidential Preliminary Determinations at 31-32, 35.

[10]While we found attenuated competition in the context of cumulation, this was not a significant enough fact to override our decision to cumulate subject imports based on a reasonable overlap of competition. We also note that, as the Court of International Trade has acknowledged, the requisite degree of competition or substitutability varies depending on which statutory finding is involved. See BIC Corp. v. United States, 964 F. Supp. 391, 397, 399 (Ct. Int'l Trade 1997) ("[L]ike product, cumulation and causation are functionally different inquiries because they serve different statutory purposes.") See also, e.g., Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers v. United States, 201 F. Supp. 2d 1287, 1298-99 (Ct. Int'l Trade 2002) (a reasonable overlap of competition for cumulation purposes requires a lesser degree of competition than when considering the issue of causation).

produced blast furnace coke are made on a contract basis. Contracts are typically for one to three years, but several of them have longer terms.[11] Several domestic producers sell their entire output to only one customer, who is often nearby, or adjacent to the producers' coke battery, avoiding freight costs and degradation from moving the coke. Many domestic producers sell only to *** customers.[12] Therefore, we find that in the merchant market for blast furnace coke, contractual commitments bind the purchasers and producers, and limit the competition between domestic producers and the subject imports.

Another factor in our finding of attenuated competition is that a significant supply deficit exists of approximately two million metric tons ("MT") between domestic supply capacity and domestic demand.[13] This deficit was the result of long-term reduction of domestic capacity due to aging batteries and environmental compliance costs. This reduction continued during the period of investigation.[14] Consequently, over the period of investigation, the domestic industry

---

[11]Confidential Report ("CR"), as revised by Memoranda INV-Y-146 (Aug. 9, 2001) and INV-Y-151 (Aug. 10, 2001) at V-3; and Public Report ("PR") at V-3.

[12]Domestic producers DTE and EES have entered into *** contracts, for respectively 9 and *** years ***, to deliver all of their output to those on-site steel producers. CR at II-1, III-2 & n.7, III-6, n.10; PR at II-1, III-3 & n.7, III-5, n.10. OINV Memorandum INV-Y-149. EES Domestic Producer Questionnaire. *** sold ***, and reported sales only in ***. Domestic Producer Questionnaires of ***. ***. ***. ***. ***. ***. ***. ***. ***. ***. Japanese Respondents' Postconference Brief, Exhibit 2. Producer Questionnaires of *** at IV-B-4 and IV-C.

[13]Apparent U.S. consumption in 2000 was 19.0 million MT, whereas total domestic production capacity was 16.7 million MT. CR/PR at Tables III-2 and IV-4.

[14]Japanese Respondents' Postconference Brief, Exhibits 3 & 4. Petitioners state that respondents "concede" that pressures from environmental compliance regulations have caused the closure of a large fraction of U.S. coke producing facilities in the 1990s. Moreover, Petitioners reference Respondents' statement that Petitioners had made no attempt to link the recent shutdowns in coke capacity to subject imports, and do not refute their arguments.

operated at very high capacity utilization rates.[15] Even when operating at full capacity, however, the domestic industry could not fully satisfy domestic demand for the product. Given the contractual commitments of the domestic producers, the high capacity utilization rates, and the supply deficit in the United States, there is a limited ability of domestic producers to respond to requests to supply new customers.

A third factor is that blast furnace coke has a low value to weight ratio. Freight costs are therefore a significant factor in total delivered cost.[16] Domestic producers tend to market their coke close to where it is produced.[17] Most domestic producers are located in Illinois, Indiana,

---

Petitioners' Postconference Brief at 20, 33. Petitioners stated at the conference that "[t]he truth of the matter is that historically closure of facilities, Gulf States included, probably is mostly related to the useful life of the facility and when it expires, it's closed." Transcript of Commission Conference held July 20, 2001 ("Conference Tr.") at 153.

When asked by the Department of Commerce to what extent the Gulf States Steel, Bethlehem Steel Corp., Koppers and LTV closures were related to imports of blast furnace coke from China and Japan, Petitioners stated that they did not intend at that time to make any assertion as to the extent to which the closure of the Gulf States Steel coke battery in 2000 was related to subject imports. Response to Commerce Department Questions on the Petition for Imposition of Antidumping Duties: Blast Furnace Coke from China and Japan (July 6, 2001) at 10.

[15]CR/PR at Table III-2.

[16]Our import and domestic product pricing data were gathered f.o.b. point of shipment for importers and domestic producers (f.o.b. delivery for importers who also consume their imports). It includes ocean freight costs and any internal U.S. freight costs to the importer's point of shipment, but not freight costs from the domestic producer to its customer or the importer to its customer. Some domestic producers that internally consume coke they produce and importers that directly import and internally consume those imports are able to avoid additional freight costs.

[17]Compare location of blast furnaces for individual domestic producers, CR/PR at Table I-4 with the geographic market range reported by those individual domestic producers. CR/PR at II-1.

Ohio, Pennsylvania and Michigan,[18] and a significant percentage of domestic production is internally consumed by steel producers at adjacent or nearby steel mills.[19] Other domestic producers of blast furnace coke generally contract with and sell to steel producers in surrounding areas.[20] In the merchant sector, freight costs, coupled with contractual commitments by the domestic producers tend to limit the market range for domestic producers. In 2000, three domestic producers sold blast furnace coke production accounting for *** percent of total U.S. domestic shipments, to an adjacent steel mill, two of them pursuant to long-term contracts, and incurred no appreciable inland freight costs.[21]

Most subject imports are sold for consumption at steel plants distant from most domestic producers, with lower inland freight costs from ports to those plants.[22] Three significant importers of subject merchandise during the period of investigation, Bethlehem, U.S. Steel and Geneva Steel, produced steel outside of the Midwest region where the domestic producers are

---

[18]CR/PR at Table I-4.

[19]***. See OINV Memorandum INV-Y-149.

[20]Compare location of blast furnaces for individual domestic producers, CR/PR at Table I-4 with the geographic market range reported by that individual domestic producer, CR/PR at II-1.

[21]DTE's blast furnace coke production is sold to Bethlehem for its adjacent Burns Harbor Steel plant. EES's blast furnace coke production is sold to National for its adjacent Ecorse, Michigan plant. CR at III-2 & n.7; PR at III-3 & n.7, and CR/PR at Table III-1, nn.13 and 14. See also OINV Memorandum INV-149. Together these two domestic producers accounted for *** percent of total 2000 U.S. domestic shipments. Calculated from CR/PR at Table III-1. *** accounted for *** percent of total U.S. domestic shipments in 2000. ***.

[22]Direct imports by *** and *** combined, plus *** indirect purchases of subject imports from China, comprised *** percent of subject imports in 2000. Bethlehem's Sparrows Point steel plant has direct port access and U.S. Steel's Fairfield, Alabama plant receives imports through the port of Mobile. ***. OINV Memorandum INV-Y-149. See also Conference Tr. at 102, 104.

concentrated. The significant freight costs from the blast furnace coke production plants in the Midwest, to Bethlehem's Sparrows Point steel plant in Maryland, U.S. Steel's steel plant in Fairfield, Alabama, and Geneva's steel plant in Utah, versus the lower inland freight costs from ports to those plants, are a factor in sourcing the coke for those plants, and are one of several factors supporting our finding of attenuated competition.[23] We further find evidence on the record that the proximity at Sparrows Point of the blast furnace to where the coke is unloaded, causes lower degradation of the coke than overland transport to that steel plant. Record evidence reflects that subject imports sold at Bethlehem's Sparrows Point steel plant are handled less and therefore degrade less than domestic coke would if transported to that facility.[24]

Moreover, steel producers often prefer subject imports for nonprice reasons. Given existing U.S. producer contractual obligations and the shortfall in U.S. coke production and capacity, steel producers can predictably rely on access to the large quantities of blast furnace coke they require by sourcing them overseas.[25] The domestic industry cannot supply enough coke to satisfy the requirements of the primary importers.[26] Steel producers may avoid mixing domestically-produced coke with subject imports because they wish to avoid mixing too many

---

[23]In its questionnaire response, *** stated that "***." ***. See also, Conference Tr. at 104-105.

[24]Affidavit of Jack Palmer, Vice President of Raw Materials for Duferco Steel ("Palmer Affidavit"), at 2. Conference Tr. at 105.

[25]*** Questionnaire at 4. Conference Tr. at 105.

[26]Apparent U.S. consumption in 2000 was 19.0 million MT, whereas total domestic production capacity was 16.7 million MT, and domestic production was 16.1 million MT. CR/PR at Tables III-2 and IV-4.

different blends of coke, which can reduce productivity.[27] Domestic coke and subject imports from China are limited in fungibility, in particular those used as center fill.[28] *** imports a particular type of coke from China for use in a center fill application that it ***.[29] Similarly, not all respondents consider domestic coke and subject imports from Japan fully interchangeable.[30] *** reported quality differences between domestic and subject merchandise from both subject countries, and noted that differences in quality affect its sourcing decisions.[31]

Thus, a combination of factors influenced our finding of attenuated competition between the subject imports and the domestic like product: the desire of importers/purchasers to have reliable access to large quantities of product and consistency in the blast furnace; the limited and declining capacity of the domestic industry to supply additional product; the contractual commitments limiting domestic producers from supplying additional purchasers; freight costs and the desire to avoid degradation; and some quality differences (separate from degradation) between subject imports and the domestic product.[32] We reaffirm our finding of attenuated competition, but again note that this finding was not central to our analysis of volume, price

---

[27]Conference Tr. at 105. ***. ***. Palmer Affidavit at 2. CR at II-7-8; PR at II-5.

[28]CR/PR at Tables II-1 and II-2.

[29]*** Domestic Producers' Questionnaire at II-14. ***. Conference Tr. at 105, 111-112, 129, 142-143.

[30]CR/PR at Tables II-1 and II-2. CR at II-10; PR at II-7.

[31]***. CR/PR at Tables II-1 and II-2.

[32]The Commission has broad discretion to analyze and assess the significance of all relevant factors in its injury determination. Reliability of the supplier, availability of the product, and quality have all been considered valid non-price factors that the Commission can take into account in its injury analyses. BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int'l Trade 1997).

effects and impact of the subject imports, with respect to either our negative material injury or negative threat of material injury analysis. We provide more information with respect to our finding on attenuated competition in the attached Appendix issued in response to the Court's Order.

III. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[33] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[34] The Commission need not find each piece of evidence to be clear and convincing under the American Lamb standard.[35] Rather, American Lamb requires only that "'the record as a whole' contain clear and convincing evidence that there is no material injury or threat of material injury by reason of

---

[33]19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int'l Trade 1999).

[34]American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[35]Connecticut Steel Corp. v. United States, 852 F. Supp. 1061, 1064 (Ct. Int'l Trade 1994).

imports."[36]

IV. DOMESTIC LIKE PRODUCT AND INDUSTRY

The Department of Commerce ("Commerce") has defined the subject merchandise contained within the scope of these investigations as follows:

> [B]last furnace coke made from coal or mostly coal and other carbon materials, with a majority of individual pieces less than 100 MM (4 inches) of a kind capable of being used in blast furnace operations, whether or not mixed with coke breeze. Blast furnace coke is generally classified under Harmonized Tariff Schedule United States ("HTSUS") subheading 2704.00.0025. The tariff classification is provided for descriptive purposes; the scope of the investigation, not the tariff classification of the import, is dispositive.[37]

Blast furnace coke is a type of metallurgical coke used as both a fuel and as a source of carbon in producing pig iron from iron ore in a blast furnace.[38] Neither the Court nor any party raised issues on appeal with respect to our original domestic like product and industry findings. Therefore, we reaffirm our finding that the single domestic like product consists of all blast furnace coke and is coextensive with the scope of these investigations as defined by Commerce ("blast furnace coke"). We also reaffirm our previous finding that the domestic industry consists of all domestic producers of blast furnace coke.

V. CUMULATION

Neither the Court, nor the parties have challenged our finding that cumulating subject imports of blast furnace coke from China and Japan is appropriate. We continue to find that a

---

[36]American Lamb, 785 F.2d at 1004; see also Aristech Chemical Corp. v. United States, 20 CIT 353 (Ct. Int'l Trade 1996).

[37]66 Fed. Reg. 39009 (July 26, 2001).

[38]Confidential Report ("CR"), as revised by Memoranda INV-Y-146 (Aug. 9, 2001) and INV-Y-151 (Aug. 10, 2001) and Public Report ("PR") at I-5.

reasonable overlap of competition exists among subject imports and between subject imports and the domestic like product. We therefore cumulate imports of blast furnace coke from China and Japan for purposes of our material injury analysis.

VI. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV SUBJECT IMPORTS FROM CHINA AND JAPAN

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[39] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[40] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[41] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[42] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected

---

[39] 19 U.S.C. § 1671b(a) and 1673b(a).

[40] 19 U.S.C. § 1677(7)(B)(I). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[41] 19 U.S.C. § 1677(7)(A).

[42] 19 U.S.C. § 1677(7)(C)(iii).

industry."[43]

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing blast furnace coke is materially injured by reason of subject imports from China and Japan that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition[44]

We reaffirm our discussion of the conditions of competition for this industry, set out in our original determinations. For the convenience of the Court, they are set out here in their entirety.

Blast furnace coke is used to make pig iron in blast furnaces by steel producers, and is then further processed into steel.[45] The demand for blast furnace coke is therefore derived from the demand for pig iron, steel and steel products.[46] Apparent U.S. consumption for blast furnace coke fell slightly from 1998 to 2000, and was lower in interim 2001 than in interim 2000.[47] In 2000, apparent U.S. consumption of blast furnace coke was 19.0 million MT.[48]

Blast furnace coke is generally produced using one of two processes: the byproduct recovery process or the beehive process. In the United States, most blast furnace coke is

---

[43]19 U.S.C. § 1677(7)(C)(iii).

[44]We note that the conditions of competition set forth in Section IV-A are equally applicable to our analysis of threat of material injury.

[45]CR at II-3, II-5; PR at II-2, II-3.

[46]CR at II-3; PR at II-3.

[47]Apparent U.S. consumption of blast furnace coke was 19.2 million MT in 1998, falling to 17.8 million MT in 1999, recovering back to 19.0 million MT in 2000. Apparent U.S. consumption of blast furnace coke was 4.3 million MT in interim 2001 as compared to 4.8 million MT in interim 2000. CR/PR at Table IV-4.

[48]CR/PR at Table IV-4.

produced using byproduct recovery ovens in which the volatile materials produced during the coking process are recovered.[49] Byproduct coke batteries run continuously because allowing them to cool can result in damage to the ovens when they are reheated. Batteries are occasionally "hot-idled," where the temperature is maintained but coal is not charged, and coke is not produced.[50] Petitioners maintain that hot-idling provides little savings due to the high energy costs required to keep the ovens hot. Therefore, they allege that they cannot adjust production to fit market demand.[51]

Blast furnace coke crumbles whenever it is being transported or handled, creating particles of coke called coke breeze.[52] Operators do not want this breeze in their furnaces because it can plug up the blast furnaces.[53] A higher percentage of breeze in a shipment, caused, for example, by the coke being on the ground, can result in a decreased price for the shipment, either because the purchaser discounts the shipment or because the breeze is screened out.[54] Therefore, blast furnace coke producers seek to minimize crumbling or degradation of the blast furnace coke prior to use, by minimizing handling, moving or transporting the coke. Since placing the coke on the ground involves handling and degradation, blast furnace coke producers endeavor to avoid holding inventories.[55] Moreover, in general, blast furnace coke is sold directly

---

[49]CR at I-6, PR at I-5.
[50]CR at I-8; PR at I-7.
[51]Petitioners' Postconference Brief at 21.
[52]Conference Tr. at 46-47, 74-75.
[53]Conference Tr. at 48-49, 51-52.
[54]Conference Tr. at 76.
[55]Conference Tr. at 76.

to end users and not through distributors.[56]

According to one of the Chinese respondents, it is far more economical for purchasers to receive blast furnace coke by vessel than by rail or truck because receiving the coke by water reduces the amount of handling of the coke, which in turn, reduces degradation.[57] [58] Respondents testified that imported coke was a viable option only to U.S. customers with ready access to port facilities due to the significance of freight costs. Moreover, they testified that most U.S. merchant producers of coke were located inland, and so were limited to sales to nearby steel mills.[59] Sixty-seven percent of domestic producers' U.S. shipments were within 200 miles of their storage or production facilities.[60]

The U.S. blast furnace coke industry is comprised of two segments, the integrated producer "captive" segment and the segment that sells to the merchant market. The integrated producers produce both blast furnace coke and steel. Most of their shipments are to their captive production operations in which they use their own coke to produce pig iron and then steel. However, the integrated producers also sell blast furnace coke in the merchant market, and are the predominant suppliers of that market.[61] [62]

---

[56]CR/PR at II-1.

[57]Duferco's Postconference Brief at 6-7, 18-19.

[58]Palmer Affidavit at 1-2.

[59]Conference Tr. at 85.

[60]CR at II-2; PR at II-1.

[61]In 2000, domestic integrated producers shipped *** MT of blast furnace coke to the merchant market, while merchant producers shipped *** MT of blast furnace coke to the merchant market. The merchant shipments by the domestic integrated producers constituted *** percent of the total domestic merchant market shipments.

The captive producers shipped *** MT tons to their captive market. Together, the

As noted above, *** and ***, two domestic producers, are also the primary importers of subject merchandise. Direct imports by *** and *** combined, plus *** indirect purchases of subject imports from China, comprised *** percent of subject imports in 2000.[63] [64] Integrated producers purchased *** percent of the merchant market's U.S. shipments of blast furnace coke in 2000, which includes merchant shipments by both integrated producers and merchant producers.[65]

---

captive producers' merchant shipments and captive shipments were 12.6 million MT, constituting 79.4 percent of total domestic shipments. Correspondingly, merchant producers' shipments constituted 20.6 percent of total domestic shipments.

In 2000, merchant shipments constituted *** percent of captive producers' overall U.S. shipments, and captive shipments constituted *** percent of their overall U.S. shipments. Calculated from CR/PR at Table III-1.

[62]No party has argued that the captive production provision of the statute, 19 U.S.C. § 1677(7)(C)(iv), applies to these investigations. We find that the threshold requirement for application of the captive production provision is satisfied because significant production of the domestic like product is internally transferred and significant production is sold in the merchant market. In 2000, captive production shipments by all U.S. integrated producers were *** MT, *** percent of total U.S. domestic shipments of blast furnace coke. Commercial shipments by domestic merchant producers and captive producers were 8.1 million MT, 51.1 percent of total U.S. domestic shipments of blast furnace coke. Calculated from CR/PR at Table III-1.

However, we find that the captive production provision is not applicable to these investigations because the third criterion of the captive production provision is not satisfied. Blast furnace coke sold in the merchant market is used in the production of pig iron and steel, as is blast furnace coke that is internally transferred. U.S. integrated steel producers are virtually the exclusive purchasers of blast furnace coke in the United States. CR at I-13, III-7, PR at I-11, III-7; CR/PR at Table III-4. Conference Tr. at 82. Petitioners agree that the third criterion of the captive production provision is not satisfied. Petitioners' Postconference Brief at 17, n.20. Nevertheless, we do consider captive production as a condition of competition.

[63]Calculated from CR/PR at Table IV-1, and CR at III-9, n.27, PR at III-7, n.27.

[64]We note that there were *** nonsubject imports during the period of investigation. CR/PR at Table IV-2.

[65]Calculated from CR/PR at Tables III-1 and III-4. Because some of the domestic producers were also purchasers and end users of blast furnace coke, the domestic producer questionnaires issued in these investigations contained some questions usually asked in purchaser

***'s total shipments (merchant and captive) were larger than the combined shipments of all of the merchant producers.[66] Clairton Partnership is a joint venture owned *** percent by ***. Clairton Partnership and DTE Energy Services have both purchased and now operate coke-making facilities on the site of integrated steel producers.[67]

As noted above, *** imported the overwhelming majority of subject imports. *** does not generally purchase subject imports. *** relies exclusively on imports of blast furnace coke from China and Japan. All of *** subject imports of blast furnace coke over the period of investigation have been consumed at ***. In first quarter 2000, Bethlehem began operation of a pulverized-coal-injection (PCI)[68] facility at Sparrows Point that will allow Bethlehem to reduce its annual need for blast furnace coke by *** MT ***, when the facility becomes fully operational.[69]

---

questionnaires. These questions concerned whether demand had changed for the end products since January 1998, and what characteristics the firm considered when determining the quality of blast furnace coke. Thus, in these investigations, we have purchaser information that we frequently have not yet obtained in preliminary phase investigations. See OINV Memorandum INV-Y-126 dated July 3, 2001.

[66]Calculated from CR/PR at Table III-1.

[67]Clairton Partnership owns and operates coke batteries 13, 14, and B of U.S. Steel's Clairton, Pennsylvania coke-making operations. DTE Energy Services owns and operates two blast furnace coke facilities: DTE Burns Harbor and EES Coke Battery Co. DTE Burns Harbor owns and operates the No. 1 coke battery at Bethlehem's Burns Harbor, Indiana steel facility, and sells its output on a contractual basis to Bethlehem. EES Coke owns and operates the Ecorse, Michigan coke production plant formerly owned by National Steel and sells its output on a contractual basis to National Steel. CR at III-2 & nn.7 and 8; PR at III-3 & nn.7 and 8; CR/PR at Table III-1.

[68]Pulverized coal injection is a blast furnace technology that requires less coke. Conference Tr. at 44-45. EES Coke owns and operates a PCI facility in Ecorse, Michigan. OINV Memorandum INV-Y-149 (August 9, 2001).

[69]OINV Memorandum INV-Y-149 at 1.

*** does not consume any imports. All of *** imports from Japan and a few test shipments from China, were consumed at *** over the period of investigation ***. *** produces blast furnace coke for *** internal steel operations, which is supplemented by imports from China and blast furnace coke from other domestic producers.[70]

Domestic capacity has declined significantly since 1979 due to environmental regulations and aging batteries,[71] leaving a significant supply deficit between domestic supply capacity and domestic demand of approximately two million MT.[72] Long-term reduction of domestic capacity continued during the period of investigation.[73] Several coke batteries closed in 1998, which coincided with compliance requirements of the Clean Air Act.[74] Another company, Gulf States

---

[70]OINV Memorandum INV-Y-149 at 1-2.

[71]Coke plants were classified as hazardous air pollutants in the Clean Air Act Amendments of 1990, and between 1979 and 1996, the number of active coke batteries declined from 179 to 78 and annual capacity dropped 60 percent. Much of the decline was concentrated in the integrated sector but the merchant sector was also affected. Moreover by 1994, half of the coke oven batteries in the U.S. had reached or were nearing the 20-30 year average life span for coke oven batteries. Today there are 66 batteries in operation in the United States; integrated steel producers operate 38 by-product recovery ovens, while merchant producers operate 18 by-product recovery batteries and ten non-recovery batteries. Japanese Respondents' Postconference Brief at 6-7 and Exhibits 3 and 4.

[72]Apparent U.S. consumption in 2000 was 19.0 million MT, whereas total domestic production capacity was 16.7 million MT, and domestic production was 16.1 million MT. CR/PR at Tables III-2 and IV-4.

[73]Japanese Respondents' Postconference Brief, Exhibits 3 & 4.

[74]Japanese Respondents' Postconference Brief at 8. In 1998, Bethlehem closed its blast furnace coke plant in Bethlehem, Pennsylvania. It also sold half of its coke-making operations at Burns Harbor, Indiana to DTE Energy Services. LTV closed its plant at Pittsburgh, Pennsylvania. Koppers closed its plant in Gadsden, Alabama, but this plant primarily produced foundry coke. CR at III-6. Petition, Exhibit 48. By January, 1998, each company had to decide which compliance track, MACT or LAER, it was going to accept for its batteries, which affected what standards were applicable to the batteries and when compliance was necessary. See Petitioners' Postconference Brief, Exhibit 1, Response Attachment D.

Steel, closed its entire steel operations in 1999,[75] and Bethlehem has announced that it will close a plant in the future.[76] Petitioners do not refute respondents' arguments that coke batteries have closed due to aging, and the need to comply with environmental regulations.[77]

The domestic industry must comply with strict and expensive environmental standards. Petitioners allege that environmental compliance costs will increase by tens of millions of dollars in the next decade.[78] One industry representative testified that the industry has spent "well over a billion dollars" on environmental projects since the early 1990s.[79] The estimated cost to build a new blast furnace coke battery from the ground up with 300,000 tons of capacity is ***.[80]

---

[75]CR at III-6; PR at III-5.

[76]Japanese Respondents' Postconference Brief, Exhibit 3. Bethlehem has announced its plans to shut down its Lackawanna plant with 700,000 MT capacity by the end of September 2001. Chinese Respondent Duferco Postconference Brief, Exhibit 6. *** were from its Lackawanna plant. Bethlehem Domestic Producer Questionnaire at 6. Staff phone conversation with ***.

[77]As we have noted previously, Petitioners state that respondents "concede" that pressures from environmental compliance regulations have caused the closure of a large fraction of U.S. coke producing facilities in the 1990s. Moreover, Petitioners reference Respondents' statement that Petitioners had made no attempt to link the recent shutdowns in coke capacity to subject imports, and do not refute their arguments. Petitioners' Postconference Brief at 20, 33. Petitioners stated at the conference that "[t]he truth of the matter is that historically closure of facilities, Gulf States included probably, is mostly related to the useful life of the facility and when it expires, it's closed." Conference Tr. at 153.

When asked by the Department of Commerce to what extent the Gulf States Steel, Bethlehem Steel Corp., Koppers and LTV closures were related to imports of blast furnace coke from China and Japan, Petitioners stated that they did not intend at that time to make any assertion as to the extent to which the closure of the Gulf States Steel coke battery in 2000 was related to subject imports. Response to Commerce Department Questions on the Petition for Imposition of Antidumping Duties: Blast Furnace Coke from China and Japan (July 6, 2001) at 10.

[78]Petitioners' Postconference Brief at 32.

[79]Petitioners' Postconference Brief at 20. Conference Tr. at 21.

[80]Petitioners' Postconference Brief, Answers to Staff Questions at 6.

The majority of sales of domestically produced blast furnace coke are sold on a contract basis. Contract periods are typically for one to three years, although they may be as many as 12 years in duration.[81] The record also reflects that domestic producers tend to sell to a small number of customers with whom they have long-standing relationships.[82]

B. Volume of the Cumulated Subject Imports

Section 771(7)(C)(I) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[83] We reaffirm our finding that the cumulated volume of subject imports was not significant.

The volume of cumulated subject imports measured in quantity decreased overall from 1998 to 2000, and was 37.1 percent lower in interim 2001 than in interim 2000.[84] The volume of cumulated subject import shipments in the U.S. market fell at a sharper rate than demand.[85] The domestic industry captured a significant share of the market, ranging between 83 and 86 percent of the U.S. market over the period of investigation, while subject imports held a more

---

[81]CR/PR at V-3.

[82]Japanese Respondents' Postconference Brief at 10-11 & Exhibit 2 (citing to several examples of long-term commitments of domestic producers, for example: ***. Over the period of investigation, the capacity utilization of domestic producers ranged from 92.6 percent in 1999 to 97.4 percent in interim 2000. CR/PR at Table III-2.

[83]19 U.S.C. § 1677(7)(C)(i).

[84]CR/PR at Table IV-2.

[85]Apparent U.S. consumption fell by one percent between 1998 and 2000, and was eleven percent lower in interim 2000 than in interim 2001. The volume of U.S. shipments of cumulated subject imports decreased by *** percent from 1998 to 2000, and was 25.9 percent lower in interim 2001 as compared to interim 2000. CR/PR at Table C-1.

minor share, ranging between 16.7 percent and 13.8 percent of the U.S. market, during the same period.[86] The share of the U.S. market held by cumulated subject imports declined over the period of investigation, and was sharply lower in interim 2001 as compared to interim 2000, while the U.S. producers' share of the U.S. market increased somewhat from 1998 to 2000, and was higher in interim 2001 than in interim 2000.[87] [88] Due to the overall decline in relative and absolute volume of subject imports during the period of investigation, we find the volume of subject imports not to be significant.

C. Price Effects of the Cumulated Subject Imports

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

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[89]

We reiterate our finding of significant underselling. However, again, we do not find it as

---

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

[87]The share of apparent U.S. consumption supplied by the cumulated subject imports declined from *** percent in 1998 to 16.5 percent in 2000, then was sharply lower in interim 2001, at 13.8 percent, as compared to 16.5 percent in interim 2000. In contrast, U.S. producers' share of apparent consumption increased from 83.0 percent to 83.5 percent during 1998 to 2000, then was higher in interim 2001, 86.2 percent than in interim 2000, 83.5 percent. CR/PR at Table IV-6.

[88] The ratio of subject imports to domestic production was 20.1 percent in 1998, 17.6 percent in 1999, and 19.8 percent in 2000. The ratio was lower in interim 2001, at 14.2 percent, compared to interim 2000, at 21.5 percent. Calculated from CR/PR Tables III-2 and IV-2.

[89]19 U.S.C. § 1677(7)(C)(ii).

significant as it may at first appear. Prices for imports from China and Japan undersold domestic product in all fourteen quarters examined. Margins of underselling by subject imports from China ranged from *** percent to *** percent while margins of underselling by subject imports from Japan ranged from *** percent to *** percent.[90] Because our price comparisons included only sales in the merchant market, the degree of captive consumption of blast furnace coke in this industry tended to dilute the price effects of subject imports on the financial condition of the domestic industry as a whole. Despite the underselling, operating income margins for the domestic industry improved from 1998 to 2000.[91] Moreover, prices for subject imports from China and prices for subject imports from Japan increased beginning in the second half of 2000 and increased further in 2001, with consequent lower margins.[92]

For the following reasons, we reaffirm our finding that the pricing of subject imports did not depress or suppress domestic prices to a significant degree over the period examined. Prices for the domestic like product generally fluctuated within a range of less than eight percent over the period of investigation.[93] More specifically, reported weighted average domestic prices for

---

[90] CR at V-8; PR at V-4.

[91] Evidence of consistent underselling that occurs while the domestic industry is performing favorably may reasonably undercut the significance attributed to underselling. Altx, Inc. v. United States, 25 CIT __, 167 F. Supp. 2d 1353 (2001). The profitability of Trade Only operations for the domestic industry was lower in 2000 than in 1998, but improved from 1999 to 2000, despite simultaneous underselling and increased subject import volume. Although the domestic industry was unprofitable in interim 2001, for both Trade and Transfer, and Trade Only operations, prices for subject imports increased in that period. CR/PR at Table C-1, Table IV-2, and Table V-1.

[92] CR/PR at Table V-1.

[93] See CR/PR at Table V-1 and Figure V-3. The reported weighted average domestic price per MT for blast furnace coke in the first quarter of 1998 was $121.18 per MT, and in the second

blast furnace coke increased steadily through the end of 1998 before peaking in the last quarter of 1998 at $130.38 per MT. Domestic prices declined irregularly in 1999, ending the last quarter of 1999 at $122.51 per MT. Including the last quarter of 1999, reported domestic prices stayed essentially flat for seven consecutive quarters.[94] Domestic prices stayed relatively flat during the period of investigation despite the vacillations in the prices of subject imports from China and Japan.[95] U.S. producers' prices were at approximately $120 to $122 at the beginning and at the end of the reporting period.[96] Thus, we find no evidence of significant price depression.

Moreover, there is no indication that the subject imports have prevented price increases, which would otherwise have occurred, to a significant degree. The pricing data obtained show that domestic prices bore little relationship to the prices of subject imports, in light of the fact that domestic prices fell at times when the level of subject import prices was rising, and vice-versa.[97] Domestic prices remained constant in 2000 and 2001, while prices of subject imports from both China and Japan vacillated, first decreasing and then increasing.[98] In addition, unit costs and the ratio of cost of goods sold to net sales revenue for the industry generally declined over the period of investigation. Specifically, unit costs and the ratio of cost of goods sold to net sales declined overall between 1998 and 2000, with a small increase in these data in interim 2001

---

quarter of 2001, it was $121.59 per MT.

[94]Domestic prices stayed within a narrow range, from $120.30 to $122.71 per MT, from the last quarter of 1999 until the second quarter of 2001. CR/PR at Table V-1.

[95]See CR/PR at Figure V-3, indicating no clear correlation between prices of the subject imports and domestic prices.

[96]CR/PR at Table V-1 and Figure V-3.

[97]CR/PR at Table V-1 and Figure V-3.

[98]CR/PR at Table V-1 and Figure V-3.

relative to interim 2000, on both an overall and trade-only basis.[99] This pattern suggests that domestic prices have not been significantly suppressed relative to costs. Moreover, the record contains no substantiated lost sales or lost revenues that would link prices for subject imports to depressed or suppressed domestic prices.[100] [101]

We find that subject imports, although underselling the domestic product, have not

---

[99]CR/PR at Table C-1. We note that the ratio of cost of goods sold to net sales revenue for trade only sales increased marginally between 1998 and 2000. Id.

[100]Petitioners never alleged any lost sales or revenues in their Petition, and never provided substantiated claims of lost sales or lost revenues. Petitioners stated that the industry was not one in which purchasing managers disclosed competitive bids. Petitioners Postconference Brief at 34. Tr. at 95. CR at V-8; PR at V-6. Domestic producer *** made a specific allegation that it had reduced prices because of blast furnace coke imports from China and Japan, but did not provide necessary information required to verify the allegation. CR at V-8; PR at V-6. ***. Tr. at 12. Petitioners' Postconference Brief at 34 & Exhibit 4.

Although Petitioners have argued at length that the domestic industry is suffering from negative price effects due to subject imports, Petitioners' Postconference Brief at 25-26, they have not explained how subject import pricing translated into alleged negative price effects for the domestic industry over the period of investigation. According to Petitioners, purchasers do not quote competitors' prices during negotiations. They do not "say. . . meet this price from XYZ country or you're not going to get the sale." Conference Tr. at 30, Petitioners' Postconference Brief at 34. Respondents agreed that there is no transparency with respect to price, Conference Tr. at 109.

Petitioners argue that import pricing for sales to Sparrows Point and Fairfield undermined market prices elsewhere in the merchant market, Petitioners' Postconference Brief at 29, but they supplied no evidence of this, or evidence that any domestic producers attempted to compete for that business. Although one domestic producer testified that it unsuccessfully attempted to negotiate a sale to a customer that purchased Chinese coke, Conference Tr. at 29, that producer offered no documentation for the alleged lost sale.

[101]Contractual commitments also tend to restrict the ability of domestic producers to increase their prices. ***, which supplies blast furnace coke to ***, reported that ***. CR at VI-2, n.4; PR at VI-1, n.4. ***. ***. ***. ***. ***. ***.

*** domestic producers have contract terms of *** price negotiations. ***. Other contracts have ***. *** at IV-B-4. ***. ***. ***. ***.

***. Domestic Producer Questionnaires of ***.

depressed or suppressed domestic prices to a significant degree. Thus, we conclude that subject imports did not have significant adverse price effects on domestic prices.

D. Impact of Cumulated Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[102] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[103] [104]

The record in these investigations indicates that the profitability of the domestic industry fluctuated within a narrow range over the period of investigation, as did several of the other economic indicators, even during the period between 1999 to 2000 when import volumes increased. Thus, there was no meaningful correlation between subject import volume and the financial condition of the domestic industry. Profitability for the domestic industry increased at

---

[102]19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[103]19 U.S.C. § 1677(7)(C)(iii).

[104]The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated dumping margins as follows: China, from 132.2 percent to 207.2 percent; Japan, 71.66 percent. 66 Fed. Reg. 39009 et seq. (July 26, 2001).

the same time that subject import volumes increased, and likewise, profitability declined between 1998 and 1999 as import volumes declined. For example, cumulated subject import volume increased from 1999 to 2000 while operating income as a share of sales rose from negative 1.1 to a positive 1.1 percent during the same period.[105] Similarly, operating margins fell to unprofitable levels when cumulated subject import volume declined. Cumulated subject import volume fell from 1998 to 1999, at the same time that the operating income as a share of sales fell from positive 0.5 percent to a negative 1.1 percent.[106] The volume of cumulated subject imports was 37.1 percent lower in interim 2001 than in interim 2000. During this time, operating income as a share of sales fell from a positive 1.6 percent to a negative 0.9 percent.[107] Thus, when subject import volume was decreasing, the domestic industry was less profitable, and when import volume was increasing, the domestic industry was more profitable. For this reason, we find no causal nexus between subject imports and the financial health of this industry.

During the period of investigation, other economic indicators for the industry fluctuated within a narrow range, while capacity utilization rates were high. Many of the economic

---

[105] Cumulated subject import volume increased from 2.7 million MT in 1999 to 3.2 million MT in 2000, while operating income as a percentage of sales for the domestic industry, Trade and Transfers, improved from negative 1.1 to positive 1.1. CR/PR at Tables IV-2 and VI-4. The same ratio for Trade Only sales improved from positive 1.3 to positive 1.6 percent. CR/PR at Table VI-1.

[106] Cumulated subject import volume decreased from 3.2 million MT in 1998 to 2.7 million MT in 1999, while operating income as a percentage of sales for the domestic industry, Trade and Transfers, decreased from positive 0.5 to negative 1.1. CR/PR at Tables IV-2 and VI-4. The same ratio for Trade Only sales decreased from 2.9 to 1.3 percent. CR/PR at Table VI-1.

[107] CR/PR at Tables IV-2 and C-1. We note that the same pattern holds true for the merchant market (Trade only sales). Operating income as a percentage of sales was a negative 0.6 percent in interim 2001 and a positive 1.8 percent in interim 2000.

indicators decreased from 1998 to 1999, recovered from 1999 to 2000, and were lower in interim 2001 than in interim 2000. Total net sales, including internal consumption and related party transfers, fell slightly over the period examined.[108] Production decreased from 1998 to 1999, and recovered in 2000, increasing slightly overall. Capacity followed similar trends, and capacity utilization remained high throughout the period of investigation.[109] [110] [111] Inventories fell from 1998 to 2000, but were larger in interim 2001 than in interim 2000.[112] Employment indicators were mixed. The number of production workers and hours worked declined between 1998 and 2000 and were lower in interim 2001 than in interim 2000. Wages paid and productivity increased between 1998 and 2000, although they were lower in interim 2001 than in interim 2000. Hourly wages increased between 1998 and 2000, and were higher in interim 2001 than in

---

[108]Total net sales and transfers fell from 16.7 million MT in 1998 to 15.8 million MT in 1999, and recovered to 16.6 million MT in 2000. Sales were 3.9 million MT in interim 2001, as compared to 4.2 million MT in interim 2000. CR/PR at Table C-1. Merchant market (Trade only) sales followed similar trends, although they increased from 1998 to 2000. Trade only sales were 8.3 million MT in 1998, decreasing to 7.8 million MT in 1999, then recovering to 8.5 million MT in 2000. Trade only sales were 2.0 million MT in interim 2001 as compared to 2.2 million MT in interim 2000. Id.

[109]Domestic production of blast furnace coke was 16.0 million MT in 1998, decreasing to 15.4 million MT in 1999, recovering to 16.1 million MT in 2000. Domestic production was 3.9 million MT in interim 2001 and 4.1 million MT in interim 2000. CR/PR at Table C-1.

[110]Domestic production capacity was 16.62 million MT in 1998, decreasing slightly to 16.60 million MT in 1999, recovering to 16.68 million MT in 2000. Domestic production capacity was 4.12 million MT in interim 2001 as compared to 4.17 million MT in interim 2000. CR/PR at Table C-1.

[111]Capacity utilization was 96.0 percent in 1998, decreasing to 92.6 percent in 1999 and recovering to 96.7 percent in 2000. Capacity utilization was lower in interim 2001 than in interim 2000. CR/PR at Table C-1.

[112]End-of-period inventories decreased from 578,072 MT in 1998, to 528,398 MT in 1999, and then fell further to 430,127 MT in 2000. Inventories were 531,633 MT in interim 2001 as compared to 464,719 MT in interim 2000. CR/PR at Table C-1.

interim 2000.[113]

Between 1998 and 1999, the per-unit cost of goods sold (COGS) was level, then declined from 1999 to 2000. Unit COGS was higher in interim 2001 than in interim 2000.[114] The ratio of COGS to sales increased from 1998 to 1999 and then fell from 1999 to 2000. It was larger in interim 2001 than in interim 2000.[115] Capital expenditures declined in 1999 and 2000. Reported research and development expenses increased steadily between 1998 and 2000, but were lower in interim 2001 than in interim 2000.[116]

In light of our findings that declining volumes of subject imports have not suppressed or depressed domestic prices to a significant degree, and that no correlation existed between subject import volumes and the financial performance of the domestic industry, we find no reasonable indication that subject imports have had a significant adverse impact on the domestic industry.

VII. CUMULATION FOR PURPOSES OF ANALYZING THE THREAT OF MATERIAL INJURY

Section 771(7)(H) of the Act permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of subject imports for purposes of conducting its threat

---

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

[114]CR/PR at Table C-1. For merchant market (Trade only) sales, unit cost of goods sold (COGS) to sales increased from 1998 to 1999, and then fell from 1999 to 2000. It was higher in interim 2001 than in interim 2000. Id.

[115]CR/PR at Table C-1. Merchant market (Trade only) the ratio of COGS to sales had similar trends. Id.

[116]CR/PR at Table VI-7. Some companies reported a high percentage of their capital expenditure costs were related to environmental compliance, and others reported no environmental compliance capital expenditures. CR at VI-29-31; PR at VI-10. CR/PR at Table VI-7. Research and development data were only reported by ***. Domestic Producer Questionnaires.

analysis.[117] In addition to the factors considered in the cumulation for present injury analysis, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.[118]

In this determination, we exercise our discretion to cumulate subject imports from China and Japan for purposes of assessing threat of material injury for the reasons discussed in our original preliminary determinations.

VIII. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA AND JAPAN

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[119] The Commission may not make such a determination "on the basis of mere

---

[117]See Kern-Liebers v. United States, 36 F. Supp.2d 394 (Ct Int'l Trade 1999).

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

[119]19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

conjecture or supposition," and considers the threat factors "as a whole."[120] In making our determination, we have considered each of the statutory threat factors that are relevant to these investigations.[121]

Cumulated subject import volume decreased overall from 1998 to 2000, although by a small amount, and was 37.1 percent lower in interim 2001 than in interim 2000. U.S. shipments of cumulated subject imports into the U.S. market also decreased from 1998 to 2000 and were 25.9 percent lower in interim 2001 than in interim 2000. The market share of cumulated subject imports also decreased *** from 1998 to 2000, and was 2.8 percentage points lower in interim 2001 than in interim 2000.[122] These decreasing trends do not suggest that substantial increases in imports are imminent.[123]

We note that there is a supply deficit in the United States for blast furnace coke, that U.S. capacity has declined over time, that import volume and the share of the U.S. market held by the subject imports has declined, in particular in interim 2001 compared to interim 2000, and that the

---

[120]19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

[121]19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies is inapplicable to this antidumping investigation, as is Factor VII regarding raw and processed agricultural products.

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

[123]CR/PR at Table IV-2, Table IV-4 and Table C-1. Subject import volume relative to production decreased from 1998 to 2000, and was lower in interim 2001 as compared to interim 2000.

volume of subject import shipments in the U.S. market has fallen at a sharper rate than demand, in particular in interim 2001 compared to interim 2000. We note that domestic producers are experiencing high rates of capacity utilization, and have long-term relationships and commitments to existing customers that tend to limit their ability to increase their share of domestic consumption.

There is no evidence on the record of an imminent, substantial increase in production capacity in China or Japan, nor is there evidence of a likelihood of substantially increased imports of the subject merchandise because the vast majority of subject imports during the period of investigation were destined for ***. The record does not reflect any intent on the part of *** to increase their imports or purchases in the future. Indeed, *** has stated that it will require *** fewer MT of subject imports annually when ***.[124] We further find that the high capacity utilization of the domestic producers during the period of investigation, 96.0 percent in 1998, 92.6 percent in 1999, 96.7 percent in 2000, 97.4 percent in interim 2000 and 93.7 percent in interim 2001,[125] indicates that they would find it difficult to fill any significant increase in orders for blast furnace coke. This further supports our finding of no reasonable indication of threat of material injury by reason of subject imports from China and Japan.

While China is now the world's largest exporter of coke,[126] producers of subject Chinese

---

[124]OINV Memorandum INV-Y-149 (August 9, 2001) at 1.
[125]CR/PR at Table C-1.
[126]CR at VII-4; PR at VII-2.

imports reported high capacity utilization levels throughout the period of investigation [127] [128] Subject import volumes from China were sharply lower in interim 2001, as compared to interim 2000. We note that exports to the United States of blast furnace coke from China were lower in interim 2001 as compared to interim 2000, and are projected to decrease further.[129]

Japanese respondents Mitsubishi Chemical ("Mitsubishi") and Mitsui Mining ("Mitsui") accounted for virtually all exports of blast furnace coke from Japan to the United States during

---

[127]CR/PR at Table VII-2.

[128]Petitioners rely to a large extent on a 1999 Chinese Coke Directory, edited by Biswambhar Goswami, President of International Inspection & Consultancy (ILC) of Japan, and published by Tex Report for the proposition that the Chinese coke industry was growing rapidly, particularly in Shanxi province. The report noted the environmental problems associated with beehive ovens, and that beehive ovens were being replaced with mechanical ovens. Petition, Exhibit 52, at pages "e-g". ***. Petition, Exhibit 51. Petitioners also presented an article stating that the local government in Luliang, Shanxi Province, China is planning to close all traditional coking plants (beehive ovens) and build 24 modern plants, although the article reflects that these modern plants will replace beehive ovens being shuttered. Petitioners' Postconference Brief, Exhibit 6.

Counsel for Respondent Shanxi Group testified at the conference that there were "massive shutdowns" of beehive ovens in China. Conference Tr. at 116. Counsel for Japanese Respondents testified that the majority of U.S. imports of furnace coke from China during the period of investigation were from beehive ovens, and that if the ovens were shut down, the capacity to export that material is also shut down. Conference Tr. at 117. See also Manatt Phelps Letter dated July 19, 2001, showing known production closures. A representative of Chinese Respondent Duferco testified that the industry is in "transition," that at least 50 percent of the beehive ovens had been closed, and that they are attempting to produce beehive quality coke using slot ovens. Conference Tr. at 119-120, 142. Based on the foregoing, record evidence demonstrates that the Chinese blast furnace coke industry is in transition, and that at least some of its capacity is being shut down.

[129] The Commission received questionnaire responses believed to account for virtually all exports of blast furnace coke from China to the United States during January 1998 to March 2001. CR/PR at VII-1. This export data reflects that 1.8 million MT of blast furnace coke was exported to the United States in 2000, as compared to 6.1 million MT to other markets. Exports to the United States in interim 2001 were 113,976 MT in interim 2001 as compared to 465,949 MT in interim 2000. Projected calendar year exports to the United States in 2002 were *** as compared to 920,600 MT projected calendar year exports in 2001. CR/PR at Table VII-2.

the period of investigation.

***.[130] In 2000, *** imports accounted for *** of subject imports from Japan, or *** percent of subject imports from Japan.[131] *** its requirements for imports at *** will decrease at some point in the future.[132]

Mitsubishi and Mitsui maintain that as in the United States, the great majority of Japanese coke production is captively consumed. They further maintain that the integrated producers in Japan lack the specialized export facilities for loading coke onto vessels necessary to make any export opportunities attractive.[133] They further maintain that there is a shortage of blast furnace coke in Japan as in the United States, and that PCI usage has stabilized in Japan and is not likely to increase.[134]

Japanese market share of the U.S. market has been generally stable throughout the period of investigation,[135] and there is no indication that subject imports from Japan will increase in the future.[136] The majority of reported Japanese shipments of blast furnace coke went to the Japanese home market, and Japanese producers reported high capacity utilization levels.[137] The

---

[130]CR at IV-5, nn. 4-5; PR at IV-3, nn.4-5.

[131]Calculated from CR/PR at Tables IV-2 and IV-3.

[132]OINV Memorandum INV-Y-149 (August 9, 2001) at 1.

[133]Japanese Respondents' Postconference Brief at 32. CR at VII-5; PR at VII-4. Conference Tr. at 99. Our data represents virtually all exports of blast furnace coke from Japan during the period of investigation. CR at VII-5, PR at VII-4.

[134]Japanese Respondents' Postconference Brief at 28-33, Exhibits 16, 17 & 18. Conference Tr. at 96.

[135]CR/PR at Table C-1. Petitioners' Postconference Brief at 40.

[136]CR/PR at Table VII-4.

[137]CR/PR at Table VII-4.

volume of U.S. imports from Japan decreased from 1998 to 2000 and were lower in interim 2001 than in interim 2000. Moreover, one of the Japanese industry's *** primary U.S. customers has announced a significant decline in its future needs for blast furnace coke.[138]

We also find it unlikely that subject imports from China and Japan will enter the U.S. market at prices likely to suppress or depress domestic prices to any significant degree. As noted above, underselling by subject imports was persistent, but had little apparent adverse effect on the level of domestic prices. Thus, import prices showed no indication that they would depress or suppress prices for domestic blast furnace coke. This conclusion is supported by *** projected decrease in demand for subject imports as its *** becomes operational, and by the decreasing underselling margins in the first two quarters of 2001.

Neither do inventories of subject imports pose a threat of material injury to the domestic industry. Inventories of subject imports from China and Japan were not generally held by non-steel producing importers, due to the degree of degradation involved.[139] Reported inventories for Japanese producers are low, and are not projected to significantly increase.[140] Chinese producers reported an increase in inventories in 2000 and larger inventories in interim 2001 as compared to interim 2000. However, we note that the reported end-of-period inventories in 2000 constituted only *** percent of apparent U.S. consumption in 2000. Although end-of-period inventories

---

[138]OINV Memorandum INV-Y-149 (August 9, 2001) at 1.

[139]Conference Tr. at 135-136. CR/PR at Table VII-5, nn.2-3. Although we note that importers held significant end-of-period inventories during the period of investigation, we note that most of these inventories were held by importers ***, importers who are also end users, i.e., steel producers.

[140]CR/PR at Table VII-4.

were higher in interim 2001 as compared to interim 2000, total shipments were lower during that time, and projected 2001 calendar year end-of-period inventories were smaller than interim 2001 inventories.[141] Although product-shifting is a theoretical possibility in both subject countries,[142] the record does not reflect any product-shifting during the period of investigation, or any intent to do it in the future.

Given our findings regarding the price effects of subject imports, we do not find that import prices have significantly negatively affected or will potentially have any significantly negative effects on capital expenditures. Petitioners have argued that prices for subject imports prevented the domestic industry from making investments in replacement and expansion capacity,[143] and ***.[144] We find that although capital expenditures were higher in 1998 than in 1999 and 2000, most of the 1998 expenditures were related to environmental compliance. Thus, the decrease in capital expenditures did not appear to reflect a decrease in expenditures for

---

[141]CR/PR at Table VII-2. Although reported Chinese inventories were projected to be higher in calender year 2002, the projected inventories constituted only *** percent of apparent U.S. consumption in 2000. Calculated from CR/PR at Tables IV-4 and VII-2.

[142]CR at VII-4, PR at VII-2; Japanese Respondents' Postconference Brief, Answers to Staff Questions at 44. While there is reportedly a large theoretical capacity for production of both foundry coke and blast furnace coke in China, the record does not indicate that such theoretical capacity will result in substantially increased exports of blast furnace coke from China to the United States in the imminent future, given the current transitional state of the Chinese blast furnace coke industry. Capacity was being shut down, and the volume of subject imports from China was significantly lower in interim 2001 than in interim 2000. Moreover, over the period of investigation, most of its exports were shipped to other markets besides the United States. CR at VII-4; PR at VII-1. CR/PR at Table IV-2 and Table VII-2.

[143]Petitioners' Postconference Brief at 34.

[144]CR/PR at Appendix D.

upgrading facilities.[145] Indeed, ***, reported capital expenditures dedicated to upgrading their facilities in 1998-2000.[146]

In light of the conditions of competition in this market,[147] the recent decrease in cumulated subject import volume, U.S. shipments of subject imports, and market share, along with a general lack of evidence of future increased imports by the primary U.S. importers, we find no reasonable indication of threat of material injury by reason of cumulated subject imports from China and Japan.

CONCLUSION

For the foregoing reasons, we determine on remand that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of blast furnace coke from China and Japan that are allegedly sold in the United States at less than fair value.

---

[145]CR/PR at Table VI-7 and CR at VI- 29-31 & nn.20-22, PR at VI-10 & nn. 20-22. Capital expenditures were lower in interim 2001 than in interim 2000. Id.

[146]CR at VI- 29-31, nn. 20 & 22; PR at VI-10, nn. 20 & 22.

[147]Our finding of attenuated competition, based on all of the factors listed, is in turn one factor among many supporting our negative determinations and our finding of no causal connection between the domestic industry and the subject imports.

APPENDIX

COMMISSION'S RESPONSE TO THE COURT'S ORDER FOR ADDITIONAL EXPLANATION

In its Opinion and Order dated May 20, 2003, the Court ordered us to reconsider our preliminary negative determinations, and in the event we reached negative determinations, provide additional explanation on twelve specific issues outlined by the Court. Given our determinations, we have provided the following additional explanation.

I. Methodology, Factors and Separate Market

1. Explain the methodology and standards employed in reaching the conclusion that "to a great extent subject imports do not compete with domestically produced blast furnace coke."

The phrase "to a great extent subject imports do not compete with domestically produced blast furnace coke," is not contained in our original preliminary determinations, although somewhat similar language referring to only the subject imports consumed at three plants is contained in the determinations. The Court appears to be referencing part of our pricing analysis in our original opinion, which has a very different meaning. In order to clarify this issue, we quote the pertinent excerpt in its entirety, without footnotes:

> The lack of significant adverse price effects by the subject imports is also confirmed by the nature of the conditions of competition for this industry. The overwhelming majority of subject imports, *** percent in 2000, is sold to *** integrated members of the industry to satisfy demand at certain of their steel plants, ***. *** purchases both domestically produced blast furnace coke and subject imports ***. There is no evidence on this record that the prices of these imports, that to a great extent do not compete with domestically produced blast furnace coke, and which constitute the overwhelming percentage of subject imports, have had a significant effect on domestic prices.[1]

[1] Confidential Preliminary Determinations at 25-26.

The imports under discussion identified in the quoted language are the subject imports imported or purchased by *** in 2000, which constituted *** percent of subject imports or purchases of imports, not all "subject imports."[2] At no time during the period of investigation, did *** purchase domestic product for consumption at, respectively, its *** steel plant. As stated in the Commission's original preliminary determinations, subject imports and domestic product are ***.[3] Therefore, the subject imports imported or purchased by *** "to a large extent" did not compete with domestic product.

We are statutorily required to analyze the relevant economic factors, including the volume of subject imports, price effects of subject imports, and their impact on the domestic industry, in the context of the conditions of competition distinctive to the industry under investigation. 19 U.S.C. § 1677(7)(B) & (C). We do not analyze the conditions of competition in an industry based on a specific set of factors, as, for example, we do for our domestic like product analysis, because each industry is different.

In considering the conditions of competition in the U.S. market for blast furnace coke, we

---

[2] We calculated this figure by totaling all subject imports imported or purchased by *** and dividing it into total subject imports for 2000. *** imported *** from China and *** from Japan in 2000, totaling ***. CR at IV-5, nn.3 & 4. *** imported *** from China in 2000 and *** from Japan in 2000. CR at IV-5, nn. 2 & 4; PR at IV-3, nn.2 & 4; PR at IV-3, nn.3 & 5. *** also purchased *** of subject imports from China. CR at III-9, n.27; PR at III-7, n.27. In the aggregate, these total ***. Total subject import volume in 2000 was 3,198,012 MT. CR/PR at Table IV-2. Thus, subject imports imported or purchased by *** were *** percent of total subject imports.

[3] Moreover, as we noted in our preliminary determinations, the record reflected that domestic product was not interchangeable with imports from China used as center fill applications at U.S. Steel's Gary, Indiana plant. Confidential Preliminary Determination at 13, n.59.

have considered the entire record, and in particular the staff report and related data, questionnaire responses, the Commission's prior Section 332 Study of Metallurgical Coke,[4] the Palmer Affidavit, the conference testimony of Petitioners and Respondents, the arguments and submissions of the parties, the location of domestic blast furnace coke production plants, and steel plants, and the purchasing patterns of customers of both domestic and imported blast furnace coke.

2. State with specificity the factors underlying [the Commission's] finding of attenuated competition.

We considered the following factors in reaching our finding that the competition between the domestic industry and the subject imports is attenuated: the desire of importers/purchasers to have reliable access to large quantities of product of uniform consistency in the blast furnace; the limited and declining capacity of the domestic industry to supply additional product, the contractual commitments limiting domestic producers from supplying additional purchasers,[5]

---

[4] Metallurgical Coke: Baseline Analysis of the U.S. Coke Industry and Imports, Inv. No. 332-342, USITC Pub. 2745 (March 1994) ("Section 332 Study").

[5] Domestic producers DTE and EES purchased blast furnace coke batteries adjacent to, respectively, Bethlehem's Burns Harbor steel plant and National's Ecorse, Michigan steel plants. DTE and EES have entered into long-term contracts, for respectively 9 and *** years with extensions, to deliver all of their output to those on-site steel producers. CR at II-1, III-2 & n.7, III-6, n.10; PR at II-1; III-3 & n.7; III-6, n.10. OINV Memorandum INV-Y-149. *** Domestic Producer Questionnaire.

*** sold ***, and reported sales only in ***. Domestic Producer Questionnaires of ***. ***. *** Domestic Producer Questionnaire at IV-B-4, IV-C. ***. *** Domestic Producer Questionnaire at IV-B-4; IV-C. ***. *** Domestic Producer Questionnaire at IV-B-4, IV-C. ***. *** Domestic Producer Questionnaire at IV-B-4, IV-B-10 and IV-C.

Mr. Palmer testified that ***. Palmer Affidavit at 3. CR/PR at Table I-4. ***. *** Domestic Producer Questionnaires at IV-B-4, IV-C. Japanese Respondents' Postconference Brief, Exhibit 2.

freight costs and the desire to avoid product degradation, and certain quality differences (separate from degradation) between subject imports and the domestic product.

As these factors suggest, competition between the domestic product and subject imports is limited by a variety of factors. Steel producers' desire for large quantities of blast furnace coke that is internally consistent, the domestic supply deficit, the domestic producers' contractual commitments, the cost of and resultant degradation caused by transporting the coke from distant domestic producers over land, and the differences in the quality of the coke from different sources, are all factors that affect whether any given steel producer has offers to or will purchase domestic coke or subject imports. In addition, our analysis of the degree to which subject imports compete with domestically-produced blast furnace coke is supported by the absence on the record of any lost sales allegations or lost revenues allegations, with the exception of one unsubstantiated claim, and by the lack of any correlation between the volume or price of subject imports and the financial condition of the domestic industry.

Domestic blast furnace coke production is generally consumed or marketed a short distance from where it is produced.[6] Integrated producers internally consume much of their production at adjacent or nearby steel plants. ***.[7] Captive production shipments by *** were

---

[6] Most domestic blast furnace coke production facilities are in Illinois, Indiana, Ohio, Pennsylvania and Michigan. Of the 21 blast furnace coke production facilities operating in 2000, 15 of them are located in these adjoining states. Outside of this region, there are plants in Alabama, Kentucky, Virginia, West Virginia, New York and Utah. CR/PR at Table I-4.

[7] OINV Memorandum INV-Y-149.

*** MT or *** percent of total U.S. shipments in 2000.[8] ***.[9] ***'s captive production constituted *** percent of total U.S. domestic producer shipments in 2000.[10] *** consumes all of its blast furnace coke production for internal consumption, and the record reflects that all of its steel and blast furnace coke production ***.[11] *** accounted for *** percent of total U.S. domestic producer shipments in 2000.[12]

Other blast furnace coke production is sold through special arrangements with adjacent steel producers. *** percent of domestic blast furnace coke production in 2000 was consumed pursuant to long term contracts at adjacent steel plants. DTE Burns Harbor Energy Services supplies blast furnace coke to Bethlehem's adjacent Burns Harbor, Indiana steel plant, while EES Coke provides blast furnace coke for National Steel's adjacent steel plant, in Ecorse Michigan.[13] ***.[14] These sales account for *** percent of total U.S. domestic producer shipments in 2000.

---

[8] CR/PR at Table III-1. These captive shipments also include ***.

[9] OINV Memorandum INV-Y-149.

[10] Following the closing of steel-making operations in Bethlehem's Lackawanna, New York facility, in 1983, all production of blast furnace coke from that facility was sold to other integrated steel producers, ***. CR/PR at Table III-1; CR at III-7, n.16, PR at III-7, n.16.

[11] In its questionnaire response, *** stated that it was an integrated steel producer, and that all of its coke was produced for internal consumption. ***. *** Domestic Producer Questionnaire at 2.

[12] CR/PR at Table III-1.

[13] CR at III-2 & n.7, PR at III-3 & n.7. ***.

[14] *** Domestic Producer Questionnaire Response at I-4, IV-B-6, IV-C. ***. Percentage of total 2000 domestic shipments calculated from CR/PR at Table III-1 and *** 2000 sales measured in quantity ***. *** Domestic Producer Questionnaire at III-9.

Consuming the coke in adjacent plants reduces costs. In the aggregate, these captive and commercial shipments to adjacent or nearby steel plants accounted for *** percent of total U.S. domestic producer shipments in 2000.[15]

Domestic producers are concentrated in Illinois, Indiana, Ohio, Pennsylvania and Michigan, and they generally market their coke in that region. *** reported that 54.0 percent of its sales were within 100 miles of its storage or production facilities.[16] ***.[17] *** reported that the geographic market in the United States served by its blast furnace coke was 250-300 miles from its *** coke plant.[18] ***, and reported that the geographic market for its coke included Ohio, West Virginia, Indiana and Illinois.[19] Acme Steel has a blast furnace coke production facility in Chicago, Illinois.[20] During the period of investigation, *** sold blast furnace coke only ***, and reported that the geographic market served by its coke was the Midwest.[21] ***, stated that one hundred percent of its sales were within 201 to 500 miles of its production

---

[15] ***.

[16] *** Domestic Producer Questionnaire at IV-B-6. Memorandum INV-Y-149 at 1. CR/PR at Table I-4 (location of ***).

[17] CR/PR at Table I-4 and *** Domestic Producer Questionnaire at II-7, IV-B-7.

[18] *** Domestic Producer Questionnaire at IV-B-7, IV-C.

[19] *** Domestic Producer Questionnaire at IV-C, IV-B-6,IV-B-7.

[20] Approximately eighty percent of Acme Steel's production is captively produced and the other twenty percent is sold to other steel producers. Conference Tr. at 23-24.

[21] *** Domestic Producer Questionnaire at IV-B-7, IV-C.

facility.[22] [23]

Other blast furnace coke is marketed further distances, or is produced outside the Midwest region where the domestic producers are concentrated. *** reported that their geographic markets within the United States were both east of the Mississippi,[24] although as stated earlier, approximately half of *** shipments were within one hundred miles of its production or storage facility. *** reported that its geographic market was the Mid-Atlantic.[25] The majority of the blast furnace coke produced by *** was sold in the merchant market.[26] *** reported that they sell their coke in the Midwest, but ***.[27] *** reported that sales from its *** plant are transported by rail.[28]

Turning to the importers, *** and ***, two *** domestic producers, are also the primary importers of subject merchandise.[29] ***, another integrated domestic producer, purchased

---

[22] *** Domestic Producer Questionnaire.

[23] *** reported that the geographic market areas in the United States served by its blast furnace coke were the Northeastern and Midwestern markets,***. CR/PR at Table I-4. *** Domestic Producer Questionnaire at IV-B-7.

[24] CR/PR at II-1.

[25] CR/PR at II-1, Table I-4..

[26] *** Domestic Producer Questionnaire at II-10.

[27] CR/PR at II-1, Table I-4. In the Section 332 Study, 14 out of 17 responding domestic producers stated in their questionnaire responses that inland transportation costs were an important factor in their customers' sourcing decision for metallurgical coke.

[28] *** Domestic Producer Questionnaire at IV-B-6.

[29] Thus, although *** produced significant quantities of blast furnace coke at *** over the period of investigation, they ***. Petitioners never attempted to explain this behavior of the

subject imports from China. Direct imports by *** and *** combined, plus *** indirect purchases of subject imports from China, comprised *** percent of subject imports in 2000. If ***'s purchases of imports from China in 2000, *** are also aggregated, the percentage rises to approximately *** percent.[30] We are aware of no record evidence that *** purchased any U.S. produced blast furnace coke at, *** during the period of investigation, or solicited bids for U.S. produced blast furnace coke at these plants during that period.

All of *** subject imports of blast furnace coke over the period of investigation have been consumed at ***. Over the period of investigation, *** of ***'s imports from Japan were consumed at its *** steel plant, ***. *** of ***'s imports from China were consumed at its *** steel plant ***. At its *** steel plant, *** supplements its internal production of blast furnace coke with purchases of subject imports and domestic product.[31]

3. State whether U.S. purchasers of Subject Imports comprise a separate market and cite the record evidence to support such conclusion, if any.

U.S. purchasers of subject imports do not comprise a separate market because there is

---

domestic industry. ***. Baltimore, Maryland is 314 miles by rail from Pittsburgh, Pennsylvania. Birmingham, Alabama is 937 miles by rail and 1,500 miles by barge from Pittsburgh, Pennsylvania, and 400 miles by barge from Mobile, Alabama. Section 332 Study, Tables 3-16 and 3-17. Provo, Utah, which is near Geneva's steel facility is approximately 820 miles from the port of San Francisco, as compared to 1,690 miles to Chicago, Illinois, 2,160 miles to Pittsburgh, Pennsylvania and 1,350 miles from Chicago, Illinois. Section 332 Study at 3-17-3-18. *** was used as center fill, to improve productivity in the blast furnace. OINV Memorandum INV-Y-149. Conference Transcript at 105 (Testimony of Jack Palmer).

[30] Calculated from CR/PR at Table IV-1, and CR at III-9, n.27, PR at III-7, n.27. ***. CR at III-9, n.25; PR at III-7, n.25.

[31] OINV Memorandum INV-Y-149 at 1-2.

some limited overlap of customers who purchase both subject imports and the domestic like product. For example, ***,[32] and *** purchase both subject imports from China and domestic product.[33]

II. Waterborne Transport.

4. State with specificity any record evidence demonstrating that lower costs resulting from waterborne transport of the Subject Imports created a separate market for the Subject Imports.

The logistics and costs related to moving blast furnace coke are one factor in our finding of attenuated competition. While we noted in our original determinations that sourcing coke through a port facility was reported to be less costly than transport over land to some blast furnace locations, we did not and do not assert now that lower costs resulting from waterborne transport of the subject imports created a separate market for them.

5. State with specificity any record evidence demonstrating that it is "far more economical" for Subject Imports to be delivered by waterborne transport when compared with modes of transportation available to the domestic like product.

6. Quantify the cost differences resulting from waterborne transport and delivery of the Subject Imports when compared with the cost of transport of the domestic like product.

A metric ton of domestic blast furnace coke, 2,204 pounds, was worth on average, approximately $124.00 during the period of investigation.[34] Thus, blast furnace coke has a low

---

[32] Memorandum OINV-Y-149 at 2.

[33] CR at III-9;PR at III-7.

[34] Calculated from CR/PR at Table V-1.

ratio of value to weight.[35] Several blast furnace coke producers facilities were located in or relatively near Pittsburgh, Pennsylvania during the period of investigation. The Commission's Section 332 Study[36] found that rail was by far the most common means of transporting blast furnace coke by the domestic producers to their customers in the United States.[37] Domestic shipments continue to be commonly transported by rail. Andrew Aloe, President of Shenango, testified that "traditionally," domestic blast furnace coke "goes directly from a screening station into a rail car directly to the customer."[38] The Commission's Section 332 Study showed railroad rates of $21.00 per ton from Pittsburgh, Pennsylvania to Baltimore, Maryland.[39] At the time of our Section 332 Study in 1993, it cost approximately $0.07 per mile per ton to ship blast furnace

---

[35] Conference Tr. at 85.

[36] The Commission's 1993 Section 332 Study was attached as an exhibit to the petition, was cited by one of the respondents, and is part of our record. We have relied on the cost data in our 332 Study not for its actual prices, because they could easily have changed since that time, but for relative costs for transporting coke from either U.S. ports or production locations in the United States, to certain steel plants. We also include information from the 332 Study because the Court desired a comprehensive response to its questions, and the 332 provides data for the cost analysis desired by the Court.

[37] The Commission's Section 332 Study found that approximately 88 percent of domestic producers' metallurgical coke was transported by rail, 11 percent by truck and one percent by barge. Barge rates were significantly lower than rail rates. Rail was still the preferred mode of metallurgical coke transport, despite less expensive barge rates, because "the vast majority of [domestic producers'] customers are not equipped to receive shipments in this manner and additional handling from barge unloading results in increased breakage." Section 332 Study at 3-14-3-15, Table 3-16.

[38] Conference Tr. at 74.

[39] Freight costs from Japan to the East Coast were approximately $12 per metric ton. Section 332 Study at 4-8.

coke from Pittsburgh, Pennsylvania to Baltimore, Maryland by rail, and $0.02 per ton per mile to ship blast furnace coke from Pittsburgh to Birmingham, Alabama by rail. Barge rates were significantly lower. It cost approximately $0.01 per ton per mile to ship blast furnace coke by barge from Pittsburgh, Pennsylvania to Ashland, Kentucky, Birmingham, Alabama or Chicago, Illinois.[40] Four domestic producers reported that inland freight costs accounted for 10 to 20 percent of the total delivered cost of blast furnace coke.[41]

The primary importers of subject merchandise are not located within the region in which domestic blast furnace coke production is concentrated, in the Midwest. Given its low value to weight ratio, inland transportation costs from the region in which domestic blast furnace coke producers are concentrated, to purchasers, is a factor in sourcing decisions.

Bethlehem can avoid inland freight costs by consuming subject imports at Sparrows Point. *** noted that "***." ***. New Steel published an article in which it stated that "[Bethlehem's] Sparrows Point [steel plant] can import coke from [China and Japan] economically because of its tidewater location." Bethlehem will shut down Coke Div, New Steel, January 1998. In its questionnaire response, *** reported to the Commission that non-price differences between Chinese, Japanese and U.S. produced blast furnace coke were frequently significant factors in making sales of blast furnace coke, including logistics .[42]

---

[40] 1993 Section 332 Study at Tables 3-16 and 3-17, at 3-15.

[41] The four responding domestic producers were *** (10-20 percent), *** (10 percent), *** (20 percent) and *** (12 percent). All of these domestic producers, as well as others, reported that the purchaser pays for the transportation costs.

[42] *** Importers' Questionnaire at 15.

Mr. Jack Palmer, a Vice President of Raw Materials for Duferco Steel, an importer of subject merchandise with seven years' experience, testified regarding the significance of freight costs in this industry. Although we recognize that some of his remarks are qualified, many of them, including why it makes sense to import coke at Sparrows Point, are not qualified, and we have relied on his testimony.[43] Mr. Palmer testified that "[t]ransport by water is often cheaper than transport by rail or truck, depending on location." Specifically with respect to cost benefits to Bethlehem, he testified as follows:

> Bethlehem Steel's Sparrows Point plant is located on the water in Baltimore, can take shipments directly from the vessel to their stockyards which are effectively at the blast furnace. . . . .Bethlehem's Sparrows Point plant is set up to economically receive raw materials by vessel.

In his Affidavit, Mr. Palmer further testified as follows:

> Bethlehem's Sparrows Point is located on the water at Baltimore and thus has a bias toward global sourcing. Sparrows Point is configured to receive large quantities of raw materials more economically by water than by rail or truck. Waterway transport from Bethlehem's Lackawanna cokemaking facility to Sparrows Point is not feasible because of the distance and complicated logistics required.

Subject imports transported to U.S. Steel's Fairfield plant incur some inland freight costs, but the record reflects those inland freight costs are lower than the freight costs from

---

[43] The Commission has the authority to weigh the significance of the factors affecting an industry, and the weight to be assigned the evidence presented. Iwatsu Electric v. United States, 758 F. Supp. 1506, 1510-1511 (Court of Int'l Tr. 1991). The Federal Circuit has found that the Commission's weighing of the evidence in a preliminary determination effectuates Congressional intent. American Lamb v. United States, 785 F. 2d 994, 1002-1004 (Fed. Cir. 1986). The Court of International Trade stated that "[i]t has long been established that in applying the statutory standard for making a preliminary determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence." Ranchers-Cattlemen, 74 F. Supp. 2d 1353, 1368 (U.S. Ct. Int'l Tr.1999).

distant domestic blast furnace coke producers, including its own production plant in Pennsylvania. Petitioners' economist, Richard Boltuck, recognized that "it might not because of freight costs be logical to ship" from merchant producers in Pennsylvania to a distant U.S. Steel plant.[44] In its questionnaire response, *** stated that "***."[45] Mr. Palmer testified that U.S. Steel's Fairfield location can take material through "[M]obile port of entry and with very little difficulty move it up into their plant."[46] Data from our Section 332 Study reflected estimated inland freight costs from Mobile to Fairfield were $7 to $9 per metric ton, including barge and rail transport.[47] In contrast, rail transport costs from Pittsburgh to Fairfield were $23 per metric ton, and barge costs from Pittsburgh to Birmingham were $13 per metric ton with $2 to $4 per metric ton rail expense to Fairfield.[48]

Geneva Steel's steel plant is in Vineyard, Utah, far from the concentration of domestic producers. In its questionnaire response, *** stated that ***[49] Mr. Palmer testified at the conference that "Geneva, which is in the middle of Utah, accesses imported furnace coke in large part because it is cheaper to transport it from the West Coast port than it is

---

[44] Conference Tr. at 153.

[45] *** Foreign Producer Questionnaire at 4.

[46] Conference Tr. at 46.

[47] The Section 332 Study based its cost estimate for transport from Japan to Fairfield, on ocean freight of $10 per metric ton, barge transport of $5 per metric ton, port terminal fees of $2-3 per metric ton and rail transport of $2-4 per metric ton. Study at 3-17, n.30.

[48] Section 332 Study at 3-15 and 3-17, n.30.

[49] ***.

from the traditional Midwest corridor."[50] The Section 332 Study found that the rail distance from the port of San Franciso to Geneva's steel plant was much shorter than the rail distance from Chicago, Illinois, Pittsburgh, Pennsylvania or Birmingham, Alabama.[51]

Freight costs are significant to this industry. They are a factor in the markets served by the domestic producers. Domestic producers generally serve markets close to their blast furnace plants, if not adjacent to them. Subject imports delivered at Sparrows Point avoid incurring any inland transportation costs. Inland freight costs from the port to Fairfield and to Geneva's Utah steel plant, are lower than from many domestic producers.[52] We find that significant freight costs from distant domestic producers are a factor in attenuating or limiting competition between subject imports and domestic product.

7. State the percentage of Subject Imports unloaded directly from Panamax vessels and other oceangoing ships directly for use in the United States.

The Court has asked us to provide the "percentage of Subject Imports unloaded directly from Panamax vessels and other oceangoing ships directly for use in the United States." Subject imports unloaded directly for consumption at *** were approximately *** percent of total

---

[50] Conference Tr. at 104.

[51] Section 332 Study at 3-17 and 3-18.

[52] The Court has questioned the reliability of the testimony of Dr. Bruce Malashevich, an economist who participated in the Commission's Section 332 Study, because his testimony lacked specificity as to any comparison of freight costs. Opinion at 13-14. Dr. Malashevich testified that "[a]s a practical matter, imported coke is a viable option only to U.S. customers with ready access to port facilities. Most U.S. merchant producers of coke, however, are located inland and so are limited to sales for consumption by nearby steel mills." Conference Tr. at 85-86. We find it appropriate to take Dr. Malashevich's testimony into account in our analysis given that other record evidence corroborates it.

imports in 1998,[53] *** percent in 1999, *** percent in 2000, *** percent in interim 2000 and *** percent in interim 2001.[54]

III. Waterborne Transport, Delivery and Reduced Degradation

8. State with specificity any record evidence that the superior quality resulting from waterborne transport or delivery of the Subject Imports created a separate market for the Subject Imports."

9. Examine the significance of the manner and frequency of handling of the Subject imports in its product quality analysis.

While we noted in our original determinations that sourcing coke through a port facility was reported to result in lower degradation of the blast furnace coke, we did not and do not assert now that the superior quality resulting from waterborne transport or delivery of the subject imports created a separate market for them.

The transportation and handling of blast furnace coke creates particles of coke called coke breeze.[55] Blast furnace coke producers seek to minimize crumbling or degradation of the blast furnace coke prior to use, by minimizing handling, moving or transporting the coke. Operators do not want this breeze because it can plug up the blast furnaces.[56] A higher percentage of breeze in a shipment, caused, for example, by the coke being on the ground, can result in a decreased price for the shipment, either because the purchaser discounts the shipment

---

[53] *** imported *** percent of subject imports in 1998. ***. According to the Section 332 Study, a Panamax vessel holds 38,000 to 40,000 metric tons. Section 332 Study at 4-8. ***.

[54] Calculated from Table IV-1, CR at IV-2.

[55] Conference Tr. at 46-47, 74-75.

[56] Conference Tr. at 48-49, 51-52.

or because the breeze is screened out.[57] Domestic producer testimony reflects that putting the coke on the ground can result in the loss five percent of the product, due to the additional handling.[58] Such degradation does not affect the internal quality or chemistry of the coke,[59] but if the product degrades in transit, its value falls, because less product is ultimately sold. Limiting degradation, therefore, is necessary to preserves the value of the coke. At the Commission's conference, the domestic producers emphasized the importance of limiting such degradation. They testified that blast furnace coke producers avoid holding inventories due to the risk of degradation likely to result from the handling and degradation involved in placing the coke on the ground. Domestic producers attempt to avoid picking up and putting down the coke, for example, by a high lift operator, and moving or transporting it by conveyor belt, because it lessens the value of the coke.[60]

Our analysis of the relative advantages of waterborne transit of the subject imports encompasses loading, moving, and unloading and/or delivering the subject imports. We do not disagree with Petitioners that the number of times the coke is handled affects the degradation of the coke. In fact, in our original preliminary determination we found that "purchasing the subject imports through a port facility results in lower degradation of the blast furnace coke and lower transportation costs through transportation over water rather than over land," relying on

---

[57] Conference Tr. at 76.

[58] Conference Tr. at 76.

[59] Conference Tr. at 62.

[60] Conference Tr. at 74-75.

the Palmer Affidavit. We find that subject imports delivered at Sparrows Point are handled less and therefore degrade less, than shipments transported overland by domestic producers to the same location. This is one of several factors that supports our finding of attenuated competition.

At Sparrows Point, blast furnace coke is unloaded in front of the blast furnace. The plant is configured to receive blast furnace coke by water. Mr. Palmer testified that "to deliver coke to Sparrows Point by water, the coke can be transported directly from the ocean vessel and placed at the stockyard located right before the blast furnace. In contrast, to deliver coke to Sparrows Point by land, the coke is handled many more times and suffers a much higher degradation rate."[61] He testified at the conference that "[i]t is much more expensive for [Bethlehem] to receive [blast furnace coke at Sparrows Point] by truck or rail as such overland transportation means incurring additional costs from handling and degradation that are avoided by waterway transportation."[62] Petitioners did not dispute these facts in their postconference brief.[63]

We have relied on the evidence provided with respect to Bethlehem's Sparrows Point plant, which accounts for approximately *** percent of subject imports, for our conclusion that reduced degradation of subject imports through their delivery at Sparrows Point is another factor

---

[61] Palmer Affidavit at 2.

[62] Conference Tr. at 105.

[63] Andrew Aloe, an executive for domestic producer Shenango, testified that subject imports suffered degradation when they are downloaded off of barges, Conference Tr. at 80-81, but that would not apply to subject imports delivered by water at Sparrows Point, which would only have to be offloaded from the ocean vessel, and would have no inland transportation within the United States, either by barge or rail.

supporting the attenuated competition between subject imports and domestic product.[64] [65] [66]

IV. Quality and Fungibility

10. State with specificity any record evidence demonstrating that the subject imports are superior in quality to the domestic like product and specify in what way the subject imports are superior.

11. State with specificity any record evidence demonstrating a preference on behalf of U.S. blast furnace coke consumers for the subject imports based on product quality.

12. State with specificity any record evidence that the Subject Imports and the domestic product are not fungible.

To a blast furnace operator, the quality of a supplier's product is not only affected by its innate quality but by how much of it the supplier can provide that is internally consistent, because the blast furnace operator wants stability in the blast furnace. One of the quality advantages of the subject imports is that they can reliably provide large volumes of blast furnace coke that are internally consistent.

---

[64] We note that both Sparrows Point and U.S. Steel's Fairfield plant appear to benefit from the specialized export facilities used by the Japanese to move coke to reduce degradation and maximize shipment. Japanese Postconference Brief at 32. Section 332 Study at 4-8. However, we have no evidence of domestic loading practices for comparison so we do not rely on that evidence.

[65] Subject imports are transported to Fairfield almost entirely by water, with the exception of a short distance by rail to the plant. We do not rely on this evidence because although Mr. Palmer testified that "[o]cean and river transport is more advantageous than overland transport because it requires less handling, which causes degradation of the coke," he did not specifically compare handling and degradation by water versus handling and degradation by land for Fairfield as he did for Sparrows Point.

[66] We note that the Japanese exhibit Petitioners relied upon and the Court discusses in its Opinion estimates the number of times coke is handled in transit to Fairfield, not Sparrows Point.

Integrated producers *** need large quantities of coke because they have large steel plants that need reliable supplies of blast furnace coke to produce steel, and they have shuttered some of their captive blast furnace coke production. Japanese Respondent ***.[67] Mr. Palmer testified at the conference that "[a]nother factor in the integrated producer's decision to import is the desire to have a stable supply of large volumes of high quality material."[68] ***.[69]

Consistency of coke quality is very important in the blast furnace. *** stated that one of the characteristics the firm considers when determining the quality of blast furnace coke was "minimal variability" *** Importer Questionnaire at 12. A recent New Steel article stated that "[t]he key to blast-furnace productivity is minimizing interruptions and production variables." In the same article, the manager of primary production at Bethlehem's Sparrows Point Division said that "[f]anatical attention to reducing variability is the critical element [in operating blast furnaces]." The article stated that one of the variables was changes in raw materials.[70]

Blast furnace coke operators strive to avoid mixing coke from too many sources together. Importer *** stated that "[c]oke produced in countries outside of the U.S. is produced using a different process than that used domestically. The coke characteristics (*i.e.*, size, stability, ash content) tend to vary. This impacts the manner in which the material is used. Different

---

[67] ***. Japanese Respondents' Postconference Brief at 9-11.

[68] Conference Tr. at 105.

[69] *** Domestic Producer Questionnaire at II-14.

[70] Respondent Duferco Postconference Brief, Exhibit 2, New Steel, July 2001.

characteristics require modifications to burden practices[71] and could potentially impact maintenance practices for furnace linings as different materials burn at different rates in the furnaces."[72] *** reported that blast furnace burdening practices limit the amount of foreign coke in a blast furnace to an average of 40 to 45 percent of total coke consumed. It also stated that foreign coke is principally used within smaller blast furnace vessels, which limits their intake of foreign coke.[73] Therefore, according to these importer/purchasers, significant adjustments are necessary to use the subject imports with domestic product.[74] Mr. Palmer testified that "*** suppliers have sufficient capacity to meet their annual volume requirements. Integrateds prefer to have a few coke suppliers who can provide large quantities of reliably high quality material. Too many coke sources in one blend could negatively affect the integrated's blast furnace productivity." Palmer Affidavit at 2.

Domestic producers may also be capable of supplying internally consistent coke to purchasers. Nevertheless, they are unable to supply it in quantities sufficient to satisfy the demand of the primary importers of subject coke. As previously discussed, domestic producers'

---

[71] "Burden" refers to all of the materials in the blast furnace. Conference Tr. at 65.

[72] *** Importer Questionnaire Response at 14.

[73] CR at II-8; PR at II-5.

[74] Other firms acknowledge that adjustments are necessary but do not consider them as significant. Domestic producer *** stated that Chinese coke is of lower quality than domestic coke and cannot normally be substituted on a one-to-one basis for it, but is substituted based on "routine adjustments" to the blast furnace. Importer/purchaser *** stated that coke produced by slot oven technology from any country can be used interchangeably but adjustments must be made for ash levels and other chemical properties. CR at II-7; PR at II-4.

rates of capacity utilization are extremely high, and to some degree they are contractually bound to their existing customers. Therefore, the domestic industry alone cannot fully supply domestic demand. Given the desire of blast furnace operators to limit mixing coke from different sources, we conclude that the primary importers of subject blast furnace coke tend to source their coke from subject imports that can be reliably provided with adequate consistency in the large quantities required.

Domestic coke and subject imports from China are of limited substitutability. Three out of eleven domestic producers and seven out of ten importers responded that blast furnace coke from China was "sometimes" interchangeable with domestic product, and one domestic producer and one importer stated that they were never interchangeable.[75] *** stated in its questionnaire response that ***.[76] *** further responded in its questionnaire as follows:

***.[77]

*** stated that the characteristics the firm considers when determining the quality of blast furnace coke were "coke chemistry, coke size, coke physical characteristics, and minimal variability." *** finds quality distinctions between subject imports and domestic product. *** told the Commission that non-price differences between Chinese, Japanese and U.S. produced blast furnace coke including coke quality were frequently significant factors in making sales of

---

[75] CR/PR at Tables II-1 and II-2

[76] *** Importer Questionnaire at II-4; *** Domestic Producers' Questionnaire at 9.

[77] ***.

blast furnace coke.[78] *** reported that Chinese coke had higher ash and moisture than U.S. coke, and some Chinese coke had better size, stability and CSR, and reported that it was never interchangeable with domestic coke.[79] [80]

With respect to subject imports from Japan, the evidence reflects a higher level of interchangeability between such imports and the domestic product, than between the domestic product and subject imports from China.[81] However, not all questionnaire respondents found subject imports from Japan fully interchangeable with the domestic product. *** said that Japanese coke is similar to U.S.-produced coke in most parameters. Depending on the use and quality of Japanese coke, it may or may not be interchangeable with domestic coke.[82] *** found that imports from Japan were never interchangeable with domestic product.[83] *** reported that Japanese coke had higher ash and moisture than U.S. coke, and poorer size consistency.[84]

---

[78] ***.

[79] ***. CR/PR at Tables II-1 and II-2.

[80] Another questionnaire respondent reported that subject imports have higher ash content, which reduces quality, than domestic blast furnace coke. *** Importer Questionnaire at II-5.

[81] Six out of eleven domestic producers reported that subject imports from Japan were always interchangeable, four reported they were frequently interchangeable and one, ***, that they were never interchangeable. Three out of seven imports reported that subject imports from Japan were always interchangeable, two frequently interchangeable, one sometimes interchangeable, and one, ***, never interchangeable. CR/PR at Tables II-1 and II-2.

[82] CR at II-10; PR at II-7.

[83] CR/PR at Tables II-1 and II-2.

[84] ***.

In summary, certain purchasers prefer to purchase subject imports that can be obtained in larger quantities of internally consistent coke. Moreover, *** reports that blast furnace coke from China used as center-fill is not fungible with domestic coke for that application. Other market participants also reported limited interchangeability between subject imports from China and the domestic industry. *** reported that there are differences in domestic coke as compared to subject imports from both China and Japan, and that these differences affect its sourcing decisions.[85] Other importers and purchasers also reported that subject imports from Japan were not fully interchangeable with domestic product.

V. Conclusion

We base our finding of attenuated competition on remand on: the desire of importers/purchasers to have reliable access to large quantities of product and consistency in the blast furnace; the limited and declining capacity of the domestic industry to supply additional product; the contractual commitments limiting domestic producers from supplying additional purchasers; freight costs and the desire to avoid degradation; location of blast furnaces near or in relation to a port; and certain quality differences (separate from degradation) between subject imports and the domestic product.

Our findings with respect to volume, price, impact, and threat are the primary basis for

---

[85] The Court has noted Petitioners' desire for further information regarding product quality through purchaser questionnaires. Our standard for a preliminary injury determination requires a reasonable indication of injury, not a reasonable need for further inquiry. Texas Crushed Stone Co.v. United States, 35 F. 3d 1535, 1543 (Fed. Cir. 1994). Although additional information would be gathered in a final investigation, the Petitioners have not demonstrated that record evidence demonstrated a likelihood that contrary evidence would be obtained if the investigation had been continued.

our negative preliminary determinations. Our finding of attenuated competition is one factor among many that support our negative determinations.