

UNITED STATES INTERNATIONAL TRADE COMMISSION

**STAINLESS STEEL BUTT-WELD PIPE FITTINGS
FROM JAPAN, KOREA, AND TAIWAN**

Investigations Nos. 731-TA-376, 563, and 564 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3280, February 2000)

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**STAINLESS STEEL BUTT-WELD PIPE FITTINGS
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DETERMINATIONS

On the basis of the record¹ 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)), that revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from 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.²

BACKGROUND

The Commission instituted these reviews on July 1, 1999 (64 F.R. 35691, July 1, 1999) and determined on October 1, 1999 that it would conduct expedited reviews (64 F.R. 55960, October 15, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on February 22, 2000.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioner Askey dissenting with respect to stainless steel butt-weld pipe fittings from Korea.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering stainless steel butt-weld pipe fittings from 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.¹

I. BACKGROUND

In March 1988, the Commission determined that an industry in the United States was materially injured by reason of imports of stainless steel butt-weld pipe fittings (“SSBW pipe fittings”) from Japan that were being sold at less than fair value (“LTFV”).² In February 1993, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of SSBW pipe fittings from Korea.³ Four months later, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of SSBW pipe fittings from Taiwan.⁴

Commerce issued antidumping duty orders following each of the Commission’s determinations. In March 1988, Commerce issued an antidumping duty order on SSBW pipe fittings from Japan. In February 1993, Commerce issued an antidumping duty order on the subject merchandise from Korea. Finally, in June 1993, Commerce issued an antidumping duty order on subject imports from Taiwan.

On July 1, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping duty orders on SSBW pipe fittings would likely lead to continuation or recurrence of material injury.⁵

In five-year reviews, the Commission initially determines whether to conduct a full review (which would 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.⁶ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

¹ Commissioner Thelma J. Askey dissenting with respect to Korea. See Concurring and Dissenting Views of Commissioner Thelma J. Askey.

² Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-376 (Final), USITC Pub. 2067 (Mar. 1988) (“Original Determination-Japan”) at 3.

³ Certain Stainless Steel Butt-Weld Pipe Fittings From Korea, Inv. No. 731-TA-563 (Final), USITC Pub. 2601 (Feb. 1993) (“Original Determination-Korea”) at 3-4.

⁴ Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, Inv. No. 731-TA-564 (Final), USITC Pub. 2641 (June 1993) (“Original Determination-Taiwan”) at 3.

⁵ 64 Fed. Reg. 35691 (July 1, 1999).

⁶ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

In these reviews, the Commission received a joint response to the notice of institution from Alloy Piping Products, Inc., Flowline, Gerlin, Inc., and Taylor Forge Stainless, Inc., domestic producers of SSBW pipe fittings.⁷ No producer, exporter, or U.S. importer of SSBW pipe fittings from Japan, Korea, or Taiwan filed a response to the notice of institution. On October 1, 1999, the Commission unanimously voted to conduct expedited reviews in the subject five-year reviews involving SSBW pipe fittings.⁸ In this regard, the Commission determined that the domestic interested party group response was adequate.⁹ Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate.¹⁰ The Commission did not find any circumstances that would warrant conducting full reviews. The Commission, therefore, determined to conduct expedited reviews.¹¹

On January 27, 2000, Alloy Piping, Flowline, Gerlin, and Taylor Forge filed joint comments pursuant to 19 C.F.R. § 207.62(d) arguing, as they had in their response to the notice of institution, that revocation of the antidumping duty orders on SSBW pipe fittings from the subject countries would likely lead to a recurrence of material injury to the domestic industry within a reasonably foreseeable time.¹²

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.”¹³ 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.”¹⁴ In its final five-year review determination, Commerce defined the subject merchandise as certain welded stainless steel butt-weld pipe fittings.¹⁵ It further noted that the subject merchandise is classified under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States.¹⁶

In each of the original investigations, the Commission defined the domestic like product as stainless steel butt-weld pipe fittings corresponding with Commerce’s scope of the subject merchandise.¹⁷

⁷ Joint Response of Alloy Piping Products, Inc. (“Alloy Piping”), Flowline, Gerlin, Inc. (“Gerlin”), and Taylor Forge Stainless, Inc. (“Taylor Forge”) (hereinafter “Joint Response”).

⁸ 64 Fed. Reg. 55960 (Oct. 15, 1999).

⁹ 64 Fed. Reg. 55960 (Oct. 15, 1999).

¹⁰ 64 Fed. Reg. 55960 (Oct. 15, 1999).

¹¹ 64 Fed. Reg. 55960 (Oct. 15, 1999).

¹² Joint Response at 3-4.

¹³ 19 U.S.C. § 1677(4)(A).

¹⁴ 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).

¹⁵ 65 Fed. Reg. 5604 (Feb. 4, 2000).

¹⁶ 64 Fed. Reg. 5604 (Feb. 4, 2000).

¹⁷ Original Determination-Japan at 7; Original Determination-Korea at 3-4; Original Determination-Taiwan at 3-4.

None of the parties to the instant reviews objects to the original domestic like product definition and no new information has been obtained during these reviews that suggests the Commission should change its definition of the domestic like product. We therefore find that the appropriate definition of the domestic like product in these expedited reviews is SSBW pipe fittings, co-extensive with the Commission's original like product determinations and Commerce's scope.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."¹⁸ We define the domestic industry, as the Commission did in the original investigations, to include all domestic producers of SSBW pipe fittings.

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to section 771(4)(B), which allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.¹⁹

In these reviews, a related party issue arises with respect to Flowline, the *** responding U.S. producer of the domestic like product.²⁰ Because it imported the subject merchandise from Japan during the last two years, Flowline is a related party. According to the responding domestic producers, "the quantities imported have not been material in relation to Flowline's total shipments of stainless steel butt-

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-à-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793 (July 1994) at I-7 to I-8.

²⁰ Joint Response at 15-16.

weld-pipe fittings, and Flowline remains a significant domestic producer.”²¹ It stresses that its interests are those of a producer, not an importer, and, as evidence, points to its support of the continuation of the antidumping duty orders.²²

The size of Flowline’s domestic production, both absolutely and relative to other reporting U.S. producers, as well as the company’s primary identification as a U.S. producer, indicate that Flowline is committed to its domestic production of SSBW pipe fittings, and that its primary interest lies in domestic production and not importation.²³ We therefore find that appropriate circumstances do not exist to exclude Flowline from the domestic industry.

III. CUMULATION²⁴

A. Framework²⁵

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.²⁶

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are 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 statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.²⁷ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific

²¹ Joint Response at 15-16.

²² Joint Response at 15-16.

²³ See Sorbitol From France, Inv. No. 731-TA-44 (Review), USITC Pub. 3165 (Mar. 1999) at 6; Pressure Sensitive Plastic Tape From Italy, Inv. No. AA1921-167 (Review), USITC Pub. 3157 (Feb. 1999) at 5; Titanium Sponge From Japan, Kazakhstan, Russia, and Ukraine, Invs. Nos. 751-TA-17-20, USITC Pub. 3119 (Aug. 1998) at 5-6.

²⁴ Commissioner Askey joins only subsections A and B of this discussion. For her cumulation analysis, see her concurring and dissenting views.

²⁵ Chairman Bragg does not join section III.A. of the opinion. For a complete statement of Chairman Bragg’s analytical framework regarding cumulation in sunset reviews, see Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999). In particular, Chairman Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation.

²⁶ 19 U.S.C. § 1675a(a)(7).

²⁷ 19 U.S.C. § 1675a(a)(7).

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.²⁸ With respect to this provision, the Commission generally considers 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.²⁹

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.^{30 31} Only a “reasonable overlap” of competition is required.³² In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail 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.³³

In these reviews, the statutory requirement that all of the SSBW pipe fittings reviews be initiated on the same day is satisfied. We do not find that subject imports from any of the subject countries are likely to have no discernible adverse impact on the domestic industry if the orders are revoked.^{34 35 36}

²⁸ SAA, H.R. Rep. No. 103-316, Vol. I (1994).

²⁹ Commissioner Askey notes that the Act clearly states that the Commission is *precluded* from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

³⁰ 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.

³¹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

³² See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. 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)).

³³ See, e.g., Torrington Co. v. United States, 790 F. Supp. 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); 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).

³⁴ In making this finding, Commissioners Askey and Okun took note of the general interchangeability between and among the domestic like product and the subject merchandise from Japan, Korea, and Taiwan. They also considered the degree of price competition in the original investigations and the likely level of such competition after revocation of the orders.

³⁵ No party has argued that subject imports from either Japan, Korea, or Taiwan “are likely to have no

(continued...)

B. Reasonable Overlap of Competition³⁷

The record indicates that domestically produced and imported SSBW pipe fittings are substitutable products. Generally, SSBW pipe fittings must meet the standards set by the ASTM and ANSI, and can be used interchangeably, except in the petrochemical and nuclear industries where butt-weld fittings must be certified.^{38 39} As was true at the time of the original investigations, SSBW pipe fittings are produced and sold in the United States in two forms, finished and unfinished. Similarly, subject imports are in both finished and unfinished forms.⁴⁰ While the record of the original investigations indicated some quality differences between subject imports from Korea and Taiwan and domestically produced SSBW pipe fittings, the Commission found in its original determination that “given their significant market share, it is clear that customers view imports from Korea and Taiwan as having acceptable quality.”⁴¹

The record also indicates that the primary channel of distribution for all SSBW pipe fittings continues to be through distributors. Thus, the channels of distribution for domestic and imported SSBW

³⁵ (...continued)

discernible adverse impact” on the domestic industry and we see no basis in the record to make such a finding. For a discussion of Vice-Chairman Miller’s and Commissioners Hillman and Koplán’s analytical framework regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Commissioner Koplán’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 803-TA-13 (Review), 701-TA-249 (Review), and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplán Regarding Cumulation).

³⁶ Commissioner Askey notes that while the record clearly does not warrant a finding of no discernable adverse impact for Japan and Taiwan, the issue is somewhat close for Korea. Korean import volumes were low during the original period of investigation and in 1997-98. Confidential Report (“CR”) at I-23, Table I-2; Public Report (“PR”) at I-18, Table I-2. The Commission in its original investigation found that Korean imports undersold the domestic like product in the large majority of price comparisons. Original Determination-Taiwan at 16. Thus, while the data show only a limited Korean presence in and impact on the U.S. market both during the original investigation and currently, which suggests that their future presence will likely be limited, this presence is not so insignificant as to lead to a conclusion that these subject imports would likely have no discernable adverse impact should the order be revoked.

³⁷ Chairman Bragg joins in the Commission’s analysis and finding of a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

³⁸ Original Determination-Korea at 13; CR at I-9; PR at I-7.

³⁹ This characterization is based not only on the general functional interchangeability between the products but on the fact that customers requiring AML certification made up *at most* one-half of the U.S. market (and not even all U.S. producers were certified). CR at I-9, PR at I-8. Moreover, current UN data seem to indicate that each of the subject countries exports stainless steel butt-weld pipe fittings to the home markets of one or both of the other suppliers. Japan’s fourth- and sixth-largest markets are Taiwan and Korea, respectively. Korea’s first- and ninth-largest markets are Japan and Taiwan, respectively. Taiwan’s third-largest market is Japan. Joint Response at exh. 3.

⁴⁰ CR at I-4, I-7, I-8, I-10, I-16; PR at I-3, I-7, I-8, I-11, I-15.

⁴¹ Original Determination-Korea at 13.

pipe fittings likely would be similar. The subject and domestic merchandise have been and likely would be sold in the same or similar markets if the orders were revoked.⁴²

The other factors (simultaneous presence and sales or offers to sell in the same geographic market) are less easy to evaluate, given that, since the orders were imposed, imports of the subject merchandise from Korea have declined substantially. However, in the original investigations, the Commission found that the subject imports generally competed directly with the domestic like product and that subject imports from all three countries were sold nationwide.⁴³ Moreover, subject imports from each of these countries have continued under the orders, further suggesting their likely simultaneous presence in the U.S. market if the orders were revoked.⁴⁴

Overall, we find that there likely would be a reasonable overlap of competition between subject imports from Japan, Korea, Taiwan, and the domestic like product as well as among the subject imports from these countries, if the antidumping duty orders covering SSBW pipe fittings from these countries were revoked.

C. Other Considerations⁴⁵

As discussed above, we have also taken into account other significant conditions of competition that are likely to prevail if the orders under review were revoked in evaluating whether to cumulate subject imports. The limited record indicates that, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. In this regard, we have considered the substantial capacity in each of the subject countries,⁴⁶ the export orientation of those foreign industries,⁴⁷ and the demonstrated ability of those exporters to shift sales from one market to another.⁴⁸ For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from Japan, Korea, and Taiwan in these reviews.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON SSBW PIPE FITTINGS FROM JAPAN, KOREA, AND TAIWAN WOULD LIKELY LEAD TO

⁴² CR at I-9; PR at I-8.

⁴³ As stated above, both subject imports and the domestic like product are sold to distributors which indicates that the subject imports directly compete with the domestic like product and each other and are sold nationwide. CR at I-9; PR at I-8; Original Determination-Japan at 12; Original Determination-Korea at 11.

⁴⁴ CR at Table I-2; PR at Table I-2.

⁴⁵ Chairman Bragg does not join section III.C. of this opinion. Having found a reasonable overlap of competition, Chairman Bragg turns to the issue of no discernible adverse impact. Chairman Bragg assesses significant conditions of competition, such as the substantial capacity in the subject countries, the export orientation of the foreign industries evident in these reviews, and the demonstrated ability of those exporters to shift sales from one market to another, in her analysis of the likelihood of no discernible adverse impact if each of the orders under review is revoked. Chairman Bragg finds that revocation of each of the orders under review will likely result in a discernible adverse impact. Accordingly, Chairman Bragg cumulates all subject imports.

⁴⁶ CR at I-22 to I-24; PR at I-20 to I-23.

⁴⁷ CR at I-22, Table I-4; PR at I-21, Table I-4.

⁴⁸ CR at I-22, Table I-4; PR at I-21, Table I-4.

CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁴⁹

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or 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 an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁵⁰ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁵¹ Thus, the likelihood standard is prospective in nature.⁵² 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.”⁵³ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{54 55}

⁴⁹ Commissioner Askey dissenting with respect to Korea. Commissioner Askey joins in the discussion of the legal standard and the conditions of competition. She joins in subsections C through E only for purposes of evaluating imports from Japan and Taiwan. For her analysis with respect to Korea, see the Concurring and Dissenting Views of Commissioner Thelma J. Askey.

⁵⁰ 19 U.S.C. § 1675a(a).

⁵¹ 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.

⁵² 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 [sic] 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.

⁵³ 19 U.S.C. § 1675a(a)(5).

⁵⁴ SAA at 887. 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. *Id.*

⁵⁵ 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, this 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.

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 fundamental 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.⁵⁶ 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.^{57 58}

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination based on the facts available, in accordance with section 776.⁵⁹ We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.⁶⁰ As noted above, no respondent interested party responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the records in the Commission's original investigations on SSBW pipe fittings, limited information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers.

For the reasons stated below, we determine that revocation of the antidumping duty orders on SSBW pipe fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

⁵⁶ 19 U.S.C. § 1675a(a)(1).

⁵⁷ 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.

⁵⁸ 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 stated in its expedited five-year review determinations that it has not issued any duty absorption finding in these cases. 64 Fed. Reg. 73013 (Dec. 29, 1999).

⁵⁹ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to use the facts otherwise available in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

⁶⁰ SAA at 869.

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the Commission is directed to evaluate all relevant economic factors within the context of the business cycle and conditions of competition that are distinctive to the affected industry.⁶¹ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for SSBW pipe fittings.⁶²

SSBW pipe fittings are produced and sold in two forms in the United States, finished and unfinished, and are relatively simple to manufacture.⁶³ The responding domestic producers state that because of modest barriers to entry, the number of producers of SSBW pipe fittings has increased worldwide over the past 10 years.⁶⁴ The domestic industry has undergone some restructuring since the period examined in the original investigations. During the 1988 Japan investigation, 11 firms produced the bulk of SSBW pipe fittings under 14 inches in inside diameter in the United States.⁶⁵ The domestic interested parties have identified only nine U.S. firms that currently manufacture the domestic like product.⁶⁶

As discussed above, domestic and imported SSBW pipe fittings are generally substitutable. However, we note that SSBW pipe fittings used in the petrochemical and nuclear industries must be certified.⁶⁷

The demand for SSBW pipe fittings is dependent on the demand for the product for use in facilities such as chemical plants, pharmaceutical plants, food processing plants, gas processing facilities, and commercial nuclear power plants.⁶⁸ Apparent U.S. consumption of SSBW pipe fittings has increased since the time of the investigation of Japan, more than doubling between 1984 and 1998.⁶⁹ However, although apparent U.S. consumption increased, U.S. producers' market share decreased from *** percent in 1984 to *** percent in 1986.⁷⁰ During the period reviewed in the Korea and Taiwan investigations, the domestic producers' market share decreased *** from *** percent in 1989 to *** percent in 1991, after peaking at *** percent in 1990.⁷¹ At present, the market share held by the reporting U.S. producers is estimated to be *** percent of apparent U.S. consumption.⁷²

With regard to subject imports' share of the U.S. market, subject imports from Japan held a *** percent share of the U.S. market in 1986,⁷³ while subject imports from Korea and Taiwan held a cumulated

⁶¹ 19 U.S.C. § 1675a(a)(4).

⁶² Commissioner Askey dissenting with respect to Korea.

⁶³ CR at I-4, I-7, I-10; PR at I-3, I-7, I-8, I-11, I-15.

⁶⁴ Joint Response at 27.

⁶⁵ CR at I-10; PR at I-9.

⁶⁶ CR at I-10, I-11; PR at I-9.

⁶⁷ Original Determination-Japan at 14; Original Determination-Korea at 13; CR at I-9; PR at I-8.

⁶⁸ CR at I-22; PR at I-17.

⁶⁹ In 1984, U.S. apparent consumption was *** pounds. In 1998, U.S. apparent consumption had risen to *** pounds. CR at I-22, Table I-3; PR at I-19, Table I-3.

⁷⁰ CR at I-22, Table I-3; PR at I-19, Table I-3.

⁷¹ CR at I-22, Table I-3; PR at I-19, Table I-3.

⁷² CR at Table I-3; PR at Table I-3.

⁷³ CR at Table I-3; PR at Table I-3.

share of *** percent of the U.S. market in 1991.^{74 75} In 1998, subject imports from Japan, Korea, and Taiwan held approximately *** percent of the U.S. market.⁷⁶

In 1984, non-subject imports held a *** percent share of the U.S. market, which rose to *** percent in 1989.⁷⁷ Non-subject imports' market share increased to *** percent by 1998.⁷⁸

During 1984-86, the period examined in the Japan investigation, U.S. capacity utilization was under 50 percent. In 1989, the first year examined in the Korea and Taiwan investigations, production levels had increased by 14 percent from that reported in 1986, and capacity utilization rose to 76 percent.⁷⁹ During 1997, U.S. production levels of SSBW pipe fittings fell, and capacity utilization levels were ***.⁸⁰

Based on the record evidence, we find that these conditions of competition in the domestic SSBW pipe fittings market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we have taken these conditions of competition into account in assessing the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed 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.⁸¹ In doing so, the Commission must consider all relevant economic factors, including four enumerated factors: (1) any likely increase in capacity or existing unused 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.⁸²

During the original Japan investigation, subject imports rose dramatically, increasing from *** pounds in 1984 to *** pounds in 1986.⁸³ At the same time, U.S. market penetration by subject imports from Japan increased from *** percent in 1984 to *** percent in 1985, before falling to *** percent in 1986.⁸⁴ During the original investigations of Korea and Taiwan, subject imports increased from 1.7 million

⁷⁴ CR at Table I-3; PR at Table I-3.

⁷⁵ Commissioner Askey notes that in 1991, subject imports from Taiwan held a *** percent market share while those from Korea held only a *** percent share. CR at Table I-3; PR at Table I-3.

⁷⁶ CR at Table I-3; PR at Table I-3.

⁷⁷ CR at Table I-3; PR at Table I-3.

⁷⁸ CR at Table I-3; PR at Table I-3.

⁷⁹ CR at I-13, Table I-4; PR at I-13-14; Table I-3.

⁸⁰ CR at I-14, Table I-4; PR at I-13-14; Table I-3.

⁸¹ 19 U.S.C. § 1675a(a)(2).

⁸² 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁸³ CR at Table I-3; PR at Table I-3.

⁸⁴ CR at Table I-3; PR at Table I-3.

pounds in 1989 to 2.7 million pounds in 1991.^{85 86 87} U.S. market penetration by subject imports from Korea and Taiwan rose from *** percent in 1989 to *** percent in 1991.⁸⁸

We find that subject import volume is likely to be significant if the orders are revoked. First, there was considerable SSBW pipe fittings capacity in the subject countries at the time of the original investigations. At the time of the 1986-87 investigation, Japanese capacity to produce SSBW pipe fittings alone was almost one-and-one half times apparent U.S. consumption in 1986.⁸⁹ Similarly, in 1991, capacity (which had almost doubled from 1989-91) was reported to be the equivalent of 62 percent of U.S. apparent consumption, not including data for one non-responding manufacturer.⁹⁰ Additionally, Korea was able to produce SSBW pipe fittings valued at \$8.2 million in 1991, as indicated by its total export figures for that year.^{91 92}

While current capacity data for the subject countries are not available, data on the record show worldwide export levels for subject countries in the past two years. Total Japanese exports in 1986, the last year of that original investigation, were 3.6 million pounds; Japanese exports in 1997 and 1998 were *** pounds and *** pounds, respectively, indicating that the Japanese industry continues to export substantial quantities of SSBW pipe fittings.⁹³ In 1991, the last year of the Taiwan original investigation, total exports were *** pounds;⁹⁴ while the record does not contain current volume data, available United Nations data show that 1997 exports were double those of Japan by value, likewise indicating substantial continued exports.⁹⁵ Korean exports in 1991 were valued at \$8.2 million, and were \$*** and \$*** million in 1997 and 1998, respectively.⁹⁶ Accordingly, there remain substantial quantities of subject SSBW pipe fitting exports from these countries that could be directed to the United States should the orders be revoked.⁹⁷

⁸⁵ CR at Table I-2; PR at Table I-2.

⁸⁶ Individually, subject imports from Korea more than tripled during this period and subject imports from Taiwan rose by 44 percent. CR at I-18 to I-19, Table I-2; PR at I-19 to I-20, Table I-2.

⁸⁷ Commissioner Askey notes that subject imports from Taiwan increased from 1.5 million pounds in 1989 to 2.1 million pounds in 1999, while subject imports from Korea were only 170,000 pounds in 1989 and 524,000 pounds in 1991. CR at I-18 to I-19, Table I-2; PR at I-19 to I-20, Table I-2.

⁸⁸ CR at Table I-3; PR at Table I-3.

⁸⁹ In 1986, Japanese capacity was 12.1 million pounds and U.S. apparent consumption was 8.5 million pounds. CR at Table I-3, Table I-4; PR at Table I-3, Table I-4.

⁹⁰ In 1991, Taiwan's capacity was reported to be *** pounds, up from *** pounds in 1989. CR at Table I-4; PR at Table I-4. In 1991, U.S. apparent consumption was 10.3 million pounds. CR at Table I-3; PR at Table I-3.

⁹¹ In 1991, U.S. apparent consumption was 10.3 million pounds. CR at Table I-3; PR at Table I-3.

⁹² Commissioner Askey notes that the market share of subject imports from Taiwan rose from *** percent in 1989 to *** percent in 1991, while the market share of those from Korea rose only from *** percent in 1989 to *** percent in 1991. CR at Table I-3; PR at Table I-3.

⁹³ CR at I-27, Table I-4; PR at I-22, Table I-4.

⁹⁴ CR at I-28, Table I-4; PR at I-23, Table I-4.

⁹⁵ Joint Response, exh. 3. The domestic interested parties state that the data contained in the exhibit are for 1997. *Id.* at 23, n. 5.

⁹⁶ CR at Table I-4, I-27; PR at Table I-4, I-22; official U.N. statistics.

⁹⁷ See the Concurring and Dissenting Views of Commissioner Thelma J. Askey for her conclusions regarding Korean exports.

At the time of the original investigations, home shipments in Japan and Taiwan were declining, while exports, including those to the United States, were increasing.⁹⁸ Although the level of Korean home shipments was unknown, Korean exports to the United States and other countries also increased during the original investigation of Korea.⁹⁹

The past ability of the subject producers to divert SSBW pipe fittings shipments from their home and third country markets to the United States, their substantial exports, and their apparent substantial capacity, indicate that they are likely to commence significant exports to the United States upon revocation of the antidumping duty orders.^{100 101} Consequently, based on the record in these reviews, we conclude that the volume of cumulated subject imports would likely increase to a significant level and would regain significant U.S. market share if the orders are revoked.¹⁰²

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products 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 domestic like products.¹⁰³

In the original investigations, the Commission found that the subject imports consistently undersold the domestic like product and had an adverse impact on prices in the domestic industry.¹⁰⁴ Given the

⁹⁸ Japanese exports to the United States increased from 2.0 million pounds in 1984 to 2.2 million pounds in 1986. Japanese exports to other countries increased from 1.2 million pounds in 1984 to 1.4 million pounds in 1986. At the same time, Japanese home shipments decreased from 8.7 million pounds in 1984 to 6.9 million pounds in 1986. Similarly, Taiwan's exports to the United States increased from *** pounds in 1989 to *** pounds in 1991 and Taiwan's exports to other countries increased from *** pounds to *** pounds. In contrast, Taiwan's home shipments dropped from *** pounds to *** pounds. CR at I-28, Table I-4; PR at I-22, Table I-4.

⁹⁹ Korean exports to the United States increased from \$717,000 in 1989 to \$779,000 in 1991. The value of Korean exports to other countries increased from \$7.3 million in 1989 to \$7.4 million in 1991. CR at Table I-4, I-27; PR at Table I-4, I-22.

¹⁰⁰ CR at I-26, Table I-4; PR I-17, Table I-4.

¹⁰¹ Chairman Bragg infers that in the absence of the orders, SSBW producers from each subject country would revert to their historical emphasis on exporting to the United States as evidenced in the Commission's original determinations. Based upon the record in these grouped reviews, Chairman Bragg finds that this historical emphasis will result in significant volumes of subject imports from Japan, Korea, and Taiwan into the United States.

¹⁰² Commissioner Askey dissenting with respect to Korea.

¹⁰³ 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.

¹⁰⁴ In the original Japan determination, the Commission found that imports of [SSBW pipe fittings] from Japan have consistently been below [stainless steel butt-weld pipe fittings] in the United States throughout the period of investigation by margins ranging from 4 to 60 percent. Original Determination-Japan at 14-16. In the Korea and Taiwan investigations, the Commission similarly found that Korean SSBW pipe fittings undersold the domestic products in 16 of 17 possible price comparisons, and Taiwan imports undersold the domestic product in all

(continued...)

general substitutability of subject imports with the domestic like product,¹⁰⁵ price appears to be an important factor in purchasing decisions. Moreover, given the large presence of low-priced non-subject imports in the U.S. market, the subject countries have further incentive to lower their prices to recapture their U.S. market share. Thus, increased sales of subject imports likely would be achieved by means of aggressive pricing.

The evidence in the record regarding prices of subject imports in the U.S. market is limited, but the evidence suggests that the subject imports would likely continue to undersell the domestic product. In 1998, the average landed duty-paid reported unit value for the three subject countries was approximately \$4.17 per pound, compared to the average unit value of \$**** per pound for the domestic like product.¹⁰⁶

The limited information in the record regarding current pricing indicates that cumulated subject imports would likely undersell the domestic product and have significant adverse price effects, as they did before the imposition of the orders, if the orders were revoked. We find that, given the importance of price in purchasing decisions, the competitive presence of low-priced non-subject imports, and the evidence of continued underselling, even in face of the orders, it is likely that, should the orders be revoked, subject imports from Japan, Korea, and Taiwan would enter the United States at prices that would significantly depress or suppress U.S. prices.

For the foregoing reasons, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the cumulated subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.¹⁰⁷

E. Likely Impact of Cumulated Subject Imports

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 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.¹⁰⁸ 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.¹⁰⁹ As instructed by the statute, we have considered the

¹⁰⁴ (...continued)
instances. Original Determination-Korea at 16-17.

¹⁰⁵ Original Determination-Korea at 13; CR at I-9; PR at I-8.

¹⁰⁶ CR at I-15, Table I-2; PR at I-12, Table I-2.

¹⁰⁷ Commissioner Askey dissenting with respect to Korea.

¹⁰⁸ 19 U.S.C. § 1675a(a)(4).

¹⁰⁹ 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 determinations, Commerce found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the following margins: Japan - Mic Horo 65.08 percent, Nippon Benkan Kogyo, K.K. 37.24 percent, and All Others

(continued...)

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 orders are revoked.¹¹⁰

In the original determination for Japan, the Commission found that the increasing volume of the lower-priced subject imports, and the significant market share accounted for by those imports, depressed domestic prices and caused the U.S. industry to suffer growing financial losses.¹¹¹ In its original determination for Korea and Taiwan, the Commission found that the significant increase in cumulated imports, their large market share, and the substitutability of the subject imports and the domestic like product led to decreased sales of the domestic like product.¹¹² In addition, the Commission found that the subject imports had an adverse impact on the domestic industry by lowering prices and lowering sales volumes that resulted in significant declines in operating profits and employment.¹¹³

The imposition of the antidumping duty orders had a positive effect on the domestic industry's performance. The domestic industry had an operating *** margin of only *** percent in 1985.¹¹⁴ However, the domestic industry's operating *** margin improved to *** percent in 1989, two years after the issuance of the antidumping duty order against Japan. Subsequently, subject imports from Korea and Taiwan increased, and by 1991, the domestic industry's operating *** margin had fallen to *** percent.¹¹⁵ In 1997, four years after the Korea and Taiwan orders were in place and nine years after the Japan order was imposed, there was a substantial increase in non-subject imports, and the domestic industry showed a *** percent operating ***.¹¹⁶ As the domestic industry argued in their joint response, it appears that the orders have helped sustain the domestic industry's performance, despite the increased competition from non-subject sources, by limiting subject imports.

However, based on the most recent data available, we find that the domestic industry is currently vulnerable to material injury if the antidumping duty orders are revoked.¹¹⁷ In 1998, the domestic industry reported an *** of *** percent, and domestic shipment levels were below those in most of the years examined during the original investigations.¹¹⁸ Capacity utilization levels are ***, but below those reported during the Korea and Taiwan investigations.¹¹⁹ While domestic average unit values increased following imposition of the antidumping duty order against subject imports from Japan, to \$*** per pound in 1989,

¹⁰⁹ (...continued)

49.31 percent; Korea - The Asia Bend Co. Ltd. 21.20 percent, and All Others 21.20 percent; Taiwan - Tachai Yung Ho Machine Industry Co. Ltd. 76.20 percent, Ta Chen Stainless Pipe Co. Ltd. 0.64 percent, Tru-Flow Industrial Co., Ltd. 76.20 percent, and All Others 51.01 percent. 65 Fed. Reg. 5604 (Feb. 4, 2000).

¹¹⁰ 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.

¹¹¹ Original Determination-Japan at 15.

¹¹² Original Determination-Korea at 17.

¹¹³ Original Determination-Korea at 17.

¹¹⁴ CR at Table I-1; PR at Table I-1.

¹¹⁵ CR at Table I-1; PR at Table I-1.

¹¹⁶ CR at Table I-1; PR at Table I-1.

¹¹⁷ Commissioners Askey and Okun do not concur in this finding.

¹¹⁸ CR at Table I-1; PR at Table I-1.

¹¹⁹ CR at Table I-1; PR at Table I-1.

average unit values in 1997 and 1998 were similar to those in place during the original investigations concerning Korea and Taiwan, at \$*** per pound in 1997 and \$*** per pound in 1998.¹²⁰ Based on the foregoing, we conclude that the domestic industry is in a weakened state as contemplated by the statute's vulnerability criterion.^{121 122}

As discussed above, revocation of the antidumping duty orders would likely lead to significant increases in the volume of cumulated subject imports at prices 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 adverse impact on the domestic industry and would likely cause the domestic industry to lose market share.

The price and volume declines would likely have a significant adverse impact on the production, shipment, 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 as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for domestic firms.

Accordingly, based on the limited record in these reviews, we conclude that, if the antidumping duty orders are revoked, subject imports from Japan, Korea, and Taiwan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.¹²³

¹²⁰ CR at Table I-1; PR at Table I-1.

¹²¹ 19 U.S.C. § 1675a(1)(C). 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 If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.”).

¹²² Commissioners Askey and Okun observe that the U.S. shipments of the four reporting companies alone are now comparable in volume to the U.S. shipments of the U.S. industry during the periods examined in the previous investigations. They note that the four reporting U.S. producers were *** in 1997, and that they continued to increase their capacity in 1998. CR at I-13, Table I-1; PR at I-11, Table I-1. They further note that the quantity of the four reporting firms' U.S. shipments remained fairly stable between 1997 and 1998. Thus, in the face of an apparent sharp decline in U.S. consumption, the four reporting U.S. producers actually gained market share. CR at I-23, Table I-3; PR at I-21, Table I-3. Therefore, Commissioners Askey and Okun do not find the domestic industry to be in a weakened state as a result of reported declines in average unit values and revenues in 1998 that accompanied increases in reported capacity and a decrease in apparent U.S. consumption.

¹²³ Commissioner Askey dissenting with respect to Korea.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of SSBW pipe fittings from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic SSBW pipe fittings industry within a reasonably foreseeable time.¹²⁴

¹²⁴ Commissioner Askey dissenting with respect to Korea.

CONCURRING 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 (“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 concur in the Majority’s determination that revocation of the antidumping duty order covering stainless steel butt-weld pipe fittings (“SSBW pipe fittings”) from Japan 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 determine that revocation of the antidumping duty order covering SSBW pipe fittings from Korea 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.

Except as otherwise noted, I join in the Majority’s findings with respect to the domestic like product and domestic industry, the legal standards governing the Commission’s cumulation and causation analysis in sunset reviews, conditions of competition in this marketplace, and the likelihood of recurrence or continuation of material injury by reason of the subject imports from Japan and Taiwan. However, I have determined to exercise my discretion with respect to cumulation and cumulate subject imports from Japan and Taiwan but not those from Korea. I also determine that revocation of the order covering subject imports from Korea would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. I discuss the reasons for these determinations below.

As a preliminary matter, I note that in response to its notice of institution, the Commission received one joint response from four domestic producers who together represent approximately *** percent of domestic industry SSBW pipe fitting production, while no respondent interested parties chose to participate in the review. Given the level of responses in this review, the Commission has a somewhat limited record to review in determining whether revocation of the orders will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future. In a case such as this, where domestic interested parties (and no respondent producers, exporters or importers) have fully participated in the review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal from the other side. 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.² The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information and evidence.³

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

² 19 U.S.C. § 1675a(a).

³ 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.⁴ 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.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 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.⁶ Therefore, 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, to determine whether I am precluded from cumulating the subject imports in my analysis, I 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.⁷

In this case, the reviews of the orders for the three subject countries were initiated on the same day. Thus, I first consider whether the subject imports from each of Japan, Korea or Taiwan are likely to have a “discernible adverse impact” on the domestic industry if the orders covering each country were to be revoked. 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 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.

⁴ 19 U.S.C. § 1675a(a)(7).

⁵ The four factors the Commission generally considers 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.

⁶ Section 752(a)(7) of the Act, 19 U.S.C. § 1675a(a)(7).

⁷ 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 (Oct. 1999) at 31.

Along with the rest of my colleagues, I find that subject imports are likely to have a discernible adverse impact on the domestic industry.⁸ Therefore, I proceed to consider whether it is appropriate to exercise my discretion to cumulate subject imports from the three subject countries.

B. Exercise of Discretion Not to Cumulate the Subject Imports from Japan and Taiwan with those from Korea

Although I find that the subject imports from all three countries are likely to have a discernible adverse impact on the domestic industry as a result of revocation of the order, I have chosen not to exercise my discretion to cumulate the subject imports from Japan and Taiwan with those from Korea for purposes of my analysis in this review. In particular, I find that U.S. import and worldwide export patterns for Japan and Taiwan are similar to each other but are significantly different from those of Korea. Therefore, I cumulate subject imports from Japan with those from Taiwan, but do not cumulate subject imports from those two countries with those from Korea.

During the original investigations, imports from Japan and Taiwan increased substantially. The volume of the subject imports from Japan quadrupled over the course of the original investigation, increasing from *** pounds in 1984 to *** pounds in 1986.⁹ Their imports declined substantially thereafter.¹⁰ The market share of the subject imports from Japan increased from *** percent in 1984 to *** percent in 1985 before declining slightly, to *** percent in 1986.¹¹ Taiwanese imports increased by 36 percent over the original POI, increasing from 1.5 million pounds in 1989 to 2.2 million pounds in 1991.¹² Taiwanese imports fluctuated thereafter, and were 2.0 million pounds and 705,000 pounds, respectively, in 1997 and 1998.¹³ Taiwanese subject import market share increased from *** percent in 1989 to *** percent in 1991 and was *** percent in 1997.¹⁴

In recent years, Japanese and Taiwanese world export levels have remained strong. Total Japanese exports in 1986, the last year of that original investigation, were 3.6 million pounds; Japanese worldwide exports in 1997 and 1998 were *** pounds and *** pounds, respectively.¹⁵ In 1991, the last year of the Taiwan original investigation, total Taiwanese worldwide exports were *** pounds;¹⁶ while the record does not contain current volume data, available United Nations data shows that 1997 Taiwanese exports were double those of Japan by value, likewise indicating substantial continued exports.¹⁷

Accordingly, Japanese and Taiwanese import levels were high during the original POI and their worldwide exports remain strong in recent years. Therefore, I find it appropriate to cumulate subject imports from those two countries because of their similar historical patterns and likely future patterns. For

⁸ Views of the Commission, Section III.A.

⁹ Table I-3, CR at I-23, PR at I-18.

¹⁰ Figure I-1, CR at I-17, PR at I-14.

¹¹ Table I-3, CR at I-23, PR at I-18.

¹² Table I-2, CR at I-18, PR at 15.

¹³ Figure I-1, CR at I-17, PR at I-18.

¹⁴ *Id.*

¹⁵ Table I-4, CR at I-27, PR at I-21.

¹⁶ Table I-4, CR at I-28, PR at I-22.

¹⁷ Petitioner's Response, Exhibit 3. Petitioners state that the data contained in the exhibit is for 1997. *Id.* at 23, n. 5.

the reasons discussed in Section III.B of the Views of the Commission, I find that there would likely be a reasonable overlap of competition between subject imports from Japan and Taiwan and the domestic like product, as well as among the subject imports from those two countries, if the antidumping duty orders covering SSBW pipe fittings from these countries were revoked.

By contrast, while Korean imports increased over the original POI, their levels remained small relative to domestic consumption and to other subject imports, and Korean worldwide exports have declined substantially since that time. Korean imports tripled over the original POI, but they remained at a low level relative to U.S. apparent consumption; they increased between 1989 and 1991, growing from 170,000 pounds in 1989 to 524,000 pounds in 1991.¹⁸ This represented domestic apparent consumption shares of only *** percent and *** percent, respectively, well below Japanese and Taiwanese levels, which reached to *** percent and *** percent, respectively, and non-subject shares, which were *** percent and *** percent, respectively.¹⁹ Korean imports remained at extremely low levels thereafter,²⁰ and were 195,000 pounds and 96,000 pounds in 1997 and 1998, respectively.²¹ Accordingly, even at their highest level during the original POI, Korean import volumes were substantially less than those of Japan and Taiwan and accounted for only a small fraction of domestic apparent consumption.

Moreover, the record shows that Korean worldwide exports in recent years were substantially lower than they were during the original investigation and than recent Japanese and Taiwanese exports. Korean worldwide exports in 1991 were valued at \$8.2 million, and at \$*** million in 1998.²² Therefore, available data shows that Korean producers have been exporting substantially less subject merchandise worldwide in recent years than have the Japanese and Taiwanese producers.

In sum, the record indicates that any increases in the volume of subject imports from Japan and Taiwan would be significantly higher than those from Korea should the orders be revoked. This shows that the subject imports from Japan and Taiwan would be likely to exhibit significantly different volume trends in the reasonably foreseeable future. In addition, the likely margins found for Korean producers are one-third to one-half of those found for Japanese producers and one-quarter to one-half those found for all but one Taiwanese producer.²³ This suggests that the Japanese and Taiwanese producers may be more aggressive in their pricing practices upon revocation of the order than the Korean producers. Therefore, because of these significant differences, I exercise my discretion to cumulate the subject imports from Japan and Taiwan but do not cumulate them with those from Korea.

II. REVOCATION OF THE COUNTERVAILING DUTY ORDER ON SSBW PIPE FITTINGS FROM KOREA IS NOT LIKELY TO LEAD TO CONTINUATION OR

¹⁸ Table I-2, CR at I-18, PR at 15.

¹⁹ *Id.* Korean imports were only 100,000 pounds in 1990, Table I-2, CR at I-18, PR at 15, representing *** percent of domestic apparent consumption. Table I-3, CR at I-23, PR at 18.

²⁰ Figure I-1, CR at I-17, PR at I-14.

²¹ Table I-2, CR at I-18, PR at 15.

²² Table I-4, CR at I-27, PR at I-22; Official U.N. statistics. Korean producers provided only value data in the original investigation, so value rather than volume data is used here for comparison purposes. See 1993 Korea Staff Report at I-45.

²³ Commerce found the following likely margins: for Japanese producers, individual company rates of 65.08 percent and 37.24 percent and an All Others rate of 49.31 percent; for Korean producers, individual company and an All Others rates of 21.20 percent; and for Taiwanese producers, individual company rates of 0.64 percent and 76.20 percent and an All Others rate of 51.01 percent. 65 Fed. Reg. 5604 (Feb. 4, 2000).

RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. *Likely Volume of Subject Imports from Korea*

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.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 the original determination concerning Korea, the Commission found that the domestic industry was materially injured by reason of imports of SSBW pipe fittings from Korea that were sold at less than fair value.²⁶ The Commission found that cumulated subject imports from Taiwan and Korea had decreased from *** percent in 1989 to *** percent in 1990 before increasing to *** percent in 1991.²⁷ The Commission concluded that the volume of the cumulated subject imports was significant. However, the market share for Korean imports alone was quite low, at *** percent in 1989, *** percent in 1990 and *** percent in 1991,²⁸ based on imports of 170,000 pounds, 100,000 pounds, and 524,000 pounds, respectively.²⁹

Korean imports volumes have remained at extremely low levels since the order was put in place in 1993.³⁰ The import levels in 1997 and 1998, which were 186,000 pounds and 96,000 pounds, respectively, are roughly comparable to 1989 and 1990 levels.³¹ Korean market share has remained at similarly low levels of *** percent and *** percent, respectively, in 1997 and 1998.³²

While Korean production and capacity data is not available for either the original POI or for recent years, available Korean worldwide export data shows that Korean exports have declined substantially. Korean worldwide exports were valued at \$8.0 million, \$4.7 million and \$8.2 million in 1989-91, respectively; by contrast, they were \$*** and \$*** in 1997 and 1998, respectively.³³ This substantial decrease in worldwide exports indicates that Korea has not been focused on export markets in recent years,

²⁴ 19 U.S.C. § 1675a(a)(2).

²⁵ 19 U.S.C. § 1675a(a)(2)(A)-(D).

²⁶ Certain Stainless Steel Butt-Weld Pipe Fittings from Korea, Inv. No. 731-TA-563 (Final), USITC Pub. 2601 (Feb. 1993) at 17.

²⁷ *Id.* at 15.

²⁸ Table I-3, CR at I-23, PR at I-18.

²⁹ Table I-2, CR at I-18, PR at I-15.

³⁰ See Figure I-1, CR at I-17, PR at I-14.

³¹ Table I-2, CR at I-18, PR at I-15.

³² Table I-3, CR at I-23, PR at I-18.

³³ Table I-4, CR at I-27, PR at I-21; Official U.N. statistics.

further indicating that Korean imports would not be likely to increase to any significant degree should the order be revoked.

Moreover, non-subject imports, which include imports from Japan and Taiwan for purposes of this analysis, have been very high, holding at least half of domestic consumption, both during the original POI and in 1997-98. Nonsubject imports held *** percent, *** percent and *** percent shares of domestic consumption in 1989-91, respectively, and *** percent in 1997 and *** percent in 1998.³⁴ Thus, if Korean imports were to increase subsequent to revocation of the order, such an increase would come predominantly at the expense of non-subject imports.

Therefore, I do not find that the past and current volume levels indicate that there will be a significant adverse volume effect on the industry if the order covering Korea is revoked. Korean imports were at relatively low levels throughout the original POI, particularly in comparison with the size of non-subject imports, and there has been an overall decrease in worldwide Korean exports. While I find that imports from Korea would have a discernable adverse impact on the domestic industry should the order be revoked, I do not find such impact to be material.

B. Likely Price Effects of Subject Imports from Korea

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.³⁵

In the original Korea determination, the Commission found that the subject imports from Korea had undersold the domestic merchandise in 16 of 17 quarterly price comparisons, by margins of more than 20 percent in 11 of those comparisons.³⁶ The Commission noted that Korean prices were declining during the POI, at the same time that the cost of goods sold, as a percentage of net sales, were increasing.³⁷

The record does not contain current pricing data and only limited pricing data was available during the original investigation.³⁸ Available landed duty-paid unit value data shows Korean unit values of \$4.13 and \$3.79 per pound in 1997 and 1998, respectively.³⁹ Domestic producer domestic shipment unit values for 1997 and 1998 were \$*** and \$***, respectively. I find AUV comparisons generally to be of limited probative value; their comparative value is particularly limited in this review because of the lack of current product mix and product quality information and because the domestic and import AUVs are calculated at different levels of trade.

³⁴ *Id.*

³⁵ 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.

³⁶ USITC Pub. 2601 at 16.

³⁷ *Id.*

³⁸ 54 direct price comparisons were available for Taiwanese imports but only 17 comparisons for Korean imports. USITC Pub. 2601 at 16. The Japanese investigation involved 99 direct price comparisons. USITC Pub. 2067 at Table 15.

³⁹ Table I-2, CR at I-18, PR at I-15.

The limited record suggests that Korean imports have undersold domestic merchandise and may continue to do so again in the future. However, as I indicate above in my discussion of the likely volume effects of the imports from Korea, I find that the minimal additional volumes that are likely to enter the United States as a result of revocation will have only a minimal impact on domestic prices.

Accordingly, I find that the subject imports from Korea would not be likely to have a significant adverse effect on domestic prices within a reasonably foreseeable time if the order is revoked.

C. Likely Impact of Subject Imports from Korea

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.⁴⁰ 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.⁴¹

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 those orders are revoked.⁴² Generally, the limited available data shows the domestic industry's financial condition has declined since the original period of investigation for Korea. The industry's market share has declined since the original period and the industry now has a relatively small share of the domestic market: In 1989 and 1991 the domestic industry held market shares of roughly *** percent and in 1997 and 1998, held market shares of *** percent and *** percent, respectively.⁴³ In addition, in 1998 the industry showed an *** of *** percent and declining domestic shipments, unit values and operating income compared to 1997.⁴⁴

Nonetheless, although the industry is now in a weakened condition, the record indicates that the small additional volumes of SSBW pipe fittings from Korea that are likely to enter the market upon revocation of the order will not have a material adverse impact on the industry. As I discussed above, the record of this review indicates that the subject imports from Korea are not likely to have significant adverse volume or price effects on the domestic industry within the reasonably foreseeable future if the order were revoked. I also find that 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, or investment within a reasonably foreseeable time in the event the order is revoked. Further, I find that revocation of the order

⁴⁰ 19 U.S.C. § 1675a(a)(4).

⁴¹ *Id.*

⁴² 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.

⁴³ Table I-1, CR at I-13, PR at I-10.

⁴⁴ *Id.*

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 order covering the subject imports from Korea is revoked.

III. CONCLUSION

For the reasons stated above, I determine that revocation of the antidumping duty order on SSBW pipe fittings from Korea would not be likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.