

allegedly dumped goods, may be excluded from the consideration of the domestic industry "in appropriate circumstances." Parties are considered to be related if one party exercises direct or indirect control over the other party. The ITC's concern in a related-party situation is whether the relation of the producers to the exporters or importers of dumped goods gives them an unusual or sheltered position in the market as compared to other producers.

9.4 Captive Production

The Uruguay Round Agreements Act of 1994 introduced the concept of "captive production" into U.S. methodology for determining material injury in anti-dumping and countervailing duty investigations. The concept was based on the fact that some products subject to trade remedy investigations may be sold both as end products ("the merchant market") or for use in further manufacturing processes. For example, in the flat-rolled steel sector, hot-rolled coils may be sold and used as end products or may be further processed into cold-rolled or corrosion-resistant steel. The issue arises as to whether injury should be assessed on the basis of total production of the product in question or only that portion sold in the "merchant market." In the former case, dumped or subsidized imports would represent a lesser share of total consumption than they would if captive production was included. Accordingly, it could be more difficult for domestic industry to demonstrate injury by dumped or subsidized imports if captive production is included.

The URAA set out criteria⁴⁶ for determination of the existence and treatment of captive production. The ITC will normally examine the condition of the U.S. producers of the domestic like product as a whole when determining whether material injury resulted from unfairly traded imports. The ITC will consider the effect that subsidized or dumped imports have had on the total production of the domestic like product. However, if certain conditions are determined to exist, the ITC will focus primarily on the merchant market in determining injury.

9.5 Regional Markets

For purposes of injury determination, the domestic industry may be limited to producers of like products in isolated or regional markets within U.S. territory, even if the domestic industry producing like products as a whole is not suffering injury. In order to establish that a regional market exists, it must be demonstrated that:

- ◆ the producers within the regional market sell all or almost all of their production in that market; and
- ◆ the demand in the regional market is not supplied to any substantial degree by producers located elsewhere in the national territory.

46 19 U.S.C. § 1671 (c) (iv).