

UNITED STATES INTERNATIONAL TRADE COMMISSION

MALLEABLE CAST IRON PIPE FITTINGS FROM BRAZIL, JAPAN, KOREA,
TAIWAN, AND THAILAND

Investigations Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3274, February 2000)

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TAIWAN, AND THAILAND¹

DETERMINATIONS

On the basis of the record² developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Taiwan, and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³ The Commission further determines that revocation of the antidumping duty orders on malleable cast iron pipe fittings from Japan and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁴

BACKGROUND

The Commission instituted these reviews on January 4, 1999 (64 F.R. 369) and determined on April 8, 1999, that it would conduct full reviews (64 F.R. 19196, April 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on June 16, 1999 (64 F.R. 32255). The hearing was held in Washington, DC, on December 2, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 3, 2000. The views of the Commission are contained in USITC Publication 3274 (February 2000), entitled *Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand: Investigations Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

¹ The investigation numbers are as follows: Brazil is 731-TA-278 (Review), Japan is 731-TA-347 (Review), Korea is 731-TA-279 (Review), Taiwan is 731-TA-280 (Review), and Thailand is 731-TA-348 (Review).

² The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

³ Chairman Lynn M. Bragg dissenting with respect to Brazil and Taiwan, Commissioner Stephen Koplan dissenting with respect to Taiwan, and Commissioner Deanna Tanner Okun not participating.

⁴ Commissioner Thelma J. Askey dissenting and Commissioner Deanna Tanner Okun not participating.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews,⁵ we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering malleable cast iron pipe fittings (“MCIPF”) from Brazil, Taiwan, and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders concerning MCIPF from Japan and Korea would be likely to lead to continuation or recurrence of material injury to an industry within the United States within a reasonably foreseeable time.⁶

I. BACKGROUND

In May 1986, the Commission determined that an industry in the United States was being materially injured by reason of less than fair value (LTFV) imports of MCIPF from Brazil, Korea, and Taiwan.⁷ The Department of Commerce issued antidumping duty orders with respect to MCIPF from those three countries that same month.⁸ In July 1987, the Commission determined that an industry in the United States was being materially injured by reason of LTFV imports of MCIPF from Japan,⁹ and in August 1987, the Commission determined that an industry in the United States was being materially injured

⁵ The record is defined in Sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 C.F.R. §207.2(f)).

⁶ Chairman Bragg determines that revocation of the antidumping duty order covering MCIPF from Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders concerning MCIPF from Brazil, Japan, Taiwan, and Korea would be likely to lead to continuation or recurrence of material injury to an industry within the United States within a reasonably foreseeable time. *See her Separate Views.*

Vice Chairman Miller and Commissioner Hillman determine that revocation of the antidumping duty orders covering MCIPF from Brazil, Taiwan, and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders concerning MCIPF from Japan and Korea would be likely to lead to continuation or recurrence of material injury to an industry within the United States within a reasonably foreseeable time. *See their Separate Views.*

Commissioner Koplan determines that revocation of the antidumping duty orders covering MCIPF from Brazil and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time but that revocation of the antidumping duty orders concerning MCIPF from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry within the United States within a reasonably foreseeable time. *See his Separate Views.*

Commissioner Askey determines that revocation of the antidumping duty orders covering MCIPF from Brazil, Japan, Korea, Taiwan, and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See her Separate Views.*

All participating Commissioners join this opinion concerning background of the reviews, domestic like product, domestic industry, the legal standard applicable to five-year reviews, and conditions of competition.

Commissioner Okun did not participate in these determinations.

⁷ Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986) (“Original Brazil/Korea/Taiwan Determination”).

⁸ 51 Fed. Reg. 18640 (May 21, 1986) (Brazil); 51 Fed. Reg. 18917 (May 23, 1986) (Korea and Taiwan).

⁹ Certain Malleable Cast-Iron Pipe Fittings from Japan, Inv. No. 731-TA-347 (Final), USITC Pub. 1987 (June 1987) (“Original Japan Determination”).

by reason of LTFV imports of MCIPF from Thailand.¹⁰ Commerce issued antidumping duty orders with respect to MCIPF from Japan and Thailand on July 6, 1987 and August 20, 1987, respectively.¹¹ On January 4, 1999, the Commission instituted five-year reviews on the antidumping duty orders on MCIPF from Brazil, Japan, Korea, Thailand, and Taiwan.¹²

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.¹³ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In these reviews, the Commission received responses to the notice of institution from: (1) the Cast Iron Pipe Fittings Committee (“CIPFC”), and its members Grinnell Corp. (now Supply Sales Co.) and Ward Manufacturing, Inc. (“Ward”), domestic producers of MCIPF; (2) Industria de Fundicao Tupy S.A. (“Tupy”), a producer and exporter of MCIPF from Brazil; and (3) Siam Fittings Co., Thai Malleable Iron and Steel Co., and BIS Pipe Fittings Industry Co. (collectively “Thai Respondents”), producers and exporters of MCIPF from Thailand. No response to the notice of institution was filed by any producers, importers, or exporters of subject merchandise from Japan, Korea, or Taiwan.

On April 8, 1999, the Commission determined that all individual interested party responses to its notice of institution were adequate, that the domestic interested party group response was adequate, and that the respondent interested party group response was adequate for the investigations concerning Brazil and Thailand and inadequate for the investigations concerning Japan, Korea, and Taiwan.¹⁴ The Commission decided to conduct full five-year reviews for all five reviews in the group.¹⁵

On December 2, 1999, the Commission held a hearing in these reviews, at which representatives of CIPFC, Thai Respondents, and Tupy appeared. CIPFC filed briefs in support of continuation of the antidumping duty orders under review.¹⁶ Thai Respondents filed briefs in support of revocation of the

¹⁰ Certain Malleable Cast-Iron Pipe Fittings from Thailand, Inv. No. 731-TA-348 (Final), USITC Pub. 2004 (Aug. 1987) (“Original Thailand Determination”).

¹¹ 52 Fed. Reg. 25281 (July 6, 1987) (Japan); 52 Fed. Reg. 31440 (Aug. 20, 1987) (Thailand).

¹² 64 Fed. Reg. 369 (Jan. 4, 1999).

¹³ See 19 C.F.R. § 207.62(a).

¹⁴ See 64 Fed. Reg. 19196 (Apr. 19, 1999).

¹⁵ See Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Explanation of Commission Determinations of Adequacy (April 1999). The Commission decided to conduct full reviews concerning Japan, Korea, and Taiwan, notwithstanding the inadequate respondent interested party response in these reviews, to promote administrative efficiency in light of its decision to conduct full reviews concerning Brazil and Thailand. Commissioner Crawford dissented from the decision to conduct full reviews concerning Japan, Korea, and Taiwan. *Id.*

¹⁶ Portions of the final comments submitted by CIPFC contained new factual information, which is not permitted under 19 C.F.R. § 207.68(b). Pursuant to that regulation and 19 U.S.C. § 1677m(g), we have disregarded that information.

antidumping duty order on MCIPF from Thailand, and Tupy filed briefs in support of revocation of the antidumping duty order on MCIPF from Brazil.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”¹⁷ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹⁸ Commerce described the merchandise subject to the antidumping duty orders under review identically in each of its final five-year review determinations. In every instance, Commerce defined the subject merchandise as “shipments of certain malleable cast iron pipe fittings, other than grooved.”¹⁹ MCIPF are used to join pipes in piping systems. Because malleable iron is somewhat stronger and less brittle than gray iron, MCIPF are used where shock and vibration resistance is required and where fittings are subject to rapid temperature changes. MCIPF are principally used in gas lines, piping systems of oil refineries, and building gas and water systems.²⁰

In each of the original investigations, the Commission defined the domestic like product as all MCIPF other than grooved.²¹ In these reviews, CIPFC argued that the Commission should define the domestic like product in these five-year reviews in the same manner as it did in the original investigations.²² Tupy and the Thai Respondents did not address the issue.

The record indicates that there have been no significant changes in the characteristics and uses of MCIPF since the time of the original determinations.²³ Indeed, at the hearing a domestic industry witness stated that the production process used to manufacture MCIPF has not changed since he began working in the industry in 1962.²⁴

No party has argued for a different like product definition in these reviews, and there is no information that indicates a need to revisit the Commission’s original determinations of the domestic like product. We therefore adopt the same domestic like product definition in the instant reviews that we did in

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹⁹ 64 Fed. Reg. 66884 (Nov. 30, 1999) (Thailand); 64 Fed. Reg. 66886 (Nov. 30, 1999) (Brazil); 64 Fed. Reg. 42665 (Aug. 5, 1999) (Japan, Korea, and Taiwan). Commerce additionally stated that in 1989 it “clarified that union heads, tails, and nuts fell within the scope of the antidumping duty order on malleable cast iron pipe fittings from South Korea.” 64 Fed. Reg. at 42665.

²⁰ Confidential Report (“CR”) at I-13, Public Report (“PR”) at I-11.

²¹ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 4; Original Japan Determination, USITC Pub. 1987 at 4-5; Original Thailand Determination, USITC Pub. 2004 at 4-5. In the Japan/Thailand investigations, the Commission rejected arguments that the domestic like product should be defined to include grooved and/or nonmalleable pipe fittings as well as MCIPF. Original Japan Determination, USITC Pub. 1987 at 5 n.10; see Original Thailand Determination, USITC Pub. 2004 at 4-5.

²² CIPFC Prehearing Brief at 5-6.

²³ See generally CR at I-13-15, PR at I-11-12.

²⁴ Tr. at 21 (Chartrau).

the original determinations. Consequently, we define the domestic like product to be MCIPF other than grooved.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁵ In these five-year reviews, we determine that the domestic industry consists of all producers of MCIPF other than grooved.²⁶

III. LEGAL STANDARD AND CONDITIONS OF COMPETITION

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”²⁷ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding] . . . and the elimination of its restraining effects on volumes and prices of imports.”²⁸ Thus, the likelihood standard is prospective in nature.²⁹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”³⁰ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will

²⁵ 19 U.S.C. § 1677(4)(A).

²⁶ There are currently three such producers: Supply Sales, Ward, and Jefferson Union Co. CR at I-16 & n.17, PR at I-13. Ward’s stock is currently owned by Hitachi Metals, Ltd., which produces MCIPF in Japan. At the time of the original Japan investigation, Hitachi was the largest Japanese exporter of MCIPF to the United States. CR at IV-7, PR at IV-5. Hitachi ***, and Ward states that it ***. CIPFC Response to Notice of Institution at 9.

Ward is not subject to exclusion from the domestic industry pursuant to the related parties provision. Under the statute, a producer of the domestic like product is subject to exclusion from the domestic industry if “a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise. . .” 19 U.S.C. § 1677(4)(B)(i). Hitachi is currently ***. Under the statute a relationship between a producer of the domestic like product and a producer of subject merchandise that does not export the merchandise to the United States does not give rise to a related parties inquiry.

²⁷ 19 U.S.C. § 1675a(a).

²⁸ SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

²⁹ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

³⁰ 19 U.S.C. § 1675a(a)(5).

exceed the ‘imminent’ time frame applicable in a threat of injury analysis in antidumping and countervailing duty investigations.”^{31 32}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”³³ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{34 35}

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³⁶ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for MCIPF.

First, the U.S. market for MCIPF is a mature one. Little, if any, growth in demand is anticipated over the foreseeable future due to an increase in the number, types, and features of alternative products available in the marketplace.³⁷ Indeed, apparent U.S. consumption for MCIPF during 1997 and 1998 was in the same general range as in the Commission’s original investigations in the mid-1980s.³⁸

³¹ Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” SAA at 887.

³² In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, his analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³³ 19 U.S.C. § 1675a(a)(1).

³⁴ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

³⁵ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations with respect to any of the orders under review.

³⁶ 19 U.S.C. § 1675a(a)(4).

³⁷ CR at II-12, PR at II-7; Tr. at 16 (Fish), 20 (Chartrau).

³⁸ Table I-2, CR at I-4, PR at I-3.

Nevertheless, there have been several changes in the structure of the domestic industry since the time of the original investigations. The domestic industry has undergone substantial consolidation since the time of the original investigations. At the time of the original investigations there were five significant domestic producers. There are currently only two significant domestic producers – Ward and Supply Sales.³⁹ Ward was acquired in 1989 by Hitachi Metals, Ltd., a Japanese producer of MCIPF that was the largest exporter of subject merchandise from Japan during the time of the original Japan investigation.⁴⁰

A second condition of competition is the existence of fairly distinct wholesale and retail markets for MCIPF. MCIPF sold in the wholesale market are used by firms and individuals that perform residential and commercial construction and maintenance duties.⁴¹ These types of users are more likely to require detailed specifications for the MCIPF that they purchase.⁴² The retail market is currently dominated by firms such as Lowe’s and Home Depot that sell MCIPF principally to firms and individuals that perform occasional repair or replacement work.⁴³ Retailers tend to carry a more limited selection of MCIPF than wholesalers and are less likely than wholesalers to monitor the quality of the product they sell.⁴⁴ Additionally, price appears to be a more important purchasing consideration in the retail market than in the wholesale market.⁴⁵ The growth of national chains operating very large home improvement stores has resulted in a relatively greater share of MCIPF being sold in the retail market today than at the time of the original determinations.⁴⁶

Although U.S. MCIPF producers participate in both markets, the overwhelming proportion of U.S.-produced MCIPF are sold in the wholesale market. CIPFC estimates that only *** percent of domestic MCIPF production is sold, directly or indirectly, to retailers.⁴⁷

A third condition of competition is that nonsubject imports now have a substantial presence in the U.S. market. Imports from China constitute the bulk of the nonsubject imports.⁴⁸ In addition, all parties agree that the nonsubject imports from China currently account for a major share of consumption in the retail market.⁴⁹ The volume of nonsubject imports from China has increased substantially since the time of the original investigations. MCIPF imports from China amounted to 10,957 short tons in 1998, as compared to 216 short tons in 1985.⁵⁰

Finally, there are two different production standards for MCIPF worldwide. MCIPF sold in the United States, Canada, Mexico, and certain parts of South America (excluding Brazil) are manufactured to

³⁹ See CR at I-16, PR at I-13. The third domestic producer, Jefferson Union, accounts for *** share of domestic production. *Id.*

⁴⁰ See CR at I-16, IV-7, PR at I-13, IV-5.

⁴¹ CR at II-1, PR at II-1.

⁴² Tr. at 32, 38 (Carey).

⁴³ CR at II-1, PR at II-1.

⁴⁴ CR at II-2-3, PR at II-2; Tr. at 38 (Carey), 52 (Carey), 52 (Chartrau), 107 (Colbert).

⁴⁵ See CR at II-3, PR at II-2; Tr. at 51-52 (Chartrau); 107-08 (Colbert).

⁴⁶ CR at II-2, PR at II-2.

⁴⁷ CIPFC Posthearing Brief, Answers to Commissioners’ Questions at 6. Data submitted by CIPFC indicate that *** percent of domestic MCIPF production is sold directly to retailers. Staff was able to confirm the existence of only one wholesale purchaser of MCIPF that sells into the retail market; this purchaser’s retail sales accounted for less than one-half of one percent of its total sales. CR at II-3, PR at II-2.

⁴⁸ Table I-2, CR at I-4, PR at I-3; CR at II-3, PR at II-2.

⁴⁹ Tr. at 32 (Carey), 80 (Matz), 108 (Colbert).

⁵⁰ CR at II-3, PR at II-2.

the National Pipe Thread (NPT) standard. MCIPF sold in other parts of the world are manufactured to metric standards.⁵¹

Based on the record evidence, we find that these conditions of competition in the U.S. market for MCIPF are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. market for MCIPF provide a reasonable basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

⁵¹ CR at II-9, PR at II-6.

**SEPARATE VIEWS OF VICE CHAIRMAN MARCIA E. MILLER AND
COMMISSIONER JENNIFER A. HILLMAN**

In these views, we explain: (1) our decision not to cumulate subject imports of malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand; (2) our determination that revocation of the existing orders on such fittings from Brazil, Taiwan, and Thailand would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time; and (3) our determination that revocation of the existing orders on such fittings from Japan and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

I. Cumulation

A. General

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.¹

Thus, cumulation is discretionary in five-year reviews. However, we may exercise our discretion to cumulate only if the reviews are initiated on the same day, and we determine that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

The statute further provides that the Commission “shall not cumulatively assess the volume and effects of *imports* of the subject merchandise in a case in which it determines that *such imports* are likely to have no discernible adverse impact on the domestic industry.”² Under this provision, if the Commission makes a finding that subject imports from a particular country are likely to have no discernible adverse impact, it may not cumulate the volume and effects of imports from that country with the volume and effects of subject imports from other countries.

We interpret this provision to be a limited exception to the Commission’s authority to cumulate subject imports in five-year reviews. Our interpretation is supported by the plain meaning of the provision and the legislative history.

The statute uses the term “*discernible* adverse impact.” In other words, the issue is whether imports will have no “noticeable” or “detectable” adverse impact. Thus, for example, it would be inappropriate to consider whether imports are likely to have a “significant” adverse impact, which is appropriate for the ultimate analysis of whether the domestic industry is likely to be materially injured if the order is revoked.³

¹ 19 U.S.C. § 1675a(a)(7).

² 19 U.S.C. § 1675a(a)(7)(emphasis added).

³ See, e.g., *Stainless Steel Plate from Sweden*, Inv. No. AA1921-114 (Review), USITC Pub. 3204 (July 1999) at 22 (Commission rendered negative determination, finding that “the subject imports are not likely to have a

The legislative history to the Uruguay Round Agreements Act (URAA) also indicates the limited scope of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible.”⁴ The legislative history further explains that it is not appropriate “to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations.⁵

Moreover, we interpret the “no discernible adverse impact” provision of the statute as requiring us to focus our analysis on the *total volume* of imports that would likely occur should an order be revoked, rather than on the *change* in imports brought about by revocation. This is because the “no discernible adverse impact” provision refers to whether “such imports,” meaning all subject imports from a specific country, are likely to have no discernible adverse impact. The statute does not refer to whether any change in the volume or market share of imports caused by revocation is likely to have no discernible adverse impact. The Senate Report to the URAA confirms this interpretation by indicating that cumulation is precluded “where *imports* are likely to be negligible.”⁶ Similarly, the URAA Statement of Administrative Action (SAA) and the House Report to the URAA mirror the statute and describe the test as whether “imports” are likely to have no discernible adverse impact.⁷ Like the statute, neither the SAA nor the House or Senate Reports in their explanation of this provision refer to the change in imports as a result of revocation.

Given the low “discernible” threshold and the fact that the statute and legislative history refer to the impact of the *subject imports*, not the change in the level of imports caused by revocation, there will be many instances in which the no discernible adverse impact provision will be inapplicable, such as where imports of a commodity product already have a solid presence in the U.S. market even with the order in place (and are not likely to fall substantially).⁸ Even where the volume of imports is likely to be low,

significant adverse impact on the domestic industry as a whole in the reasonably foreseeable future if the finding is revoked.”).

⁴ S. Rep. 103-412, at 51 (1994).

⁵ 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required in original AD/CVD investigations if the subject imports were “negligible and have no discernible adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year review provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews. Compare, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from Japan, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-458-460 (Preliminary), USITC Pub. 2292 (June 1990) at 20-21 (exception applied where market share of imports from Taiwan was under 0.1 percent and data suggested that sales of those imports were isolated and sporadic, even though the market segment at issue was price sensitive); *with Certain Stainless Steel Butt-Weld Pipe Fittings from Korea and Taiwan*, Inv. Nos. 731-TA-563-564 (Preliminary), USITC Pub. 2534 (July 1992) at 15-16 (exception *not* applied where market share of imports from Korea varied between 1.0 and 5.3 percent and the product was continuously marketed throughout the period of investigation).

⁶ S. Rep. 103-412, at 51 (1994) (emphasis added).

⁷ SAA at 887, H.R. Rep. 103-826, Part 1, at 62 (1994).

⁸ See, e.g., *Potassium Permanganate from China and Spain*, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999) at 9-10. In such instances a substantial discussion of the issue in the Commission’s opinion would appear to serve little purpose. In this respect we note that Commission opinions typically omit discussion of the negligibility exception that is applicable to original investigations in cases in which the level of subject imports

whether such imports are likely to have no discernible adverse impact on the domestic industry may depend on the particular competitive conditions likely to exist upon revocation of an order. Thus, as appropriate, we consider likely volume and market share of imports and other competitive factors that can affect whether a given volume of imports can have a noticeable adverse impact on the domestic industry, such as the price-sensitive nature of the market, fungibility of the domestic and imported products, or levels of underselling.

In these reviews, given the likely volume of subject imports in the reasonably foreseeable future (as discussed below), we do not find that the subject imports from any of the five countries are likely to have no discernible adverse impact on the domestic industry if the order is revoked. However, for the reasons set forth below, we have not exercised our discretion to cumulate the subject imports from any of the subject countries.

B. Discussion

The Cast Iron Pipe Fittings Committee urged the Commission to cumulate all subject imports. Both the Brazilian and Thai respondents argued that their respective imports should not be cumulated with each other or with other subject imports.

The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.⁹ ¹⁰ Only a “reasonable overlap” of competition is required.¹¹ In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we examine not only the Commission’s traditional competition factors, but also other significant conditions of competition that affect, or are likely to affect, the volume and price of subject imports if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.¹²

In the original investigations, the Commission cumulated subject imports from Brazil, Korea, and Taiwan and, in its subsequent investigations, cumulated subject imports from Japan and Thailand. Despite

clearly exceeds the statutory threshold found in 19 U.S.C. § 1677(24).

⁹ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market.

¹⁰ See e.g., *Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

¹¹ See *Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); *Wieland Werke, AG*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); *United States Steel Group v. United States*, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994, *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996)).

¹² See, e.g., *Torrington Co. v. United States*, 790 F. Supp.1161, at 1172 (Ct. Int’l Trade 1992), *aff’d* without opinion, 991 F. 2d 809 (Fed. Cir. 1993) (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).

evidence of quality differences among the subject imports, the Commission found a reasonable overlap of competition among the cumulated subject imports and with the domestic like product. Notably, the Commission found that the channels of distribution for domestic and imported pipe fittings were similar.¹³

A significant distinction between the market conditions prevailing during the original investigations and today is the development of a more segmented market. At the time of the original investigations, virtually all malleable cast iron pipe fittings were sold through wholesalers.¹⁴ Today, in contrast, a large and growing volume of sales are made directly to retailers.¹⁵ This development reflects the expansion of large retail outlets, such as Home Depot. Further, the record indicates that the wholesale market is segmented into primary wholesalers (those selling to large commercial, industrial, and government projects, which account for roughly 80 percent of fittings sold in the wholesale market) and secondary wholesalers (small wholesalers who generally supply residential plumbing contractors).¹⁶ The different market segments generally correspond to differences in the quality of malleable cast iron pipe fittings, with pipe fittings sold in the primary wholesale segment being of higher quality than pipe fittings sold in the secondary wholesale segment or retail segment.¹⁷

The domestic producers mainly sell to primary wholesalers. In contrast, imports from Thailand, which have maintained a fairly constant presence in the U.S. market even after the imposition of the order, are mainly sold to secondary wholesalers and, to a lesser extent, to retailers.¹⁸ With respect to Brazil, current import volumes are very small. However, the Brazilian producer provided credible testimony that any sales it makes after revocation would be concentrated in the retail market, which currently is dominated by nonsubject imports from China.¹⁹ Imports from Japan, Taiwan, and Korea effectively ceased since the imposition of the orders so it is difficult to assess to what extent any imports from these countries would compete in the same segments as imports from Thailand and Brazil and with the domestic like product. Nevertheless, we note that the significantly higher average unit values of imports from Japan during the original investigation would suggest that imports from Japan would compete more directly with the domestic product in the primary wholesale segment.²⁰

We conclude that the existence of market segments, which indicates that there are differences among subject imports and between imports and the domestic product in terms of channels of distribution and fungibility, calls into question the existence of a reasonable overlap of competition, and strongly weighs against exercising our discretion to cumulate subject imports in these reviews. Moreover, other

¹³ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at pp. 8-9.

¹⁴ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at p. A-20; *Original Japan Determination*, USITC Pub. 1987 at A-13-14 (also including information for Thailand).

¹⁵ CR at II-2, PR at II-2.

¹⁶ CR at II-1, footnote 1, PR at II-1. Tr. at p. 79. The domestic producers argue that the market is not segmented based on the fact that all malleable cast iron pipe fittings must meet a national standard and because most purchasers did not indicate that the market is segmented. Posthearing brief of CIPFC, p. 2 and section on Answer to the Commissioners' Questions, p. 10. However, all of the purchasers responding to the Commission questionnaire were customers of the domestic producers, rather than purchasers that buy large quantities of imports. Moreover, the questionnaire response of one of the major wholesalers supports the testimony provided by respondents that imports do not compete in the primary wholesale market. CR at II-1, PR at II-1.

¹⁷ CR at II-2-3, PR at II-2-3.

¹⁸ Tr. at pp. 78-80.

¹⁹ Tr. at p. 112.

²⁰ CR at Table I-2, PR at Table I-2. We note that assessing the likelihood of geographical overlap and simultaneous presence in the U.S. market is difficult because imports from subject countries (other than Thailand) have largely left the U.S. market since imposition of the orders.

conditions of competition also weigh against a cumulated analysis. As discussed below, the industry in Taiwan has largely ceased operations, whereas the industry in Japan does not appear to have changed since the original investigations and remains much larger than the industries in the other subject countries. The industry in Thailand has fairly substantial excess capacity, whereas the industry in Brazil has much less excess capacity.²¹

In sum, given the now more segmented structure of the market and the fact that subject imports are likely to compete in different market segments, and other differences in the conditions of competition among the subject countries, we have determined not to exercise our discretion to cumulate subject imports in these reviews.

II. Likelihood of Material Injury Analysis

A. Statutory Criteria

The statute directs the Commission to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”²² It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.²³

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.²⁴ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.²⁵

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.²⁶

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the

²¹ Compare CR at Table IV-3 with CR at Table IV-4.

²² 19 U.S.C. § 1675a(a)(1).

²³ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

²⁴ 19 U.S.C. § 1675a(a)(2).

²⁵ 19 U.S.C. § 1675a(a)(2)(A)-(D).

²⁶ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.²⁷ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.²⁸ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the order are revoked.

B. Brazil

We determine that revocation of the antidumping duty order on malleable cast iron pipe fittings from Brazil is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

In the original determination concerning Brazil, the Commission found that subject imports from Brazil increased from 698 tons in 1983 to 1,637 tons in 1984, and then decreased to 238 tons in 1985.²⁹ The ratio of these imports to apparent domestic consumption remained near or less than *** percent during all years, and was lower in 1985-86 than in 1983-84.³⁰ Commission data showed underselling throughout the period of investigation. Purchasers also indicated that the domestic industry had lost sales because of lower priced subject imports. Finally, in concluding that the domestic industry producing malleable cast iron pipe fittings was materially injured by reason of cumulated subject imports from Brazil, Korea, and Taiwan, the Commission found that the increasing volumes of low-priced subject imports led to declines in the domestic industry's financial performance, employment, and market share.³¹

Under the antidumping duty order, subject imports from Brazil remained low, with only 2 tons entering in 1998. Prior to the order, subject imports never accounted for more than *** percent of apparent domestic consumption, and were generally below *** percent. Currently, other subject and nonsubject imports account for just over *** percent of the domestic market.

Tupy is the sole Brazilian producer and exporter of the subject pipe fittings and has indicated its intent to increase only "moderately" its shipments to the U.S. market if the order is revoked.³² The record

²⁷ 19 U.S.C. § 1675a(a)(4).

²⁸ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). In its final five-year review determinations concerning malleable cast iron pipe fittings, Commerce determined that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping margins of the following magnitudes: for Brazil, 5.64 percent; for Japan, 57.39 percent; for Korea, 12.48 percent; for Taiwan, from 7.93 to 80.0 percent; and for Thailand, 1.7 percent. CR at I-10, PR at I-8.

²⁹ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at A-29. In the original investigation, the Commission assessed imports from Brazil on a cumulated basis with Korea and Taiwan. Collective imports from Korea and Taiwan rose from 5,149 short tons in 1983 to *** short tons in 1985.

³⁰ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at A-32.

³¹ *Id.* at 5-7, 11-12.

³² Prehearing brief of Tupy, p. 16.

supports Tupy's contention that imports from Brazil will not increase to significant levels if the order is revoked. Tupy reports little excess capacity in Brazil, with utilization rates near *** percent.³³ Further, current production is concentrated in metric standard pipe fittings, which are not shipped to the United States. Recognizing the ability of Tupy to manufacture U.S. standards fittings (referred to as NPT) and its stated intent to configure some unused capacity to production for the U.S. market,³⁴ we note that the concentration in metric standards nevertheless limits the likelihood of the diversion of a large quantity of current production to the U.S. market.³⁵ Also, Tupy testified that in order to compete with the domestic product at the wholesale level, it would have to supply a fuller range of products than it currently manufactures in the NPT standard, and establish a complete distribution system.³⁶ Moreover malleable cast iron pipe fittings are only one of a number of different cast products manufactured by Tupy, and are not the primary focus of the company's operations.³⁷ Thus, we do not find the ability to shift certain production steps between malleable cast iron pipe fittings and other cast products to be an indication of likely significant increases in export levels to the U.S. market.

Finally, while Tupy expects to increase shipments to the U.S. market in the event of revocation, the company reports that it expects to concentrate initially in the retail market.³⁸ Thus, it is likely that any increase in imports from Brazil would compete first with other imports, primarily Chinese, in the retail market, rather than with the domestic product.³⁹

Because of the limited level of subject imports from Brazil, we were unable to obtain current pricing for these subject imports.⁴⁰ Nevertheless, because we have found that import volumes are likely to be small and that competition from such imports is likely to be against other subject and nonsubject imports in the retail segment of the market, we find that the Brazilian product is unlikely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product. Even if subject imports were to enter the wholesale segment of the market, it is likely that any competition largely would be with imports from Thailand in the secondary segment of the wholesale market. Such imports from Thailand have undersold the U.S. product throughout the period for which data were collected and, as discussed below, have not had any significant depressing or suppressing effect on domestic prices.⁴¹

We have considered whether the domestic industry is vulnerable to material injury if the order is revoked.⁴² Based on the recent overall financial performance of the domestic industry, despite some

³³ Table IV-3, CR at IV-6.

³⁴ Posthearing Brief of Tupy, Attachment 2, p. 2.

³⁵ CR at II-8, PR at II-5.

³⁶ Tr. at pp. 102 and 111.

³⁷ Tupy notes that auto castings comprise the largest portion of its overall production. Tr. at p. 102; *See* CR at IV-5.

³⁸ Prehearing brief of Tupy, p. 16; Tr. at p. 112.

³⁹ Prehearing brief of Tupy, p. 16 and Posthearing Brief of Tupy, p. 11, noting that the related party to Tupy's U.S. customer sells exclusively to the retail segment. Also Tr. at 121-22 (Werner).

⁴⁰ The shipment reported by an importer was considered a trial import, and the products were priced *** both the domestic and Thai fittings. The importer reported that ***. CR at V-7, PR at V-5.

⁴¹ *See*, CR at Tables V-1-V-4, PR at Tables V-1-V-4.

⁴² *See* SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further on revocation of an order . . ."). In its submissions, CIPFC asserts that an industry in a strong financial condition can nevertheless be vulnerable in light of conditions of competition, such as

downturns in certain operating and financial indicators, we do not consider the industry to be vulnerable.⁴³ The industry has undergone consolidation since the original investigations, and now consists of two domestic producers, Supply Sales and Ward. The industry reported *** financial results in both 1997 and 1998. Although production and net sales quantities were somewhat lower in 1998 than 1997, prices and unit values were higher, resulting in an overall *** performance.⁴⁴ The *** condition of the domestic industry supports the conclusion that the industry is not likely to be materially injured if the order is revoked.⁴⁵

We find that revocation of the antidumping duty order is not likely to lead either to significant volumes of imports from Brazil or to significant price effects, and therefore, that subject imports are not likely to have a significant adverse impact on the domestic industry's output, sales, market share, profits or return on investments. We therefore find that revocation of the antidumping duty order on Brazil is not likely to lead to continuation or recurrence of material injury to the U.S. malleable cast iron pipe fittings industry within a reasonably foreseeable time.

C. Taiwan

We determine that revocation of the antidumping duty order on malleable cast iron pipe fittings from Taiwan is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

In the original determination concerning Taiwan, the Commission found that subject imports increased from 3,709 tons in 1983 to 5,516 tons in 1985. The imports accounted for a share of domestic consumption that increased from *** percent to *** percent over the investigation period.⁴⁶ In its analysis of cumulated subject imports from Brazil, Korea, and Taiwan, the Commission found persistent underselling by the subject imports.⁴⁷ The Commission found that the increasing volumes of low-priced, cumulated subject imports led to declines in the domestic industry's financial performance, employment, and market share, and concluded that the domestic industry was materially injured.⁴⁸

Since the original determination, subject imports from Taiwan have remained low, averaging less than a *** percent market share. During the original investigation, there were reportedly 25 companies producing subject pipe fittings in Taiwan, five of which provided data to the Commission.⁴⁹ Reported production capacity at that time was *** tons.⁵⁰ Since the original investigation, the industry in Taiwan has largely ceased operations. An industry expert with substantial familiarity with the Taiwan industry testified that only one company still produces subject pipe fittings in Taiwan and its production is ***.⁵¹

when there is a mature market for a price-sensitive product. CIPFC Posthearing Brief at 9-10; Answers to Commissioners' Questions at 7-8. We disagree with CIPFC's interpretation of the vulnerability criterion.

⁴³ Staff Report at Table C-1.

⁴⁴ CR at Table III-5, and Tables V-1-V-5, PR at Table III-5, and Tables V-1-V-5.

⁴⁵ We note that the domestic industry has achieved this *** performance notwithstanding the presence of a substantial quantity of imports (primarily from China and Thailand), which account for about *** percent of the domestic market.

⁴⁶ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at A-29, A-32.

⁴⁷ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at A-37-38.

⁴⁸ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at 5-7.

⁴⁹ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at A-10.

⁵⁰ *Original Brazil/Korea/Taiwan Determination*, Conf. Report at A-18.

⁵¹ CR at IV-9. See also Posthearing brief of Tupy, Appendix 4.

The other companies have either shut down or moved their operations offshore.⁵² Further, while the record suggests that the Taiwan industry exports small amounts of malleable cast iron pipe fittings to the EU,⁵³ Taiwan was not among the countries named in the recently filed antidumping complaint in the EU, which may suggest that imports from Taiwan in the EU are not significant.⁵⁴ Finally, the domestic industry only identified a single producer remaining in Taiwan.⁵⁵

Even though we were unable to obtain current pricing data for pipe fittings from Taiwan we find that the likely import levels from Taiwan are likely to be too small to have significant effects on the domestic price of malleable cast iron pipe fittings.

Given the apparent exit from the Taiwan industry of virtually all producers since the Commission's original determination, we conclude that the volume of subject imports from Taiwan is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty order is revoked. We also do not find that imports from Taiwan are likely to enter at prices that would have a significant depressing or suppressing effect on domestic prices. Thus, we find little likelihood of a significant adverse impact on the domestic industry's output, sales, market share, profits or return on investments.⁵⁶ We therefore find that revocation of the antidumping duty order against Taiwan is not likely to lead to continuation or recurrence of material injury to the U.S. malleable cast iron pipe fittings industry within a reasonably foreseeable time.

D. Thailand

We determine that revocation of the antidumping duty order on malleable cast iron pipe fittings from Thailand is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

In the Commission's original determination for Thailand, the Commission found that the volume of cumulated imports from Japan and Thailand remained at high levels during a period of declining apparent consumption and that market penetration of these imports increased.⁵⁷ The quantity of subject imports from Thailand increased from 1,266 tons in 1984 to 4,631 tons in 1986, and was 1,633 tons in interim (January-March) 1987 as compared to 841 tons in interim 1986. Market penetration of subject imports from Thailand increased from 1.8 percent in 1984 to 7.6 percent in 1986 and was also higher in interim 1987 (10.8 percent) than interim 1986 (5.2 percent).⁵⁸ In that determination, the Commission found that the subject imports from Thailand undersold the domestic like product in every comparison.⁵⁹

Unlike the other subject countries, subject imports from Thailand did not fall following issuance of the order; rather, their presence in the U.S. market is now larger in absolute volume and as a share of

⁵² Tr. at p. 133.

⁵³ Posthearing brief of the Cast Iron Pipe Fittings Committee, p. 7.

⁵⁴ This conclusion is supported by information submitted by the domestic producers, which shows that the volume of imports into the EU from Taiwan is small in comparison to import volumes from the countries subject to the EU investigation. Posthearing brief of the Cast Iron Pipe Fittings Committee, Exhibit 2.

⁵⁵ *Id.*

⁵⁶ As discussed above, we have concluded that the domestic malleable cast iron pipe fitting industry is not currently in a vulnerable condition. This factor supports the conclusion that the domestic industry is not likely to be materially injured if the order is revoked.

⁵⁷ *Original Thailand Determination*, USITC Pub. 2004 at 11; *Original Japan Determination*, USITC Pub. 1987 at 10-11.

⁵⁸ *Original Thailand Determination*, USITC Pub. 2004 at A-35.

⁵⁹ *Original Thailand Determination*, USITC Pub. 2004 at A-38-41.

apparent consumption than during the original investigation period.⁶⁰ However, import volumes have declined since 1997. The quantity of subject imports from Thailand was 8,144 tons in 1997 and 7,011 tons in 1998. Market penetration, measured by quantity, was *** percent in 1997, *** percent in 1998, *** percent in interim 1998, and *** percent in interim 1999.⁶¹ The antidumping duty margin imposed on subject imports from Thailand has been 1.7 percent since the order was issued.⁶²

Thai production capacity has remained constant since 1997, and Thai producers *** should the antidumping duty order be revoked.⁶³ Additionally, the Thai producers have indicated that ***.⁶⁴

The Thai industry's unused production capacity, and capacity utilization, in interim 1999 was lower than in the previous periods.⁶⁵ While inventories of Thai fittings are maintained both in the United States and Thailand, not all such inventories in Thailand are of types sold in the U.S. market.⁶⁶

Notwithstanding the existence of some unused capacity and inventories, we do not believe that subject import volume of subject pipe fittings from Thailand would likely increase significantly should the antidumping duty order be revoked. As previously discussed, the market for malleable cast iron pipe fittings is divided into distinct retail and wholesale segments, and the wholesale market is further segmented into primary and secondary tiers. Thai respondents argued that while they participate in the wholesale segment, it is at the secondary level, and not in direct competition with domestic merchandise. One of the largest domestic wholesalers of pipe fittings noted that "imported malleable is hardly showing up in the section of the market we're dealing with," and that what is available is sold separately from the domestic products.⁶⁷ Although the Thai industry is export-oriented, Thai producers have stated that their long-term export strategy is one of ***.⁶⁸ Indeed, Thai producers export to North America, Europe, Asia, and Australia, and producers have longstanding relationships with the suppliers in these countries.⁶⁹ Based on these facts, we do not believe that revocation of the antidumping duty order is likely to cause Thai producers to increase significantly their presence in the U.S. market.

The current record indicates consistent underselling of the domestic product by the subject imports from Thailand. The subject imports from Thailand undersold the domestic like product in all possible quarterly comparisons.⁷⁰ We believe that the subject imports from Thailand will continue to undersell domestic fittings if the antidumping duty order is revoked. We note, however, that these imports do not currently have significant adverse effects on prices for the domestic product, and there is no evidence in the record to suggest that this will change. Over the course of the period of review – January 1997 through June 1999 -- prices for the subject imports from Thailand declined for each of the four products for which

⁶⁰ CR at Table I-2, PR at Table I-2.

⁶¹ CR at Table I-2, PR at Table I-2.

⁶² CR at Table I-2, PR at Table I-2.

⁶³ CR at Table IV-4, CR at IV-9, PR at IV-6; CR at IV-10, PR at IV-6; CR at II-9, PR at II-6.

⁶⁴ CR at II-12, PR at II-7.

⁶⁵ Capacity utilization declined from *** percent in 1997 to *** percent in 1998, and was *** percent in interim 1999, as compared to *** percent in interim 1998. Table IV-4, CR at IV-9, PR at IV-6.

⁶⁶ Table IV-2, CR at IV-4, PR at IV-4; Table IV-4, CR at IV-9, PR at IV-6; CR at II-11, PR at II-7.

⁶⁷ CR at II-1, PR at II-1.

⁶⁸ CR at II-10, PR at II-6.

⁶⁹ CR at II-10, PR at II-6; Tr. at 73-75 (Sakai). There are currently no barriers to importation of Thai malleable cast iron pipe fittings in other markets. While there is an investigation underway in the EU that names Thailand, among a number of other countries, including Brazil, Japan, and Korea, we do not assume any particular outcome to those ongoing investigations.

⁷⁰ Tables V-1 to V-4, CR at V-8-11, PR at V-6-9.

data were collected. In contrast, prices for the domestic fittings rose for each of the products.⁷¹ The lack of correlation of prices between domestic and imported Thai pipe fittings appears to reflect the different market segments in which these products are sold.

Consequently, at current volumes, we find no causal relationship between the price of the subject imports from Thailand and the price of the domestic like product. In light of our prior finding that, if the antidumping duty order is revoked, subject import volume from Thailand is not likely to change significantly, we conclude that this lack of a causal relationship between prices for Thai and domestically-produced pipe fittings will persist.

As discussed in the previous section on Brazil, we do not find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion of the statute. We also conclude that the subject imports from Thailand are not likely to have an adverse impact on the domestic malleable cast iron pipe fitting industry within a reasonably foreseeable time if the antidumping duty order is revoked. We have found that revocation of the antidumping duty order is not likely to lead either to significant additional volumes of subject imports from Thailand or to significant price effects. Instead, these imports are likely to continue their current presence in the market, under which the domestic industry is able to maintain or increase prices, notwithstanding underselling by the subject imports, and to produce positive operating results. We therefore find that revocation of the antidumping duty order against Thailand is not likely to lead to continuation or recurrence of material injury to the U.S. malleable cast iron pipe fittings industry within a reasonably foreseeable time

E. Japan

We determine that revocation of the antidumping duty order on malleable cast iron pipe fittings from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

In the current review, no producers or importers of Japanese malleable cast iron pipe fittings responded to the Commission's notice of institution or foreign producers' questionnaires,⁷² or entered appearances in these reviews; thus there is limited information in the record concerning the malleable cast iron pipe fittings industry in Japan. In the original determinations, the Commission concluded that the domestic industry producing malleable cast iron pipe fittings was materially injured by reason of the subject imports from Japan.⁷³ The quantity of subject imports from Japan declined over the original period of investigation from 10,870 tons in 1984 to 6,919 tons in 1986.⁷⁴ While there was no overall capacity data available for Japan, production volume was 132,276 short tons in 1984 and 114,639 short tons in 1986.⁷⁵ These production figures indicate that the Japanese industry was very large. The market share held by Japan was the largest of all the subject countries, reaching *** percent in 1984 and remaining above *** percent through 1986.⁷⁶

⁷¹ Tables V-1 to V-4, CR at V-8-11, PR at V-6-9.

⁷² In these reviews, Commission staff sent foreign producers' questionnaires to those producers of malleable cast iron pipe fittings in the subject countries for which it had addresses. This encompassed producers in Japan and Korea as well as Thai Respondents and Tupy. The producers in Japan and Korea did not respond to the questionnaires. See CR at IV-7 n.8, IV-8 n.11, PR at IV-5.

⁷³ *Certain Malleable Cast Iron Pipe Fittings from Japan*, Inv. No. 731-TA-347 (Final), USITC Pub. 1987, June 1987.

⁷⁴ *Original Japan Determination*, USITC Pub. 1987 at A-34.

⁷⁵ *Original Japan Determination*, USITC Pub. 1987 at A-10.

⁷⁶ CR at Table I-2, PR at Table I-2.

The information we were able to obtain for this review does not indicate structural changes in the composition of the industry in Japan or its ability to compete in the U.S. market.⁷⁷ There is no evidence that production capability has fallen since the original investigation. In fact, it is clear that the pipe fittings industry in Japan maintains its export capability. There are nine producers belonging to the Japanese Pipe Fittings Association and at least five are known to have the equipment to manufacture to U.S. standards. Moreover, five Japanese producers are currently subject to an ongoing antidumping investigation in the EU.⁷⁸ Consequently, we conclude that the Japanese producers would increase exports to the U.S. market, and that subject import levels would rise significantly, as in the original investigation, if the discipline of the order were removed.

In the original determinations, the Commission found that the subject imports from Japan *** the domestic like product in *** quarterly pricing comparisons concerning four distinct products.⁷⁹ Moreover, the information in the original investigation indicated that subject imports from Japan competed with the domestic like product on the basis of price.⁸⁰

The record in these reviews contains no pricing data on the subject imports from Japan. Moreover, because subject import volume has been so small during the period of review, the average unit value data, which show enormous fluctuations for particular subject countries from year to year, are unreliable.⁸¹ Consequently, the most probative information available concerning pricing of subject imports from Japan is that from the record of the original investigations. Thus, we find that it is likely that if the antidumping duty order on malleable cast iron pipe fittings from Japan were revoked, the underselling observed during the periods of the original investigations would recur and would result in significant price suppression or depression.

As discussed previously, we do not consider the domestic industry to be vulnerable. Nevertheless, given the information suggesting that subject imports from Japan and the domestic like product were substitutable during the original investigation, and the *** average unit values for the Japanese fittings compared to the other subject imports, we find that it is likely that these imports would compete for sales with the domestic merchandise in the wholesale markets, and would have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, and in the absence of contrary information or argument, we conclude that revocation of the antidumping duty order on malleable cast iron pipe fittings from Japan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

F. Korea

⁷⁷ We note that Hitachi, the largest Japanese exporter in the original investigation, acquired domestic pipe fittings producer Ward in 1989. Since the acquisition, Hitachi has not exported pipe fittings to the United States. Hitachi accounted for approximately *** of Japanese production during the original investigation. *Original Japan Determination*, at A-10. Based on this information, even if we were to conclude that Hitachi is not likely to export significant quantities to the U.S. market, the rest of the Japanese industry would appear to have significant production capacity available to produce pipe fittings for the U.S. market.

⁷⁸ The EU proceedings involve, *inter alia*, five named Japanese producers and two named Korean producers. CR at IV-7-8, PR at IV-5.

⁷⁹ *Original Japan Determination*, USITC Pub. 1987 at A-37-40.

⁸⁰ *Original Japan Determination*, USITC Pub. 1987 at A-45-47.

⁸¹ See Table IV-1, CR at IV-2, PR at IV-2.

We determine that revocation of the antidumping duty order on malleable cast iron pipe fittings from Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

As with Japan, there is limited information in the record concerning the malleable cast iron pipe fittings industry in Korea since no Korean producer responded to the Commission's notice of institution or foreign producers' questionnaires, or entered appearances in these reviews. The record in the original investigation shows that the quantity of subject imports from Korea during the original period of investigation increased from 1,440 tons in 1983 to 3,395 tons in 1984 and then to 5,048 tons in 1985.⁸² Market penetration of subject imports from Korea increased from 2.7 percent in 1983 to 3.5 percent in 1984 and then to 6.8 percent in 1985.⁸³

During the original investigation, data showed that the capacity of the Korean industry fell over the period, from *** short tons in 1983 to *** short tons in 1985, remaining above all other subject countries' capacity except Japan.⁸⁴ The pipe fittings industry in Korea maintains production and export capabilities, as evidenced by the current antidumping remedies in place in Australia and by Korea being subject to an ongoing antidumping investigation in the EU.⁸⁵ Consequently, as Korean producers exported substantial and growing quantities of subject merchandise to the United States prior to the imposition of the antidumping duty orders, we conclude that Korean producers would increase exports to the U.S. market substantially if the discipline of the orders were removed.

In the original determinations, the Commission found that the subject imports consistently undersold the domestic like product and competed with the domestic like product on the basis of price.⁸⁶ The record in these reviews contains no pricing data on the subject imports from Korea. Moreover, because subject import volume has been so small during the period of review, the average unit value data, which show enormous fluctuations from year to year, are unreliable.⁸⁷ Consequently, the most probative information available concerning pricing of subject imports from Korea is that from the record of the original investigations.

Thus, we find it likely that if the antidumping duty order on malleable cast iron pipe fittings from Korea were revoked, the underselling observed during the period of the original investigation would recur, and would have significant price-depressing or price-suppressing effects.⁸⁸

As discussed previously, we do not consider the domestic industry to be vulnerable. Nevertheless, given the information suggesting that subject imports from Korea and the domestic like product were substitutable during the original investigation, we find that it is likely that these imports would compete for sales with the domestic merchandise, and would have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, and in the absence of contrary information or argument, we conclude that revocation of the

⁸² *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at A-29.

⁸³ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at A-32.

⁸⁴ *Original Brazil/Korea/Taiwan Conf. Report* at A-16.

⁸⁵ The EU proceedings involve, *inter alia*, five named Japanese producers and two named Korean producers. CR at IV-7-8, PR at IV-5.

⁸⁶ *Original Brazil/Korea/Taiwan Determination*, USITC Pub. 1845 at 12, and A-18, A-38, A-45.

⁸⁷ See Table IV-1, CR at IV-2, PR at IV-2.

⁸⁸ In the absence of contrary information or argument, we infer that imports from Korea would compete directly with the domestic product.

antidumping duty order on malleable cast iron pipe fittings from Korea would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

SEPARATE AND DISSENTING VIEWS OF COMMISSIONER STEPHEN KOPLAN

On the basis of the record in these investigations, I determine that revocation of the antidumping orders covering MCIPF from Brazil and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time but that revocation of the antidumping duty orders covering MCIPF from Japan, Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry within the United States within a reasonably foreseeable time. Therefore, I dissent from the Commission's determination with respect to imports from Taiwan. While I join the Commission's determination regarding the like product, the domestic industry, and the conditions of competition, I write to explain my separate views regarding: (1) why I have not cumulated subject imports from Brazil as they will have no discernable adverse impact on the domestic industry; (2) why I have consequently determined that revocation of the antidumping order respecting Brazil is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time; (3) why revocation of the antidumping order respecting Thailand is not likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time; and, (4) why revocation of the antidumping orders respecting Japan, Korea, and Taiwan is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

I. CUMULATION

A. Framework

The statute regarding review investigations provides that: the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.¹

Thus, cumulation is discretionary in five year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews were initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The Act precludes cumulation, however, if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.² I note that neither the statute nor the SAA provides guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact" on the domestic industry.³ With respect to this

¹ 19 U.S.C. § 1675a(a)(7).

² 19 U.S.C. § 1675a(a)(7).

³ The legislative history to the URAA, however, provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that "it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible." S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate "to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision" and, therefore, "the 'no discernible adverse impact' standard is appropriate in sunset reviews." Thus, I understand the "no discernible adverse impact"

provision, I generally consider the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.

I have generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.⁴ Only a “reasonable overlap” of competition is required.⁵ In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, I have examined not only the traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. I have considered factors in addition to the traditional competition factors which the Commission has considered in other contexts where cumulation is discretionary.⁶

In these reviews, the statutory requirement that all reviews be initiated on the same day is satisfied. For the reasons discussed below, however, I find that the subject imports from Brazil are likely to have no discernable adverse impact on the domestic industry and therefore I do not cumulate imports from Brazil with those from Japan, Korea, Taiwan or Thailand. Additionally, although I find there would likely be a reasonable overlap of competition among subject imports from Thailand with imports from Japan, Korea, Taiwan and with the domestic like product, for the reasons set forth below, I have not exercised my discretion to cumulate imports from Thailand with those from Japan, Korea, and Taiwan.

B. Discussion

1. No Discernible Adverse Impact

The Brazilian Respondent, Tupy, and the Thai Respondents respectively argue that subject imports from Brazil and Thailand should not be cumulated because they will have “no discernible adverse impact

provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernable adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994).

⁴ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; 2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; 3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and 4) whether the imports are simultaneously present in the market. *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁵ *See Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); *Wieland Werke, AG*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); *United States Steel Group v. United States*, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994, *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996).

⁶ *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1172 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F. 2d 809 (Fed. Cir. 1993) (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); *Metallwerken 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).

on the domestic industry” if the pertinent antidumping duty order is revoked.⁷ CIPFC contends that all subject imports should be cumulated.

I have examined both the current volume of subject imports and likely volume of subject imports if the antidumping duty order is revoked with respect to each of the countries for which I engage in a “no discernible adverse impact” analysis. With respect to Thailand, I find the quantity of its subject imports was 8,144 short tons in 1997, 7,011 short tons in 1998, 3,758 short tons in interim (January-June) 1998, and 3,666 short tons in interim 1999. Throughout this period, subject imports from Thailand constituted at least 34.0 percent of all imports, measured by quantity.⁸ The percentage of U.S. apparent consumption, measured by quantity, attributable to subject imports from Thailand was *** percent in 1997, *** percent in 1998, *** percent in interim 1998 and *** percent in interim 1999.⁹

I find that the current volume of subject imports from Thailand, even with the antidumping duty order in place, exceeds levels that would satisfy the “no discernible adverse impact” provision. There is no evidence in the record indicating that subject imports from Thailand are likely to decline upon revocation of the order. Accordingly, I do not find that subject imports from Thailand satisfy the “no discernible adverse impact” criterion with regard to the domestic industry if the antidumping duty order is revoked.

In contrast to subject imports from Thailand, there are currently only minimal levels of MCIPF imports from Brazil in the U.S. market. Subject imports from Brazil amounted to two short tons in both 1997 and 1998, one short ton in interim (January-June) 1998 and zero short tons in interim 1999.¹⁰

In a five-year review, however, my focus is on likely future subject import volumes rather than current volumes. Tupy, the sole Brazilian MCIPF producer, acknowledges that subject imports from Brazil will not remain at current levels if the antidumping duty order is revoked. Instead, it asserts that it will increase exports to the United States, but projects that its market penetration level would not exceed at most the market penetration levels achieved by subject imports from Brazil during the original investigation.¹¹

I have considered the small historical levels of subject imports from Brazil prior to imposition of the order. In addition, I note the limitations in Tupy’s projected product line, as well as its anticipated customer base, both of which likely will significantly limit competition of the subject imports from Brazil with the domestic like product. In fact, imports from Brazil are likely to enter the retail market into which the domestic producers collectively sell only a small proportion of their MCIPF production.¹² Thus, the effect of even the historically low market penetration achieved by the imports from Brazil would be substantially muted by this lack of overlap in competition.¹³ I also find that the domestic industry is currently in a strong financial condition.

⁷ No party has argued that subject imports from Japan, Korea, or Taiwan “are likely to have no discernible adverse impact” and I see no basis in the record to make such a finding. As discussed below, I find that the likely volume and impact of subject imports from each of these countries would exceed levels that would have no discernible adverse impact.

⁸ Table IV-1, CR at IV-2-3, PR at IV- 2-3.

⁹ Table I-2, CR at I-4-5, PR at I-3-5.

¹⁰ Table IV-1, CR at IV-2. The subject import data presented in the staff report for Brazil, Japan, Korea, and Taiwan may include some nonsubject and/or misclassified pipe fittings and hence may be slightly overstated. See CR at I-17 & n.23, PR at I-14.

¹¹ Tupy Prehearing Brief at 18; Tr. at 123-24 (Klett).

¹² See Tr. at 102 (Werner), Tr. at 112 (Colbert). The domestic producers’ focus on wholesale markets is discussed in the Conditions of Competition section of the Commission’s opinion, which I join.

¹³ Indeed, one purchaser of domestic MCIPF indicated that it ***. CR at II-7; PR at II-5. Under those circumstances, ***. *Id.*

The combination of these factors leads me to conclude that any likely increase in subject imports from Brazil would be insufficient to have a discernible adverse impact on the domestic industry. Accordingly, I have not cumulated subject imports from Brazil with subject imports from Japan, Korea, Taiwan, or Thailand.

2. Exercise of Discretion to Cumulate

In determining whether to exercise my discretion to cumulate the remaining subject imports, I next examine whether, upon revocation of the antidumping duty orders, imports from Japan, Korea, Taiwan, and Thailand would be likely to compete with each other and with the domestic like product. As an initial matter, I consider the issue of reasonable overlap of competition.

The parties have not disputed that the subject imports are fungible with the domestic like product and each other. Indeed, in the original determinations the Commission concluded that the subject imports and the domestic like product satisfied the fungibility requirement.¹⁴ In these reviews, all responding U.S. producers and importers indicated that MCIPF from all subject countries are interchangeable with MCIPF from the United States, and that MCIPF from the individual subject countries are interchangeable with MCIPF from the other subject countries.¹⁵

In the original investigations, the Commission also found a reasonable overlap of geographic markets: imports from Thailand were marketed principally in Gulf and Western states, and all other subject imports and the domestic like product were marketed throughout the country.¹⁶ The record indicates that subject imports from Thailand are currently marketed nationwide.¹⁷ Moreover, should the orders be revoked, there is nothing in the record that would indicate that imports from the other subject countries would not again be marketed nationwide as they were prior to issuance of the antidumping duty orders.

With respect to channels of distribution, the Commission found in the original Brazil/Korea/Taiwan determination that there was a reasonable overlap in channels of distribution in the commercial/industrial and residential construction end-use markets, and it found in the original Japan and Thailand determinations that imports from those countries had similar channels of distribution not only with each other, but with domestically-produced MCIPF.¹⁸

The record indicates that the overwhelming proportion of domestically produced MCIPF is sold through wholesalers.¹⁹ The record further indicates -- and respondents have not disputed -- that subject imports from Thailand are distributed through similar channels of distribution (wholesalers) as the

¹⁴ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 8-9 (concluding all MCIPF “are essentially fungible”); Original Japan Determination, USITC Pub. 1987 at 9 (subject imports and domestic like product “are sufficiently comparable in quality to be interchangeable to many end-users”); Original Thailand Determination, USITC Pub. 2004 at 8-9 (same).

¹⁵ CR at II-15, PR at II-9-11.

¹⁶ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 9; Original Japan Determination, USITC Pub. 1987 at 9; Original Thailand Determination, USITC Pub. 2004 at 9.

¹⁷ See CIPFC Prehearing Brief, Ex. A (World Wide Web sites, of, *inter alia*, Matco-Norca and Calsak, which subsequently identified themselves at the hearing as significant importers of Thai product, indicating that they have nationwide distribution systems).

¹⁸ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 9; Original Japan Determination, USITC Pub. 1987 at 9; Original Thailand Determination, USITC Pub. 2004 at 10.

¹⁹ CR at II-3, PR at II-2.

domestic like product.²⁰ With respect to the remaining three subject countries, the information available is that from the original determinations, which indicates that subject imports from these countries were sold through the wholesale market.

Nevertheless, my cumulation analysis in a five-year review encompasses more than an examination of whether there would likely be a reasonable overlap of competition. To aid me in the exercise of my discretion, I also have examined the overall similarities and differences in the conditions of competition that likely would prevail if the orders under review are revoked. I find that, in the absence of the respective orders, the likely prevailing conditions of competition concerning subject imports of MCIPF from Thailand would differ significantly from those concerning subject imports from Japan, Korea, and Taiwan.²¹

First, the magnitude of the antidumping duty margins, and likely margins of dumping for imports from Japan, Korea, and Taiwan are all significantly higher than the current and likely rate on subject imports from Thailand.²² The Commerce Department, in its review of that order, found that the likely prevailing antidumping rate would be unchanged from the current rate. Subject imports from Thailand have been largely unaffected by the existence of the antidumping duty order. This is a significant difference in the condition of competition for subject imports from Thailand as opposed to subject imports from Japan, Korea, and Taiwan. Unlike Thailand, the current antidumping duty orders have had a restraining effect on the volume of subject imports from those three countries.

In light of the fact that the Commission received no responses from three subject countries, Japan, Korea and Taiwan, regarding the reviews on their exports of MCIPF to the United States, the analysis of the conditions of competition concerning those subject imports must, of necessity, be based principally on the information available in the record. The record evidence leads me to conclude that the conditions of competition among those three subject countries would be quite similar, and distinct from those relating to subject imports from Thailand. Those three subject countries are all restrained to a significant degree by the respective antidumping duty orders and the Commerce Department has determined that all are likely to have significant dumping margins in the event of revocation. These very different likely antidumping margins indicate that those producers would be operating under very different pricing pressures. Thus, in stark contrast to the subject imports from Thailand, the existing orders have effectively eliminated subject imports from those three countries.

The information available in the record regarding imports from Japan, Korea and Taiwan indicates that subject imports from those countries competed in all end-use markets.²³ Unlike subject imports from Thailand, which are not generally sold in the non-residential construction industry and in industrial applications, the information available, which is that from the original investigations, indicates that subject

²⁰ Tr. at 80 (Matz).

²¹ In this regard, I note that the Commission has considered factors in addition to its traditional competition analysis in evaluating whether to exercise its discretion to cumulate for the purposes of threat determinations in original antidumping and countervailing duty investigations. *See, e.g., 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).

²² *See* CR at I-1-2, I-10-11, PR at I-1-2, I-8-9. Subject imports from Thailand have been subject to a 1.7 percent margin throughout the life of the antidumping order. CR at II-3, PR at II-2.

²³ Original Japan Determination, USITC Pub. 1987 at 9; Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 9-10 and note 30.

imports from Japan, Korea, and Taiwan likely would resume competition in those end-use segments.²⁴ In addition, producers in Korea and Taiwan are subject to antidumping duties in Australia.²⁵ Thai producers also face higher transportation costs on shipments to the U.S. than do producers in Japan, Korea and, especially Taiwan.²⁶

As a result, unlike subject imports from Thailand, I find that removal of the existing orders covering subject merchandise from Japan, Korea, and Taiwan would result in a substantial change in the prevailing conditions of competition affecting those three countries. Moreover, the likely dumping margins found for those three countries indicates that they would be operating under significantly different conditions of competition than the imports from Thailand.

Overall, the conditions of competition would be significantly different for subject imports from Thailand as opposed to those for subject imports from Japan, Korea, and Taiwan if the respective orders were revoked. Consequently, I find that it is not appropriate to assess cumulatively the likely volume and price effects of subject imports from Thailand with those of subject imports from Japan, Korea, and Taiwan.

Accordingly, I have not exercised my discretion to cumulate subject imports from Thailand with subject imports from Japan, Korea, and Taiwan for purposes of determining whether revocation of the respective antidumping duty orders is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. I have exercised my discretion to cumulate subject imports from Japan, Korea, and Taiwan based on the substantially similar conditions of competition affecting imports from those three subject countries.²⁷

II. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON MCIPF FROM BRAZIL IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, I find that imports from Brazil are likely to have no discernable adverse impact on the domestic industry if the antidumping duty order is revoked. I have considered the small historical levels of subject imports from Brazil prior to imposition of the order. In addition, I note the limitations in Tupy's projected product line, as well as its anticipated customer base, both of which likely will significantly limit competition of the subject imports from Brazil with the domestic like product. As I stated above, imports from Brazil are likely to enter the retail market into which the domestic producers collectively sell only a small proportion of their MCIPF.²⁸ Thus, the effect of even the historically low market penetration achieved by the imports from Brazil would be substantially muted by this lack of overlap in competition.²⁹ Moreover, in light of the low likely volumes of subject imports from Brazil and the limited competition with the domestic like product, I find that the subject imports from Brazil will not have significant price effects on the domestic like product. I also find that the domestic industry is currently in a strong financial condition and that the relatively small quantity of imports from Brazil would enter a moderately expanding U.S. market. The combination of these factors led me to conclude that any

²⁴ *Id.*

²⁵ CR at IV-10 PR at IV-6-7.

²⁶ CR at V-1 PR at V-1.

²⁷ Original Japan Determination, at 9; Original Brazil/Korea/Taiwan Determination, at 8-9 and note 30.

²⁸ CR at II-3; PR at II-2.

²⁹ As I indicated above, one purchaser of domestic MCIPF indicated that it ***. CR at II-7; PR at II-5. Under those circumstances, ***. *Id.*

likely increase in subject imports from Brazil will be insufficient to have a discernible adverse impact on the domestic industry. Accordingly, I also find that revocation of the antidumping duty order on imports from Brazil would not likely lead to the continuation or recurrence of material injury to the domestic industry in the reasonably foreseeable future.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON MCIPF FROM THAILAND IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.³⁰ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.³¹

In the original determinations concerning Japan and Thailand, the Commission found that the volume of cumulated imports from Japan and Thailand remained at high levels during a period of declining apparent consumption and that market penetration of these imports increased.³² The quantity of subject imports from Thailand increased from 1,266 tons in 1984 to 4,631 tons in 1986, and was 1,633 tons in interim (January-March) 1987 as compared to 841 tons in interim (January-March) 1986. Market penetration of subject imports from Thailand increased from 1.8 percent in 1984 to 7.6 percent in 1986 and was also higher in interim 1987 (10.8 percent) than interim 1986 (5.2 percent).³³

Issuance of the antidumping duty order, however, did not cause subject imports from Thailand to reduce their presence in the U.S. market. To the contrary, the current volume and market penetration of subject imports from Thailand is greater than it was during the original investigation. The quantity of subject imports from Thailand was 8,144 tons in 1997, 7,011 tons in 1998, 3,758 tons in interim (January-June) 1998, and 3,666 tons in interim (January-June) 1999. Market penetration, measured by quantity, was *** percent in 1997, *** percent in 1998, *** percent in interim 1998, and *** percent in interim 1999.³⁴

Thai MCIPF production capacity has remained constant since 1997, and Thai producers *** should the antidumping duty order be revoked.³⁵ Additionally, the Thai producers have indicated that ***.³⁶

Taking into account the existence of unused capacity and volume of inventories, I do not believe that subject import volume of MCIPF from Thailand would be likely to increase significantly should the

³⁰ 19 U.S.C. § 1675a(a)(2).

³¹ 19 U.S.C. § 1675(a)(a)(A)-(D).

³² Original Thailand Determination, USITC Pub. 2004 at 11; Original Japan Determination, USITC Pub. 1987 at 10-11.

³³ Original Thailand Determination, USITC Pub. 2004 at A-35.

³⁴ Table I-2, CR at I-4-5, PR at I-3-5.

³⁵ Table IV-4, CR at IV-9, PR at IV-6; CR at IV-10, PR at IV-6; CR at II-9, PR at II-

³⁶ CR at II-12, PR at II-7.

antidumping duty order be revoked. First, the antidumping duty order simply has not had the effect of limiting the presence of Thai imports in the U.S. market, since they are at higher quantities now than at the time of the original investigation. Because imposition of the order has not appeared to affect Thai import volumes, I do not believe that its revocation will either. Second, while the Thai MCIPF industry has been heavily export-oriented,³⁷ Thai producers have stated that their long-term export strategy is one of ***.³⁸ Indeed, Thai producers export MCIPF to various markets in North America, Europe, Asia, and Australia, and Thai producers have long-standing relationships with the suppliers in those countries.³⁹ In fact, the ratio of home market shipments, exports to the United States, and exports to third country markets ***.⁴⁰ Especially in light of projected economic growth in Asia,⁴¹ I do not believe that revocation of the antidumping duty order is likely to induce Thai producers to focus on the U.S. market more intensively than they do currently.

B. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if an antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.⁴²

In the original determination the Commission found that the subject imports from Thailand undersold the domestic like product in every comparison.⁴³ Similarly, the current record reflects continuation of pervasive underselling during the period of investigation by the subject imports from Thailand. Subject imports from Thailand undersold the domestic like product in all 40 quarterly pricing comparisons across four different products.⁴⁴

While I believe that subject imports from Thailand will continue to undersell the domestic like product if the antidumping duty order is revoked, I cannot conclude that this underselling is likely to have significant effects on the prices for the domestic like product. A principal reason for this conclusion is that the subject imports do not currently have such effects. Over the course of the period of review – January 1997 through June 1999 -- prices for the subject imports from Thailand declined for each of the four

³⁷ See Table IV-4, CR at IV-9, PR at IV-6.

³⁸ CR at II-10, PR at II-6.

³⁹ CR at II-10, PR at II-6; Tr. at 74-75 (Sakai). There are currently no barriers to importation of MCIPF from Thailand in other markets. MCIPF from Thailand are currently the subject of an antidumping investigation before the European Union (EU), where a final determination is not scheduled to be issued before August 2000. See Letter from Dan Horovitz to Donna R. Kohenke (Dec. 24, 1999). I note that prior EU antidumping investigations of MCIPF have not resulted in imposition of duties. See CR at II-10, PR at II-6.

⁴⁰ CR at Table IV-4; PR at IV-6.

⁴¹ CR at II-10, PR at II-6.

⁴² 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁴³ Original Thailand Determination, USITC Pub. 2004 at A-38-41.

⁴⁴ Tables V-1 to V-4, CR at V-8-11, PR at V-6-9.

MCIPF products for which pricing data were collected. Prices for the domestic like product, by contrast, moved in the opposite direction – they rose for each of the four products.⁴⁵

Consequently, there appears to be no causal relationship between the price of the subject imports from Thailand and the price of the domestic like product. In light of my prior finding that, if the antidumping duty order is revoked, subject imports volume from Thailand is not likely to change significantly, correspondingly I conclude imports from Thailand will continue to have no significant depressing or suppressing effect on domestic prices.

C. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁴⁶ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁴⁷ As instructed by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁴⁸

The first step in my analysis of the likely impact of subject imports if the antidumping duty order is revoked is to determine whether the domestic industry is in a vulnerable state. During the review period, the domestic industry's capacity remained constant.⁴⁹ Although both production and sales quantities declined, the price increases discussed above yielded an increase in sales revenues.⁵⁰ Gross and operating

⁴⁵ Tables V-1 to V-4, CR at V-8-11, PR at V-6-9.

⁴⁶ 19 U.S.C. § 1675a(a)(4).

⁴⁷ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding MCIPF from Thailand, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order was revoked will be 1.7 percent. 64 Fed. Reg. 66685 (Nov. 30, 1999).

⁴⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁴⁹ Capacity was *** short tons in both 1997 and 1998 and *** short tons in both interim 1998 and interim 1999. Table III-1, CR at III-1, PR at III-1.

⁵⁰ Production declined from *** short tons in 1997 to *** short tons in 1998. Interim 1999 production of *** short tons was lower than interim 1998 production of *** short tons. Table III-1, CR at III-1, PR at III-1. Sales quantities declined from *** short tons in 1997 to *** short tons in 1998, and were lower in interim 1999, at *** short tons, than in interim 1998 at *** short tons. By contrast, sales revenues increased from *** in 1997 to *** in 1998, and interim 1999 sales revenues of *** were higher than interim 1998 revenues of ***. Table III-5, CR

margins increased and the domestic industry enjoyed profitable performance.⁵¹ Accordingly, I do not find that the domestic industry is in a vulnerable state.⁵²

I also conclude that the subject imports from Thailand are not likely to have an adverse impact on the domestic MCIPF industry in the reasonably foreseeable future if the antidumping duty order is revoked. I have found that revocation of the antidumping duty order is not likely to lead either to significant additional volumes of subject imports from Thailand or to significant depressing or suppressing price effects. Instead, these imports are likely to continue their current presence and effect in the domestic market, under which the domestic industry is able to maintain or increase prices, and to produce *** operating results.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON MCIPF FROM JAPAN, KOREA, AND TAIWAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

The quantity of subject imports from Japan declined since the original period of investigation from 10,870 tons in 1984 to 6,919 tons in 1986 and market penetration declined from 15.1 percent in 1984 to 11.3 percent in 1986.⁵³ The quantity of subject imports from Korea during the original period of investigation increased from 1,440 tons in 1983 to 3,395 tons in 1984 and then to 5,048 tons in 1985.⁵⁴ Market penetration of subject imports from Korea increased from 2.7 percent in 1983 to 3.5 percent in 1984 and then to 6.8 percent in 1985.⁵⁵ The quantity of subject imports from Taiwan increased from 3,709 tons in 1983 to 4,388 tons in 1984 and then to 5,516 tons in 1985.⁵⁶ Market penetration for subject imports from Taiwan increased from 4.9 percent in 1983 to 5.5 percent in 1984 and then to 7.6 percent in 1985.⁵⁷

The antidumping duty orders had a significant restraining effect on subject import volumes from these three subject countries, which is why those import volumes are not currently significant. Cumulated subject import quantity was 669 tons in 1997, 877 tons in 1998, 437 tons in interim 1998, and 391 tons in interim 1999. During the period of review, the maximum market penetration for these three subject countries, on a cumulated basis, was *** percent or less.⁵⁸

at III-6, PR at III-3.

⁵¹ Operating income increased from *** in 1997 to *** in 1998, and was *** in interim 1998, and *** in interim 1999. Gross margins were *** percent in 1997, *** percent in 1998. Operating margins were *** percent in 1997, *** percent in 1998. Table III-5, CR at III-8-9, PR at III-3.

⁵² See SAA at 885 (“The term ‘vulnerable’ relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further on revocation of an order . . .”).

⁵³ Original Japan Determination, USITC Pub. 1987 at A-34.

⁵⁴ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-29.

⁵⁵ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-32.

⁵⁶ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-29.

⁵⁷ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-32.

⁵⁸ Table I-2, CR at I-4-6, PR at I-3-5. As noted earlier, the subject import data presented in the confidential staff report for Brazil, Japan, Korea and Taiwan may include some nonsubject and/or misclassified pipe fittings and

There is limited information in the record concerning the MCIPF industries in Japan, Korea, and Taiwan because no producer in any of these countries responded to the Commission's notice of institution or foreign producers' questionnaires,⁵⁹ or entered appearances in these reviews. The limited information the Commission was able to obtain indicates that there have been some structural changes in the industries in these countries. Hitachi, the largest Japanese exporter in the original investigation, acquired domestic MCIPF producer Ward in 1989, and does not intend to resume exporting MCIPF to the United States.⁶⁰ Additionally, there may have been attrition since the time of the original determination among Taiwan MCIPF producers.⁶¹

Nevertheless, the MCIPF industries in Japan, Korea, and Taiwan apparently maintain significant production and capacity.⁶² There is no record information indicating any likely limitations on the resumption of significant export shipments to the U.S. by producers in those countries if the respective orders are revoked.⁶³

Consequently, based on the levels that producers from these countries did export to the United States prior to the imposition of the antidumping duty orders, I conclude that if the discipline of the order is removed, these producers would increase current levels of exports to the U.S. market, and that subject import levels from Japan, Korea and Taiwan would rise significantly to the levels experienced in the original investigations, and that subject imports would regain the U.S. market share held during the original investigation periods.

hence may be slightly overstated. *See* CR at I-17 & n.23.

⁵⁹ In these reviews, Commission staff sent foreign producers' questionnaires to those producers of MCIPF in each of the five subject countries for which it had addresses. This encompassed producers of MCIPF in Japan and Korea as well as Thai Respondents and Tupy. The producers in Japan and Korea did not respond to the questionnaires. *See* CR at IV-7 n.8, IV-8 n.11, PR at IV-5.

⁶⁰ *See* Tr. at 60-61 (Chartrau); CIPFC Posthearing Brief at 6.

⁶¹ CR at IV-7, PR at IV-5.

⁶² CR at IV-7-IV-8; PR at IV-5-6; CIPFC Prehearing Brief at 7, 30. As Taiwan producers were not represented by counsel during these reviews, the Commission obtained no information regarding their production capacity. Nevertheless, I note that Commerce's expedited sunset review, as well as two administrative reviews conducted with respect to this order, assigned margins to five producers. CR at IV-8, PR at IV-6.

⁶³ Original Japan Determination, USITC Pub. 1987 at 9; Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 8-9 and note 30.

B. Likely Price Effects of Subject Imports

In the original determinations the Commission found that the subject imports consistently undersold the domestic like product.⁶⁴ Indeed, subject imports from Japan undersold the domestic like product in 41 out of 42 quarterly pricing comparisons concerning four distinct products and the subject imports from each of the other four subject countries undersold the domestic like product in every comparison.⁶⁵

The record in these reviews contains no current pricing data on the subject imports from Japan, Korea, and Taiwan. Moreover, because subject import volume has been so small during the period of review, the average unit value data, which shows enormous fluctuations for particular subject countries from year to year, are unreliable.⁶⁶ Consequently, the most probative information available concerning pricing of subject imports from Japan, Korea, and Taiwan is that from the record of the original investigations. The record from the original investigations indicated that imports from these subject countries competed with each other and with the domestic like product on the basis of price.⁶⁷

Consequently, I conclude that should the antidumping duty orders on MCIPF from Japan, Korea, and Taiwan be revoked, the underselling observed during the periods of the original investigations will recur. I find it likely that those subject producers would undersell the domestic industry in order to regain the market shares held prior to the imposition of the antidumping orders. Because subject import volumes from those countries will increase, and because the facts available with respect to those subject countries indicate that the underselling will affect purchasing decisions for MCIPF, I conclude that the underselling will likely be significant and have significant price-depressing or price-suppressing effects.

C. Likely Impact of Subject Imports

I have concluded that the domestic industry is not currently in a vulnerable condition. I have also concluded, however, that revocation of the antidumping duty orders with respect to Japan, Korea, and Taiwan would lead to significant increases in the volume of cumulated subject imports from those subject countries that would undersell the domestic like product and significantly depress U.S. prices. In addition, the volume and price effects of the cumulated subject imports would have a significant negative impact on the domestic industry and would likely cause it to lose revenues and/or market share.

Indeed, in the original investigations the Commission found that the increasing volumes of low-priced subject imports led to declines in the domestic industry's financial performance, employment, and either shipments or market share.⁶⁸ Based on the facts available, I conclude that if the antidumping duty orders on MCIPF from Japan, Korea, and Taiwan should be revoked, these circumstances would recur and the domestic industry's financial performance would be adversely affected.

⁶⁴ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 12; Original Japan Determination, USITC Pub. 1987 at 11; Original Thailand Determination, USITC Pub. 2004 at 12.

⁶⁵ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-37-38; Original Japan Determination, USITC Pub. 1987 at A-37-40; Original Thailand Determination, USITC Pub. 2004 at A-38-41.

⁶⁶ See Table IV-1, CR at IV-2, PR at IV-2.

⁶⁷ Original Brazil/Korea/Taiwan Determination, Confidential Report at A-29, A-57, A-63, A-66, A-68-69; Original Japan Determination, Confidential Report at A-57-58, A-63, A-65-66.

⁶⁸ Original Japan Determination, USITC Pub. 1987 at 5-7; Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 5-7.

V. CONCLUSION

For the foregoing reasons, I conclude that revocation of the antidumping orders covering MCIPF from Brazil and Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time but that revocation of the antidumping orders covering MCIPF from Japan, Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry within the United States within a reasonably foreseeable time.

SEPARATE AND DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand Investigations Nos. 731-TA-278-280 and 347-348 (Review)

Based upon the record in these investigations, I find under section 751(c) of the Tariff Act of 1930, as amended, that revocation of the antidumping duty orders on malleable cast iron pipe fittings (“MCIPF”) from Brazil, Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I also find that revocation of the antidumping duty order covering MCIPF from Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. CUMULATION

A. ANALYTICAL FRAMEWORK

As set forth in previous views,¹ in considering whether to cumulate subject imports in a sunset review, I first assess: (1) whether the reviews were initiated on the same day; and (2) the likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product, in the event the orders are revoked.

If, as a result of the foregoing assessment, I determine that subject imports are amenable to cumulation, I then proceed to examine whether the statutory exception precludes cumulation of such imports that are otherwise amenable to cumulation—i.e., I examine whether such imports, when considered individually, are likely to have no discernible adverse impact on the domestic industry.

B. REASONABLE OVERLAP OF COMPETITION

In the original determinations, the Commission concluded that the subject imports and the domestic like product were either “sufficiently fungible” or “sufficiently comparable in quality to be interchangeable to many end-users.”² In these grouped sunset reviews, the parties have not disputed that the subject imports are fungible with each other and the domestic like product. In addition, all responding U.S. producers and importers indicated that MCIPF from all subject countries are interchangeable with MCIPF from the United States, and that MCIPF from the individual subject countries are interchangeable with MCIPF from other subject countries.³

¹ See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review),

² Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986); Certain Malleable Cast-Iron Pipe Fittings from Japan, Inv. No. 731-TA-347 (Final), USITC Pub. 1987 (June 1987); and Certain Malleable Cast-Iron Pipe Fittings from Thailand, Inv. No. 731-TA-348 (Final), USITC Pub. 2004 (Aug. 1987).

³ CR at II-15, II-18, PR at II-9-11.

With respect to the issue of geographical overlap, in the original investigations the Commission found that imports from Thailand were marketed principally in the Gulf and Western United States, and all other subject imports and the domestic like product were marketed throughout the country.⁴ The record in this review indicates that subject imports from Thailand are currently marketed nationwide.⁵ In addition, there is no record evidence which indicates that imports from the other subject countries would not again be marketed nationwide in the event of revocation.

On the issue of channels of distribution, the Commission found in the original Brazil/Korea/Taiwan investigations that there was a reasonable overlap in channels of distribution among subject imports and between subject imports and the domestic like product.⁶ The Commission found in the original Japan and Thailand investigations that subject imports for these two countries were sold in similar channels of distribution with the domestic like product.⁷ In this review, the record indicates that the domestic product is primarily sold through wholesalers.⁸ With regard to subject imports, the importer essentially takes, or would be likely to take in the event of revocation, the role of the wholesaler in the distribution chain.⁹

Based upon all the foregoing, I determine that all subject imports would be likely to compete with each other and with the domestic like product in the U.S. market if the orders were revoked.

C. DISCERNIBLE ADVERSE IMPACT

I find that revocation of each of the orders on subject imports from Brazil, Japan, Korea, and Taiwan would likely have a discernible adverse impact on the domestic industry. I therefore cumulate subject imports from Brazil, Japan, Korea, and Taiwan in these grouped reviews. However, I also find that revocation of the order with respect to subject imports from Thailand would have no discernible adverse impact on the U.S. industry. I therefore do not cumulate subject imports from Thailand with subject imports from Brazil, Japan, Korea, and Taiwan.

1. THAILAND

Subject imports from Thailand have been present in the U.S. market at considerable levels throughout the period of review. The U.S. market share of subject imports from Thailand increased even in the face of the antidumping order at issue, holding a *** percent market share in 1998, as compared to a *** percent market share in 1986.¹⁰ In addition, the record indicates that Thai MCIPF producers had the ability throughout the period of review to increase imports into the United States by increasing capacity utilization, but did not do so (capacity utilization rates ranged from *** percent (in interim 1999) to *** percent (in 1997)), indicating that an increase in the volume of subject imports from Thailand as a result of

⁴ Original Brazil/Korea/Taiwan Determinations, USITC Pub. 1845 at 9; Original Japan Determination, USITC Pub. 1987 at 9; Original Thailand Determination, USITC Pub. 2004 at 9.

⁵ CIPFC Prehearing Brief, Ex. A.

⁶ USITC Pub. 1845 at 9.

⁷ Original Japan Determination, USITC Pub. 1987 at 9; Original Thailand Determination, USITC Pub. 2004 at 10.

⁸ CR at I-15, PR at I-12.

⁹ CR at I-15, PR at I-12.

¹⁰ CR at I-4, PR at I-3.

revocation is unlikely.¹¹ Accordingly, I determine that removal of the antidumping duty order with respect to subject imports from Thailand would have no discernible adverse impact upon the domestic industry.

2. BRAZIL, JAPAN, KOREA, AND TAIWAN

With respect to subject imports from Japan, Korea, and Taiwan, the near absence of subject imports from each of these countries in the U.S. market since the imposition of the orders evidences the efficacy of the orders in restricting the presence of unfairly traded merchandise. Applying adverse inferences based upon the failure of any interested party from each of these subject countries to participate in these grouped reviews, and therefore relying in large part upon the record from the original investigations, I determine that, in the event of revocation of the respective orders, subject imports from Japan, Korea, and Taiwan are each likely to return to pre-order volumes, at pre-order pricing levels, and with a corresponding likely discernible adverse impact to the domestic MCIPF industry.¹²

With regard to Brazil, the Brazilian producer Tupy argues that imports from Brazil should not be cumulated because such imports are not currently present in the U.S. market in significant volumes, and Tupy does not have the ability to exceed pre-order volumes of imports into the United States because of high Brazilian capacity utilization rates. Tupy also argues that it does not have the ability to shift production from metric-based products to products for the U.S. market because the company does not currently possess a sufficient variety of molds to produce products for the U.S. market. It is argued that to be competitive in the U.S. market Tupy must be able to supply a variety of MCIPF products. I find, however, that Tupy has both significant unused capacity and a marked ability to shift production to merchandise destined for the U.S. market.

Tupy has acknowledged that in the event of revocation of the order, it would be likely to increase exports of subject merchandise to the United States to pre-order levels, or 1,637 tons.¹³ This indicates some immediate ability and intent of Tupy to divert exports from other markets to the United States. In addition, the record indicates that Tupy currently has unused capacity.¹⁴ The combination of these two factors indicates that Tupy is likely to increase its exports of subject merchandise to the United States at a level beyond one that would cause no discernible adverse impact to the domestic industry, in the event of revocation.

In addition, as noted above, Tupy argues that it is unable to produce a significant volume of non-metric products because Tupy does not have the molds for each of the various products sold in the U.S. market. The record indicates, however, that Tupy is currently able to produce nearly 14 percent of what Tupy identifies as the most popular varieties of MCIPF consumed in the U.S. wholesale market and over 47 percent of the most popular varieties of products sold in the U.S. retail market.¹⁵ The record also indicates that within “close to 12 months” Tupy would be able to produce 30 percent of the most popular

¹¹ CR at IV-9, PR at IV-6.

¹² I note that I have not taken any adverse inferences with respect to the subject imports from Brazil.

¹³ Tupy Prehearing Brief at 11; CR at I-5, PR at I-4.

¹⁴ CR at IV-6, PR at IV-6.

¹⁵ Tr. at 101-102 (Werner).

varieties of MCIPF consumed in the U.S. wholesale market and 100 percent of the most popular varieties consumed in the retail market.¹⁶

Based upon the foregoing, I find that, in the event of revocation, subject imports from Brazil are likely to have a discernible adverse impact on the domestic MCIPF industry. I therefore cumulate subject imports from Brazil, Japan, Korea, and Taiwan in these grouped reviews.

II. REVOCATION OF THE ORDERS ON MALLEABLE CAST IRON PIPE FITTINGS FROM BRAZIL, JAPAN, TAIWAN, AND KOREA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. LIKELY VOLUME OF SUBJECT IMPORTS

In assessing the likely volume of subject imports if the orders are revoked, I view the sharp reduction in imports from Brazil, Japan, Korea, and Taiwan following imposition of the orders as evidencing the remedial effects of the orders. In the case of Brazil, the record indicates that exports of MCIPF from Brazil could increase by well in excess of 1,600 tons.¹⁷ With respect to Japan, Korea, and Taiwan these countries collectively exported to the United States over 12,400 tons of subject merchandise during the original period of investigation.¹⁸ Based upon the adverse inferences I am taking in these reviews, I conclude that pre-order subject import volumes are likely to recur with regard to Japan, Korea, and Taiwan.

Cumulating the likely volume of subject imports from Brazil, Japan, Korea, and Taiwan reveals that a significant volume of subject merchandise from these countries would be available for immediate export to the United States in the event of revocation. I therefore conclude that revocation of the antidumping duty orders will likely result in significant volumes of subject imports from Brazil, Japan, Korea, and Taiwan.

B. LIKELY PRICE EFFECTS OF SUBJECT IMPORTS

In these reviews, there are no current reliable pricing data for subject imports from Brazil, Japan, Korea, and Taiwan. I have therefore relied upon pricing data from the original investigations, which evidences pervasive underselling by subject imports from all subject countries.¹⁹ The record also indicates that price is one of the top factors purchasers consider when choosing an MCIPF supplier and that there is a high degree of substitutability between imported and domestic MCIPF.²⁰ It is therefore likely that in the event of revocation, imports will be priced aggressively to regain market share. In turn, such imports would likely have significant depressing and suppressing effects on prices for the domestic like product. Accordingly, I find that the likely significant volume of subject imports from Brazil, Japan, Korea, and

¹⁶ Tr. at 101-102 (Werner).

¹⁷ CR at I-5, PR at I-4; CR at IV-6, PR at IV-6.

¹⁸ CR at I-5, PR at I-4.

¹⁹ I again note that I have not taken adverse inferences with respect to the likely price of subject imports from Brazil, in the event of revocation.

²⁰ CR at II-15, PR at II-9.

Taiwan resulting from revocation of the antidumping duty orders would likely undersell the domestic like product, resulting in significant price depression or suppression in the U.S. market.

C. LIKELY IMPACT OF SUBJECT IMPORTS

While the record indicates that the domestic MCIPF industry is currently financially healthy, such health is contingent upon the existence of the orders under review, with the exception of the order on Thailand which appears to have had no restraining effect on Thai subject imports. Given the generally substitutable nature of the subject imports and domestic like product, I find that the likely significant volume of LTFV subject imports from Brazil, Japan, Korea, and Taiwan, when combined with the likely adverse price effects of these imports, would have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, I conclude that if the antidumping duty orders on Brazil, Japan, Korea, and Taiwan are revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON MALLEABLE CAST IRON PIPE FITTINGS FROM THAILAND IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, I find that subject imports from Thailand are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order on such imports is revoked. I therefore do not cumulate likely imports from Thailand with those from the other subject countries.

I find that the volume of subject imports from Thailand is not likely to change to a significant degree as a result of revocation of the antidumping duty order. Thai subject imports increased their U.S. market share even in the face of the antidumping order at issue.²¹ Thai MCIPF producers had the ability throughout the period reviewed to increase imports into the United States by increasing capacity utilization, but did not do so.²²

Based upon my finding that revocation of the antidumping duty order on subject imports from Thailand is not likely to result in a significant increase in the volume of subject imports from Thailand, I determine that revocation is not likely to result in significant adverse price effects on prices for the domestic like product. The pricing data in the record indicate that, at current volumes, subject imports from Thailand are not having a negative effect on prices for the domestic like product despite pervasive underselling; there is no apparent relationship between Thai and domestic price trends.²³ Because Thai subject import volumes are not likely to change, neither will the absence of price effects.

I also find that the financial condition of the domestic industry indicates that subject imports from Thailand are not having an adverse impact at current volume and price levels. Because neither volumes nor

²¹ CR at I-4, PR at I-3.

²² CR at IV-9, PR at III-6.

²³ CR at V-6-15, PR at V-5-10.

prices are likely to change upon revocation of the order, there will likely be no significant impact on the domestic industry. I therefore conclude that revocation of the antidumping duty order on subject imports from Thailand would not be likely to result in a significant adverse impact to the domestic industry.

IV. CONCLUSION

Based upon the foregoing analysis, I find that revocation of the antidumping duty orders on Brazil, Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic MCIPF industry within a reasonably foreseeable time. I also find that revocation of the antidumping duty order covering MCIPF from Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**SEPARATE AND DISSENTING VIEWS OF
COMMISSIONER THELMA J. ASKEY**

Section 751(d) of the Tariff Act of 1930, as amended, requires that the Department of Commerce revoke a countervailing duty order or an antidumping duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ Based on the record in these reviews, I determine that revocation of the antidumping duty orders covering malleable cast iron pipe fittings (“MCIPF”) from Brazil, Japan, Korea, Taiwan, and Thailand would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I write separately to explain my determinations with respect to the antidumping duty orders covering Brazil, Japan, Korea, Taiwan and Thailand. However, because I agree with my colleagues with respect to their findings on the domestic like product and the domestic industry, the legal standards governing the Commission’s causation analysis in sunset reviews, and the conditions of competition in the MCIPF marketplace, I join the Commission’s joint views discussing these issues.

As a preliminary matter, I note that several parties entered an appearance, submitted information to the Commission, and filed briefs in this proceeding. These parties include the Cast Iron Pipe Fittings Committee (“CIPFC”) (an association whose membership consists of the two significant domestic producers of MCIPF, Supply Sales Company and Ward Manufacturing), the three Thai producers of MCIPF,² and the sole Brazilian producer of MCIPF, Industria de Fundicao Tupy. The Japanese, Korean, and Taiwanese producers of subject merchandise did not enter appearances in this proceeding, however, and have submitted no information to the Commission.

Given the lack of any response from the Japanese, Korean and Taiwanese producers, the Commission has a somewhat limited record to review in determining whether revocation of the orders will be likely to lead to the continuation or recurrence of material injury in the reasonably foreseeable future. In a case such as this, where one or more of the parties (whether domestic or respondent interested parties) have fully participated in the review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal or comment from the absent parties. Nonetheless, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the information and evidence before it in terms of the statutory criteria.³ The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information and evidence.⁴

¹ 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

² Siam Fittings Co., Thai Malleable Iron and Steel Co., and BIS Pipe Fittings Industry Co.

³ 19 U.S.C. § 1675a(a).

⁴ See, e.g., *Alberta Pork Producers’ Mktg. Bd. v. United States*, 669 F. Supp. 445, 459 (Ct. Int’l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

I. CUMULATION

A. *General*

In sunset reviews, the Commission has the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.⁵ The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.⁶ In five-year reviews, the relevant inquiry is whether there would likely be competition among the domestic and subject merchandise within the reasonably foreseeable future, even if none currently exists. Moreover, because of the prospective nature of five-year reviews and the discretionary nature of the cumulation decision, when deciding whether to cumulate in sunset reviews, the Commission has examined other significant conditions of competition that are likely to prevail if the orders under review are revoked.

Although cumulation is discretionary in sunset reviews, the statute clearly and unambiguously states that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry upon revocation of an order.⁷ Accordingly, the Commission must conclude that the subject imports from a country will have a “discernible adverse impact on the domestic industry” after revocation of the order before cumulating the volume and effect of those imports with those of other subject imports. Accordingly, when I assess whether I am permitted to cumulate the subject imports in sunset reviews, I must first focus on how discernibly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small -- i.e., negligible -- volume of imports after revocation.⁸

In this case, the reviews of the orders for the five subject countries were initiated on the same day. Accordingly, I have considered first whether the subject imports from each of the subject countries are likely to have a “discernible adverse impact” on the domestic industry upon revocation of the orders. If I find that imports from any one of these countries are not likely to have a discernible adverse impact on the domestic industry if the order is revoked, then I am precluded from cumulating the imports from that country with those of any other subject country. If I find that they are likely to have a discernible adverse

⁵ 19 U.S.C. §1675a(a)(7).

⁶ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; 2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; 3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and 4) whether the imports are simultaneously present in the market.

⁷ Section 752(a)(7) of the Act, 19 U.S.C. 1675a(a)(7)

⁸ For a more complete discussion of my views on this matter, see my Additional Views in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 31 (October 1999).

impact on the industry upon revocation of the order, I must then consider whether it is appropriate to exercise my discretion to cumulate the subject countries. I discuss my cumulation analysis for each of these countries below.

B. The Subject Imports from Brazil Are Not Likely to Have A Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future If the Order is Revoked

I find that the subject imports of MCIPF from Brazil are not likely to have a discernible adverse impact on the domestic industry if the order is revoked. Currently, there are minimal levels of Brazilian imports in the market. Only two tons of Brazilian MCIPF were imported into the U.S. market in 1997 and 1998 and no Brazilian imports entered the United States during interim 1999.⁹ Accordingly, in each of these years, the Brazilian imports have had little or no share of the U.S. market.¹⁰ Moreover, during each of these years, the sole Brazilian producer operated at very high capacity utilization rates and generally had a small level of MCIPF inventories.¹¹ Given the extremely small current levels of U.S. imports by the sole Brazilian producer of MCIPF, its high capacity utilization rates, and its low inventory levels, I find that it is unlikely that the Brazilian producer will begin shipping imports to the United States at levels that would have a discernible adverse impact on the domestic industry.¹²

Moreover, I note that the domestic MCIPF market is divided into two distinct segments: the “wholesale” market, where sales are made to construction and maintenance firms; and the “retail” market, where sales are made primarily to retail outlet stores, such as Lowe’s and Home Depot.¹³ Purchasers in the retail market are less quality-conscious and more price-sensitive than those in the wholesale market.¹⁴ The record of this review indicates that the domestic producers have concentrated their sales on the wholesale market and have not attempted to make significant levels of sales to the retail market.¹⁵ The record further indicates that, with the exception of the Thai imports, imports of MCIPF have generally been sold into the retail segment of the market and are likely to continue to be sold in that market segment.¹⁶ I find that there is little in the record to indicate that the subject Brazilian imports are more likely to be sold in the wholesale segment of the market than other imports.¹⁷ Accordingly, I find that it is likely that the bulk of the subject

⁹ CR and PR at Table I-4 & I-5.

¹⁰ CR and PR at Table I-4 & I-5.

¹¹ The Brazilian producer’s capacity levels were *** percent in 1997 and *** percent in 1998 and declined only slightly, to *** percent in interim 1999. CR and PR at Table IV-3. Its inventory levels were *** percent of its total production in 1997, *** percent in 1998 and *** percent in interim 1999. Id.

¹² In this regard, I note that, even during the original investigation, the Brazilian producer occupied only a small share of the market, with its largest market share being *** percent in 1984. CR and PR at Table I-2.

¹³ CR at II-1-2, PR at II-1-2.

¹⁴ CR at II-2-3, PR at II-2-3.

¹⁵ CR at II-3, PR at II-2. The record indicates that, at best, *** of domestic sales are made to this market segment. Petitioners’ Posthearing Brief at Attachment, Question 6.

¹⁶ Tr. at 107-109, 128-129, 132-33 (Colbert). In this regard, the Thai imports appear to be the only group of imports that are sold into the wholesale market. See Post-hearing Brief of Tupy at 13.

¹⁷ Indeed, the Brazilian producer has stated that any additional Brazilian imports will likely enter the retail market segment. Tr. at 112 & 121-22. Moreover, although the record indicates that substantial volumes of Thai

imports from Brazil will enter a market segment -- the retail segment -- in which the domestic producers are now competing in a limited fashion. This fact further reduces the possible level of the any likely small impact from the Brazilian product on the domestic industry if the order were revoked.

In coming to the conclusion that the subject imports from Brazil are unlikely to have a discernible adverse impact on the domestic industry upon revocation of the order, I have considered the fact that the European Community has instituted a dumping proceeding against imports of MCIPF from Brazil (as well as Japan, Korea and Thailand).¹⁸ However, I note that two prior antidumping cases in Europe against MCIPF products did not result in the imposition of antidumping duties and that the record indicates that it would take a significant amount of time and money for Tupy to shift substantial additional portions of its facilities from production of the metric-based MCIPF products sold in Europe to the NPT (i.e., non-metric) measurement system used in the United States.¹⁹ Accordingly, I do not find that the institution of the EC antidumping proceeding necessarily indicates that there is likely to be a discernible shift of subject imports from the European Community to the United States within the reasonably foreseeable future.

Similarly, I believe that the record data indicates that the subject imports from Brazil will not have a discernible adverse impact on domestic prices upon revocation of the order. Although there is little usable price comparison data for Brazilian imports in this review because of the very small levels of Brazilian imports now in the market, the available pricing data for both the subject and non-subject imports currently in the market indicate that the subject and non-subject imports have generally been underselling the domestic merchandise by significant margins throughout the period from 1997 through 1999.²⁰ Despite the existence of consistent underselling by substantial volumes of subject and non-subject imports, domestic prices for all of the comparison products have actually increased over the period. Moreover, the domestic industry has remained very profitable during a period of flat demand, with its operating income margins being *** percent in 1997, *** percent in 1998, and *** percent in interim 1999.²¹ I see little in the record that indicates that the Brazilian imports will have a significantly different price effect on the domestic industry's prices than that of the imports currently in the market.²² Given this, I believe that the small

imports enter the wholesale market, I believe that the limited record indicates that they are able to do so because they are of a higher quality level than other imports. CR at II-16 & II-18, PR at II-9-11. However, given the lack of discernible price effects from the Thai imports even in the wholesale segment (which I discuss below), I believe that the Thai producers are correct when they assert that they are not in competition with the domestic producers even in that market segment, because they sell not to the large wholesalers but only to small, "mom-and-pop" distribution operations. CR and PR at II-1, n. 1.

¹⁸ I also note that Mexico presently has antidumping tariffs in place against galvanized MCIPF from Brazil. CR at II-10, PR at II-6. The order was imposed in 1996 and does not appear to have resulted in a significant lessening of Brazil's sales to third country markets in 1997 or 1998 or in a significant shift of exports to the United States. CR and PR at Table IV-3. Accordingly, the record indicates that the Brazilian producer has already adjusted its sales to reflect the impact of the order.

¹⁹ CR at II-9-10, PR at II-4-6; Tr. at 101.

²⁰ CR and PR at Tables I-2 & V-1 to V-4.

²¹ CR and PR at Table III-5.

²² In this regard, I note that the existence of significant underselling currently by the subject and non-subject producers without any obvious effect on domestic prices further indicates that there is significant segmentation in the market and that the domestic industry has not been competing against subject and non-subject imports to a significant degree in the wholesale or retail segment.

increase in the level of the Brazilian imports that would occur upon revocation of the order is unlikely to have a discernible effect on domestic prices within the reasonably foreseeable future, especially given the small size of the likely Brazilian dumping margins in this review.²³

For the foregoing reasons, I find that the small increase in the volume of the subject imports from Brazil that can be expected upon revocation of the order is unlikely to have a discernible adverse impact on the domestic industry. I have, therefore, not cumulated the subject imports from Brazil with imports from the other subject countries for purposes of my analysis in this review.

C. The Subject Imports from Thailand Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future If the Order is Revoked

I also determine that the subject imports from Thailand are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering Thailand is revoked. First, although the subject imports from Thailand currently have a substantial presence in the market, their volume levels are unlikely to increase to a discernible extent if the antidumping order covering Thailand is revoked. In this regard, the Thai producers have been subject to a minimal dumping margin of 1.7 percent since the original investigation.²⁴ Due to the small size of this dumping margin, the subject Thai producers have been able to ship substantial volumes of merchandise to the United States even after imposition of the order. In fact, during 1997 and 1998, their share of the domestic market was significantly higher than their share of the market during the original period of investigation.²⁵ Given the current substantial volumes of Thai merchandise now in the market, I believe that imposition of the antidumping order on the subject imports from Thailand has not had any effect on their volume levels in the market place. Accordingly, I find that revocation of the order will effect no change at all in their marketing patterns or the likely volume of their shipments within the reasonably foreseeable future.

In addition, even if the Thai producers desired to increase the level of their shipments to the U.S. market upon revocation of the order, they would have a limited ability to do so. The Thai producers have been operating at reasonably high capacity utilization rates during the period²⁶ and this acts as a structural limitation on their ability to ship additional imports to the United States. Moreover, even though there has been a decline in the Thai producers' capacity utilization rates since 1997, that decline has not been accompanied by an increase in the volume of Thai merchandise shipped to the United States or in an increase in the market share level of the Thai producers. On the contrary, it has been accompanied by a decline in the volume and market share levels of the Thai imports in the U.S. marketplace.²⁷ Accordingly,

²³ The Department of Commerce announced likely margins of 5.64 percent for the Brazilian producers in this review. 64 Fed. Reg. 66686 (Nov. 30, 1999).

²⁴ CR at I-3, PR at I-2.

²⁵ During the period from 1997 to interim 1999, the subject imports from Thailand had a market share of between *** percent and *** percent. Their highest share during the original period of investigation was *** percent. CR and PR at Table I-2.

²⁶ In this regard, I note that the capacity utilization rate of the Thai producers was *** percent in 1997, *** percent in 1998 and *** percent in 1999. CR and PR at Table IV-4.

²⁷ CR and PR at Table IV-4 and Table I-2.

the existence of some unused and available capacity in Thailand does not provide a basis for concluding that the volumes of imports from Thailand will be likely to rise to levels that will have a discernible impact on the industry upon revocation of the order.²⁸

In this regard, although the subject producers of MCIPF in Thailand have been heavily export-oriented,²⁹ they have stated that their long-term export strategy is one of ***.³⁰ The Thai producers export MCIPF to various markets in ***, and have long-standing relationships with the suppliers in these countries.³¹ In light of the projected economic growth in Asia,³² I do not believe that revocation of the antidumping duty order is likely to cause Thai producers to shift discernible levels of imports to the U.S. market in the reasonably foreseeable future.

Similarly, I find that the subject imports from Thailand are not likely to have a discernible adverse impact on domestic prices upon revocation of the order. The price comparison data in this review indicates that the Thai producers have been underselling the domestic merchandise by significant margins throughout the period from 1997 through 1999.³³ Despite the existence of consistent underselling by the Thai imports, domestic prices for all of the comparison products have actually increased over the period. Moreover, despite the existence of relatively large volumes of Thai merchandise in the market and consistent underselling by the Thai importers, the domestic industry has remained very profitable during a period of flat demand, with its operating income margins being *** percent in 1997, *** percent in 1998, and *** percent in interim 1999.³⁴ In light of this pricing and profitability data, the record indicates that the subject imports from Thailand have not had a significant impact on domestic prices or the profitability of the domestic industry during the period from 1997 to 1999.³⁵ Accordingly, I find that it is unlikely that they would have any additional adverse impact on domestic prices if the order were revoked, especially given the minimal size of the existing and likely dumping margins applicable to Thailand in this review.

I find that the subject imports from Thailand would not be likely to have a discernible adverse impact on the domestic industry if the order were revoked. I have, therefore, not cumulated the subject

²⁸ Even if all of the Thai producers' unused capacity were directed to the United States, those imports would be unlikely to have a discernible adverse impact on the industry, given the lack of any discernible price effects from current Thai imports, which I discuss below.

²⁹ See CR and PR at Table IV-4.

³⁰ CR at II-10, PR at II-6.

³¹ CR at II-10, PR at II-6; Tr. at 73-75 (Sakai).

³² CR at II-10, PR at II-6.

³³ I note that, in this review (unlike many sunset reviews), the Commission was able to obtain good price comparison data for the subject imports from Thailand because they have remained in the market in substantial volumes after imposition of the order. See CR and PR at Tables V-1-V-5.

³⁴ CR and PR at Table III-5.

³⁵ In this regard, I believe that the pricing data supports the Thai producers' assertions that they do not compete in the same segments of the wholesale market as the domestic producers. Although the Thai producers do appear to sell substantial volumes of merchandise to the wholesale segment of the market, the existence of significant underselling by the Thai producers without any obvious effect on domestic prices indicates to me that there is significant segmentation in the market, even within the wholesale segment of the market, and that the domestic industry has not been competing against the Thai imports to a significant degree in that market segment.

imports from Thailand with the subject imports from other countries for purposes of my analysis in this review.³⁶

D. Exercise of Discretion to Cumulate the Subject Imports from Japan, Korea and Taiwan

I have determined to exercise my discretion to cumulate the subject imports from Japan, Korea and Taiwan for my analysis in this review. As an initial matter, however, I note that the record could arguably support a finding that the subject producers in each of these three countries would not have a discernible adverse impact on the domestic industry if the orders in question were revoked. However, my ability to make such a finding has been hampered by the fact that no Japanese, Korean and Taiwanese producers entered an appearance in this proceeding or submitted data with respect to its operations. Moreover, I note that there is a limited amount of publicly available data with respect to operations of the producers in these countries. Accordingly, I have chosen to exercise my discretion to cumulate these three countries for my analysis. In this regard, I note that the somewhat limited record data does support a finding that any small volumes of subject merchandise from Japan, Korea and Taiwan that might enter the United States upon revocation of the order are likely to be reasonably interchangeable, to be sold throughout the United States in similar channels of distribution, and to be simultaneously present in the market upon revocation of the orders.³⁷ Accordingly, I find that the statutory competition requirement for cumulation is satisfied with respect to these three countries.

II. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING MALLEABLE CAST IRON PIPE FITTINGS FROM BRAZIL IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed in detail above, I determined that the subject imports from Brazil are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Brazil with the other subject imports for purposes of my sunset analysis. In addition, for the same reasons that I discussed above, I find that the subject imports from Brazil are not likely to have a significant adverse volume or price effects or any other impact on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³⁸

³⁶ If I had not found that the Thai imports were unlikely to have a discernible adverse impact on the domestic industry, I would have exercised my discretion not to cumulate the subject Thai imports with the other subject imports in this review. In this regard, I note that the Thai producers have been consistently subject to very small dumping margins, they have continued to maintain a substantial presence in the market (unlike the other subject imports), and they are generally competing in the wholesale segment of the market, as opposed to the retail segment (which is the segment in which the majority of other imports are competing and can be expected to compete).

³⁷ I also note that the sunset reviews for Japan, Korean and Taiwan were all initiated on the same day.

³⁸ In this regard, I find that, as discussed below, the industry is currently not vulnerable to imports. I also that the record indicates that there is minimal potential for product shifting with respect to the Brazilian producers. CR

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING MALLEABLE CAST IRON PIPE FITTINGS FROM THAILAND IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed in detail above, I determined that the subject imports from Thailand are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Thailand with the other subject imports for purposes of my sunset analysis. In addition, for the reasons I discussed above, I find that the subject imports from Thailand are not likely to have a significant adverse volume or price effects or any other impact on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Thailand would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³⁹

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS COVERING MALLEABLE CAST IRON PIPE FITTINGS FROM JAPAN, KOREA AND TAIWAN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of the Cumulated Imports from Japan, Korea and Taiwan

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁴⁰ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁴¹

In the original determinations with respect to Japan and Thailand, the Commission found that the volume of cumulated imports from Japan and Thailand remained at high levels during a period of declining apparent consumption and that their market share increased.⁴² In the original determination concerning Brazil, Korea and Taiwan, the Commission found that the cumulated volumes of the subject imports from

at II-11-12, PR at II-5-6.

³⁹ In this regard, I find that, as discussed below, the industry is currently not vulnerable to imports. I also find that the size of the Thai inventories do not warrant an affirmative finding, given my consideration of the other record data. Finally, I note that the record indicates that there is minimal potential for product shifting with respect to the Thai producers. CR at II-12, PR at II-5-6.

⁴⁰ 19 U.S.C. § 1675a(a)(2).

⁴¹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁴² Original Thailand Determination, USITC Pub. 2004 at 11; Original Japan Determination, USITC Pub. 1987 at 10-11.

the three countries had increased significantly over the period and that their market share showed a similar trend at the same time that the domestic industry's market share was steadily declining.⁴³

Although the volume and market share of the subject imports from the three cumulated countries showed differing trends during the original periods of investigation, their cumulated volume and market share remained substantial during those years. The volume of the subject imports from Japan declined over the original period of investigation from 10,870 tons in 1984 to 6919 tons in 1986 and their market share similarly declined from 15.1 percent in 1984 to 11.3 percent in 1986.⁴⁴ The quantity of subject imports from Korea during the original period of investigation increased from 1440 tons in 1983 to 3395 tons in 1984 and then to 5048 tons in 1985⁴⁵ while their market share increased from 2.7 percent in 1983 to 3.5 percent in 1984 and then to 6.8 percent in 1985.⁴⁶ The quantity of subject imports from Taiwan increased from 3709 tons in 1983 to 4388 tons in 1984 and then to 5516 tons in 1985⁴⁷ while their market share increased from 4.9 percent in 1983 to 5.5 percent in 1984 and then to 7.6 percent in 1985.⁴⁸

Since the periods examined in the original investigations, the volume and market share levels of the cumulated imports have declined to minimal levels. The volume of the cumulated subject imports was 669 tons in 1997, 877 tons in 1998, and 391 tons in interim 1999. Similarly, the market share of the three subject countries was minimal during this same period, being *** percent in 1997, *** percent in 1998 and *** percent in interim 1999.⁴⁹

Although these declines in the volume and market share of the three cumulated subject countries since imposition of the order might otherwise suggest that there is likely to be a significant increase in the volume of the subject imports upon revocation of the order, I find that the volume of the cumulated subject imports is not likely to be significant if the orders covering these countries were to be revoked. First, although there is a limited amount of data available with respect to the subject producers' capacity levels in this review, the limited data indicates that the aggregate capacity levels of the Korean and Taiwanese producers have declined significantly since the period of the original investigation. In particular, the record evidence (including credible witness testimony offered at the public hearing in this proceeding) indicated that at least one of the two original Korean producers has gone bankrupt since the time of the original proceeding,⁵⁰ that the large majority of Taiwanese producers have closed their facilities in Taiwan, and that several of the Taiwanese producers have moved their MCIPF operations to the non-subject countries of China or Indonesia.⁵¹ Given the absence of any other record data indicating otherwise, this evidence indicates that there is currently a much smaller level of production capacity in these two countries available to ship merchandise to the United States than during the original investigations. Accordingly, I find that the

⁴³ Original Brazil, Korea and Taiwan Determination at 11-12. In particular, the Commission found that the cumulative volumes of the subject imports rose from 5,230 tons in 1983 to 9,761 tons in 1985 and that their market share increased from 8.9 percent in 1983 to 15.1 percent in 1985.

⁴⁴ Original Japan Determination, USITC Pub. 1987 at A-35.

⁴⁵ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-29.

⁴⁶ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-32.

⁴⁷ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-29.

⁴⁸ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-32.

⁴⁹ CR and PR at Table I-2.

⁵⁰ CR at IV-8, n. 12, PR at IV-5, n.12; Tr. at 134 (Mr. Colbert). I also note that there is no record evidence that indicates that there are any new Korean producers of MCIPF have started operations in Korea.

⁵¹ CR at IV-8, PR at IV-5; Tr. at 133.

record evidence concerning capacity levels in these two countries does not support a finding that they will increase their imports to the United States significantly above their current minimal levels upon revocation of the orders.⁵²

With respect to Japan, the limited record evidence indicates that there remains substantial available capacity in Japan, which could theoretically be used to ship significant levels of MCIPF to the United States within the reasonably foreseeable future.⁵³ Nonetheless, I find that such an increase is unlikely to occur. First, Hitachi -- the Japanese producer who accounted for more than half of total Japanese production during the original investigation and nearly *** percent of total exports to the United States during the original investigation -- purchased Ward, one of the two remaining domestic producers of MCIPF, in 1989.⁵⁴ Because Ward is one of the two significant domestic producers of MCIPF and accounted for approximately *** percent of total domestic sales in 1998,⁵⁵ I find that Hitachi is unlikely to resume exporting MCIPF products to the United States in significant volumes because ***.⁵⁶ Accordingly, I believe that it is unlikely that the largest single Japanese exporter of MCIPF to the United States during the original investigation would ship more than minimal volumes of MCIPF to the United States upon revocation of the order.

Secondly, at the hearing in this proceeding, credible witness testimony indicated that the Japanese producers of MCIPF have focused in recent years on their home market and have pulled back significantly from third country export markets.⁵⁷ While there is again a limited amount of record data on this issue, I believe that the small amount of data does indicate that the remaining Japanese producers have been more focused on their home markets and are unlikely to resume shipping significant volumes of MCIPF products to the United States in the reasonably foreseeable future.⁵⁸ For example, the record indicates that the Japanese producers have been shipping small volumes of MCIPF to the European market in recent years.⁵⁹ Indeed, I note that, during the original period of investigation, the volume and market share levels of the subject imports from Japan declined significantly in 1985 and 1986 from their 1983 and 1984 levels,⁶⁰ which suggests that the Japanese producers were pulling back from at least the U.S. market even during the original period of investigation.

Third, even if there were some increase in the volume levels of subject imports from these three countries upon revocation of the order, such an increase would not have a significant impact on the domestic industry. As I have discussed previously, the domestic MCIPF market is divided into two distinct segments: the "wholesale" market, where sales are made to construction and maintenance firms, and the

⁵² Tr. at 133-34.

⁵³ CR at IV-7, PR at IV-5.

⁵⁴ CR at IV-7, PR at IV-5; Original Japan Determination, USITC Pub. 1987 at A-10.

⁵⁵ CR and PR at Table III-7.

⁵⁶ Indeed, the parties agree that Hitachi is unlikely to resume exporting to the U.S. market as long as it owns Ward. Tr. at 60-61 (Chartrau) & 75 (Sakai); Petitioners' Posthearing Brief at 6.

⁵⁷ Tr. at 119 (Werner), 43-44 (Chartrau)(Japanese producers currently focusing on products that are not very attractive in the United States because of their expense).

⁵⁸ Id.

⁵⁹ According to petitioners, the Japanese producers shipped 966 short tons of MCIPF to Europe in 1997 and 1102.7 short tons in 1998. Petitioners Posthearing Brief at Ex. 2.

⁶⁰ CR and PR at Table I-2.

retail market, where sales are made to retail outlet stores, such as Lowe's and Home Depot.⁶¹ The record of this review indicates that the domestic producers have concentrated primarily on the wholesale market and have not made significant shipments in the retail market.⁶² Indeed, the record indicates that the domestic industry's focus on the wholesale market has enabled it to thrive in the face of significant import volumes and underselling.⁶³ With the exception of the subject imports from Thailand, the other subject and non-subject imports have generally been sold in the retail market, the segment in which the industry has not had a significant presence.⁶⁴ Moreover, the record suggests that even the Thai imports are entering a segment of the retail market (the secondary wholesale segment) in which the domestic producers have not been competing on a significant level. Given this market segmentation, I find that any volume increase in imports from the cumulated subject countries is likely to enter the segments of the market in which the domestic industry does not compete.

Finally, there are different world-wide standards for MCIPF production. In the United States, Mexico and Canada, and some South American markets, MCIPF products are manufactured and sold on the basis of the NPT measurement system, which is a non-metric system.⁶⁵ In the European, Asian and other markets, MCIPF is sold on the basis of a metric-based measurement system.⁶⁶ The record of this review indicates that conversion of production facilities from the production of metric-based MCIPF to NPT products is capital-intensive and can be done only on a long-term commitment basis.⁶⁷ Given this, I find that the subject producers' ability to shift significant portions of their production facilities (which are presumably now being used primarily in the production of metric MCIPF) over to the production of NPT products within a reasonably foreseeable time is significantly limited.

In assessing whether there is likely to be a significant volume of subject imports from the cumulated countries upon revocation of the orders, I have also considered whether there are barriers to the importation of the subject merchandise into third country markets. I note that the MCIPF industries in Japan and Korea are currently subject to an ongoing antidumping investigation in the European Community and that Australia imposed antidumping duties on MCIPF from Korea and Taiwan in 1990.⁶⁸ With regard to the EC's antidumping investigation, the available record data indicates that only small volumes of merchandise from the cumulated subject countries are now being exported to the EC.⁶⁹ Moreover, the EC has not imposed antidumping duties in two previous antidumping investigations involving MCIPF products. Finally, I note that Europe is a metric-based market and that it will take significant time and investment for the subject producers to shift the production facilities now used to produce metric-based MCIPF to the production of NPT merchandise.⁷⁰ With regard to the Australian order (which has been in

⁶¹ See, e.g., CR and PR at II-1-3.

⁶² *Id.*

⁶³ Compare CR and PR at Tables V-1 to V-4 with Tables III-5 & III-7.

⁶⁴ CR at Table IV-1 and II-3, PR at Table IV-1 & II-2.

⁶⁵ CR at II-8, PR at II-5.

⁶⁶ CR at II-8, PR at II-5.

⁶⁷ CR at II-8, PR at II-5, Tr. at 101 (Werner).

⁶⁸ CR at IV-10, PR at IV-6.

⁶⁹ Total imports from the three countries into the EC were 2,379 short tons in 1997 and 2,811 short tons in 1998, which represent approximately *** percent of total U.S. consumption in each of these years. Compare Petitioners' Posthearing Brief at Ex. 2 with CR and PR at Table I-2.

⁷⁰ CR at II-8, PR at II-5; Tr. at 101.

place for approximately nine years), I believe that any remaining Korean and Taiwanese producers are likely to have adjusted their export and marketing patterns to account for any disruption in their productions that might have resulted from imposition of the order in 1990. Accordingly, I do not find that the existence of the Australian order or the initiation of the EC antidumping proceedings indicates that there is likely to be a significant shift in the volume of subject imports from Europe to the United States upon revocation of the orders.

Finally, the record contains little information in the record as to whether there is potential for product shifting in Japan, Korea and Taiwan.⁷¹ However, both the domestic producers and the subject producers in Brazil and Thailand have reported that there is little actual potential for product shifting in their own production facilities.⁷² Accordingly, I find that this suggests that it is unlikely that the subject producers in Japan, Korea and Taiwan would be able to significantly shift production in their facilities.

Accordingly, I find that the likely volume of the cumulated subject imports from Japan, Korea and Taiwan would not be significant upon revocation of the order. This finding is consistent with the economic analysis of the Commission's Office of Economics, which indicated that revocation of all of the orders subject to this review would have only a minimal impact on domestic sales if demand were to grow at a rate of one percent per year.⁷³

B. Likely Price Effects of the Cumulated Subject Imports from Japan, Korea and Taiwan

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.⁷⁴

In the original determinations the Commission found that the subject imports consistently undersold the domestic like product.⁷⁵ In those investigations, the subject imports from Japan undersold the domestic like product in 41 out of 42 quarterly pricing comparisons concerning four distinct products and the subject

⁷¹ 19 U.S.C. § 1675a(a)(2)(A)-(D). I note that there is little or no record evidence with respect to the existing inventories of the subject merchandise, or likely increases in inventories, for the three cumulated countries.

⁷² CR at II-6 & II-11-12, PR at II-7.

⁷³ CR at II-21 & App. E; PR at II-12 & App. E. The staff found that revocation of the order for all five countries subject to this review would be likely to change current domestic sales levels by between *** and *** percent in a "high-growth" scenario (one in which demand grows at a rate of one percent per year). Because of the continuing health of the U.S. economy and the recent growth rate in the MCIPF market of 3.7 percent between 1997 and 1998, I believe that the staff's estimates of likely price and volume changes in the "high growth" scenario are a better estimate of the likely impact of revocation than its estimates of likely impact in a "low growth" scenario, where demand contracts by five percent. *Id.*

⁷⁴ 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

⁷⁵ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 12; Original Japan Determination, USITC Pub. 1987 at 11; Original Thailand Determination, USITC Pub. 2004 at 12.

imports from Korea and Taiwan undersold the domestic like product in every comparison.⁷⁶ The record in these reviews contains no current pricing data on the cumulated subject imports from Japan, Korea, and Taiwan. Moreover, because subject import volume has been so small during the period of review, the average unit value data for the three countries is of very limited use.

Nonetheless, I find that other available record evidence indicates that the cumulated subject imports are not likely to have significant adverse effects on domestic prices if the orders are revoked. First, although domestic producers, importers and purchasers generally report that the domestic and subject merchandise are interchangeable and that price is one of the three most important factors in the purchase decision for MCIPF (and is the most important consideration in many cases), the record also indicates that purchasers are very aware of the country of origin of MCIPF, that they often make their purchase decision dependant on the country of origin, and that there are some quality differences between the subject and domestic merchandise.⁷⁷ Indeed, I believe that the record strongly suggests that the bulk of subject and non-subject imports are generally sold into different market segments than the domestic merchandise primarily because there are quality differentials between the imported and domestic merchandise and because of purchasers' domestic sourcing preferences. Given this, I believe the record indicates that there is likely to be only a limited level of substitutability between the domestic merchandise and the subject imports from Japan, Korea and Taiwan upon revocation of the order.⁷⁸ Accordingly, I also find that the possible adverse effects from the cumulated subject imports on domestic prices are likely to be limited, at best.

Second, the record of this investigation shows that the substantial volumes of subject and non-subject imports now in the market undersell the domestic merchandise significantly but have not had a significant adverse effect on domestic prices or profitability. For example, during the period from 1997 to interim 1999, the subject imports from Thailand undersold the domestic merchandise in every single quarterly pricing comparison, at margins of underselling ranging from *** to *** percent.⁷⁹ Similarly, the average unit values of non-subject imports now in the market were substantially below those of the domestic industry during the period from 1997 to interim 1999.⁸⁰ Despite the existence of consistent and significant underselling by subject and non-subject imports, the industry's prices and profitability levels have remained strong, and indeed risen, throughout the period of review.⁸¹ These facts suggest that the pricing practices of subject and non-subject imports have not had a significant impact on domestic prices, even though they have occupied a substantial share of the market throughout the period from 1997 to interim 1999. Consequently, there appears to be no causal relationship between the price of any imports and the price of the domestic like product.⁸² I believe that there is little evidence in the record to suggest

⁷⁶ Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at A-37-38; Original Japan Determination, USITC Pub. 1987 at A-37-40.

⁷⁷ CR at II-15-II-18, PR at II-10-11.

⁷⁸ In this regard, I do not fully agree with staff with respect to their recommendation that the elasticity of substitution between the subject and domestic MCIPFs is in the range of 3-6. CR at II-15, PR at II-15. I believe that the substitution elasticity is closer to a range of 2 to 5.

⁷⁹ CR and PR at Tables V-1 to V-4.

⁸⁰ CR and PR at Table I-2.

⁸¹ CR and PR at Tables I-2, III-5, & V-1 to V-4.

⁸² I believe that the lack of any observable adverse price effects between the current volumes of imports in the market place and the domestic merchandise is due to the limited level of substitutability between the domestic and imported merchandise and to the fact that there is a high degree of segmentation in the MCIPF market.

that the subject imports from Japan, Korea and Taiwan will have a different effect on domestic prices than the imports now in the marketplace if the orders were revoked.

Accordingly, I find that the cumulated subject imports from Japan, Korea and Taiwan would not be likely to have a significant adverse effect on domestic prices within a reasonably foreseeable time if the orders were revoked. This finding is consistent with the economic analysis of the Commission's Office of Economics, which indicated that revocation of all of the orders subject to this review would have only a minimal impact on domestic prices if demand were to grow at a rate of one percent per year.⁸³

C. Likely Impact of the Cumulated Subject Imports from Japan, Korea and Taiwan

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁸⁴ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁸⁵

In its original determinations, the Commission found that the increasing volumes of low-priced subject imports led to declines in the domestic industry's market share during the periods of investigation.⁸⁶ The Commission found that the rise in import volume and market penetration was accompanied by consistent underselling by the subject imports at a time when the condition of the industry fluctuated at low levels.⁸⁷ Accordingly, the Commission found that the industry was materially injured by reason of the subject imports.

As instructed by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is

⁸³ CR at II-21& App. E; PR at II-12 & App. E. The staff found that revocation of the order for all five countries subject to this review would be likely to change current domestic prices by between *** and *** percent in a "high growth" scenario (i.e., which assumes growth of one percent). *Id.*

⁸⁴ 19 U.S.C. § 1675a(a)(4).

⁸⁵ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. I have taken into account the size of the likely margins in this review. Commerce has determined that the magnitude of the dumping margins that are likely to prevail if the antidumping duty orders were revoked are 57.39 percent for Japan, 12.48 percent of Korea, and between 7.93 and 80 percent for Taiwan. 64 Fed. Reg. 42665, 42667-68 (Aug. 5, 1999).

⁸⁶ Original Japan Determination, USITC Pub. 1987 at 10-11; Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 5-7.

⁸⁷ Original Japan Determination, USITC Pub. 1987 at 10-11; Original Brazil/Korea/Taiwan Determination, USITC Pub. 1845 at 5-7.

vulnerable to material injury if those orders are revoked.⁸⁸ The industry's condition has improved considerably in many respects since the imposition of the orders. First, the industry currently retains the same dominant market share that it had during the original period of investigation, with its market share consistently staying in the range of *** percent.⁸⁹ Moreover, the industry's production levels are similar to its production levels during the original period of investigation while its capacity utilization rates and productivity have improved considerably since imposition of the order.⁹⁰ The industry has also seen its average unit prices and sales revenues increase significantly since the original period of investigation.⁹¹ Finally, the industry's operating income levels are high and increasing, and have improved significantly since imposition of the order.⁹² Accordingly, it is clear that the industry is not now vulnerable to the possible effects of imports from the subject countries.⁹³

I further find that the improved condition of the industry is not attributable to the imposition of the orders under review. Although the order resulted in the almost total departure of the cumulated subject imports (as well as the Brazilian imports) from the marketplace, those import volumes have been almost completely replaced by similar volumes of imports from non-subject countries (such as China) and by increased volumes from the subject Thai producers.⁹⁴ Moreover, the subject and non-subject imports now in the marketplace appear to be underselling the domestic industry at rates that are very similar to those exhibited by the subject countries during the original investigations.⁹⁵ In fact, the only significant structural change in the U.S. marketplace since the imposition of the orders has been the consolidation of the domestic industry, with three of the original five domestic producers leaving the market since 1987.⁹⁶ Given this, I believe that the current improvement in the industry's condition is due not to the imposition of the order but to the overall consolidation of the industry, which has resulted in the removal of several significant domestic competitors from the market.

As I stated previously, the record of this review indicates that the subject imports from Japan, Korea and Taiwan are not likely to have significant adverse volume or price effects on the domestic industry within the reasonably foreseeable future if the orders were revoked. Accordingly, I also find that cumulated subject imports would not be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment or development efforts

⁸⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁸⁹ CR and PR at Table I-2.

⁹⁰ CR and PR at Tables I-2, III-1, III-3 & III-5.

⁹¹ CR and PR at Table I-2.

⁹² CR and PR at Table I-2.

⁹³ See SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further on revocation of an order . . .").

⁹⁴ CR and PR at Table I-2.

⁹⁵ CR and PR at Table I-2.

⁹⁶ CR at I-16, PR at I-13.

within a reasonably foreseeable time in the event the orders were revoked. Further, I find that revocation of the orders is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

Accordingly, I find that there is not likely to be a significant impact on the domestic industry if the orders covering the subject imports from Japan, Korea and Taiwan are revoked. This finding is consistent with the economic analysis of the Commission's Office of Economics, which indicates that revocation of all of the orders subject to this review would have only a minimal impact on domestic revenues if demand were to grow at a rate of one percent per year.⁹⁷

V. CONCLUSION

For the reasons stated above, I determine that revocation of the antidumping duty orders covering the subject imports from Brazil, Japan, Korea, Taiwan and Thailand would not be likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.

⁹⁷ CR at II-21 & App. E; PR at II-12 & App. E. The staff found that revocation of the order for all five countries subject to this review would be likely to change domestic revenues by *** and *** percent in a "high growth" scenario (one in which demand increases by one percent). Id.