

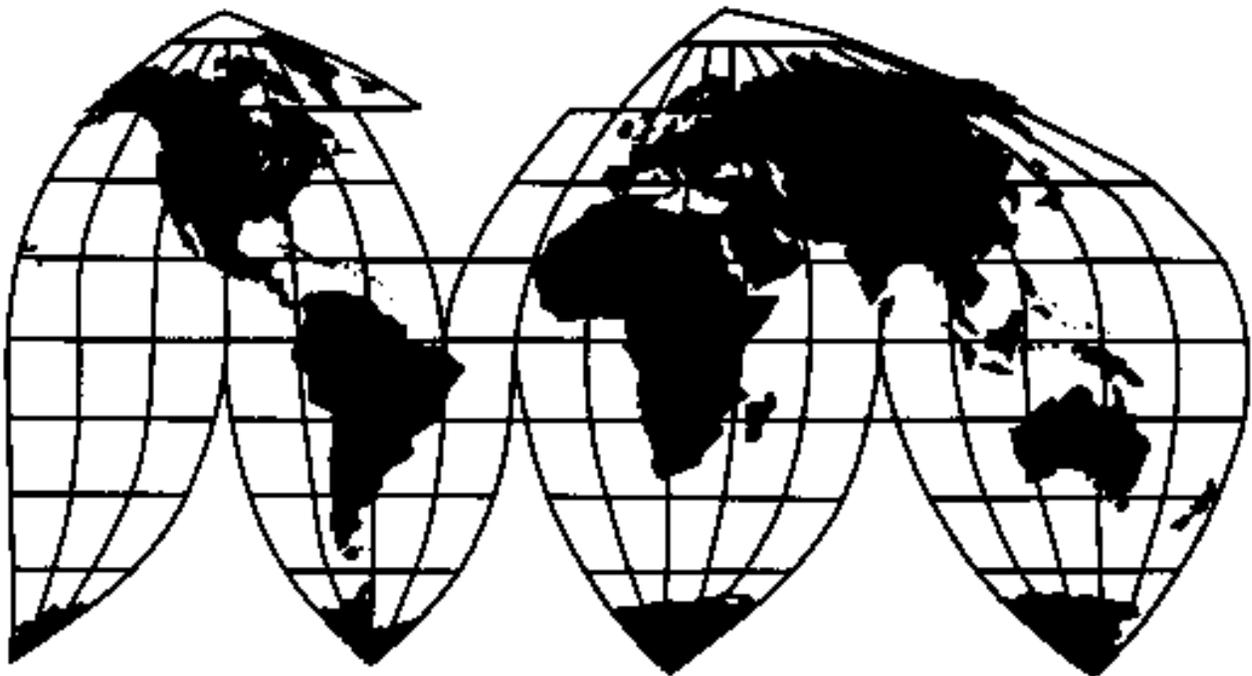
Certain Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia, and the Philippines

Investigations Nos. 731-TA-864 through 867 (Preliminary)

Publication 3281

February 2000

U.S. International Trade Commission



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CERTAIN STAINLESS STEEL BUTT-WELD PIPE FITTINGS FROM GERMANY, ITALY, MALAYSIA, AND THE PHILIPPINES

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Germany, Italy, Malaysia, and the Philippines of certain stainless steel butt-weld pipe fittings, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigations is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On December 29, 1999, a petition was filed with the Commission and the Department of Commerce on behalf of Alloy Piping Products, Inc., Shreveport, LA; Flowline Division of Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; and Taylor Forge Stainless, Inc., North Branch, NJ, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia, and the Philippines. Accordingly, effective December 29, 1999, the Commission instituted antidumping duty investigations Nos. 731-TA-864-867 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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* of January 7, 2000 (65 FR 1174). The conference was held in Washington, DC, on January 19, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these preliminary investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Germany, Italy, Malaysia, and the Philippines of certain stainless steel butt-weld pipe fittings that are allegedly sold in the United States at less than fair value (“LTFV”).

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “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.”⁴ In turn, 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”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

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

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., NEC Corp. v. Dep’t of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990) aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and
(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as follows:

{c}ertain stainless steel butt-weld pipe fittings (pipe fittings) ... under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and “commodity” and “specialty” fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings and fittings made from any material other than stainless steel.

The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

These investigations do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to these investigations are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these

⁶ (...continued)

production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

investigations is dispositive.¹⁰

Stainless steel butt-weld pipe fittings (herein “butt-weld fittings”) can be produced in various shapes, including 90 degree long and short radius elbows, 45 degree long and short radius elbows, 180 degree long radius returns, caps, straight tees, reducing outlet tees, stub-ends, concentric reducers, eccentric reducers, straight crosses, and reducing outlet crosses. Butt-weld fittings are used to join pipes in straight lines and to change or divide the flow of fluids. They may be used in piping systems requiring permanent welded connections and involving any of the following conditions: potential for corrosion or contamination; high or extremely low temperatures; or high pressure. Applications include, *inter alia*, piping systems for chemical plants, refineries, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment, and nuclear power plants.¹¹

C. Domestic Like Product Issues

Petitioners contend that the Commission should find a single like product consisting of all finished and unfinished butt-weld fittings having an outside diameter of less than 14 inches.¹² Malaysian producer Kanzen is the only respondent that expressly requested that the Commission adopt a domestic like product other than the one proposed by petitioners. Kanzen contends that the domestic like product should be expanded to include butt-weld fittings having an outside diameter of greater than 14 inches (“large-diameter butt-weld fittings”).¹³

The record does not indicate any differences in uses or physical characteristics between large-diameter butt-weld fittings and butt-weld fittings having an outside diameter of less than 14 inches (“small-diameter butt-weld fittings”), other than size. We find that there is limited interchangeability between large- and small-diameter butt-weld fittings inasmuch as large-diameter butt-weld fittings are made to order and small-diameter butt-weld fittings are produced for inventory.¹⁴ These facts further suggest that the channels of distribution for large- and small-diameter butt-weld fittings differ.

There are significant differences in the inputs, equipment, and workers necessary to produce large- and small-diameter butt-weld fittings. Small-diameter butt-weld fittings are cold formed from seamless or welded stainless steel pipe,¹⁵ whereas large-diameter butt-weld fittings are produced from stainless steel plate.¹⁶ According to petitioners, only *** domestic producers produce both large- and small-diameter butt-weld fittings; other producers are dedicated to the manufacture of one type or the other.¹⁷ Petitioners contend that special dies, different production methods and equipment, and different workers are used to

¹⁰ 65 Fed. Reg. 4595, 4596 (Jan. 31, 2000).

¹¹ Confidential Report (“CR”) at I-4 to I-5; Public Report (“PR”) at I-3 to I-4; Petition at 8-9, 11, 38.

¹² Petition at 39-40; Conference Transcript at 9-12; Petitioners’ Postconference Brief at 3-4, 6-7. Respondents Norca and Coprosider concur with petitioners that large-diameter pipe fittings should not be included in the domestic like product. Postconference Brief of Norca and Coprosider at 2, Exhibit A at 2.

¹³ Postconference Brief of Kanzen at 2-5. We note that Kanzen does not provide any factual information based on *domestic* practices to support its arguments.

¹⁴ CR at I-6, I-9, II-1; PR at I-5, I-6, II-1.

¹⁵ CR at I-5; PR at I-3 to I-4.

¹⁶ CR at I-9; PR at I-6.

¹⁷ Id.; Petitioners’ Postconference Brief at 4-6.

produce small- and large-diameter butt-weld fittings.¹⁸ Insofar as some producers specialize in large- and some specialize in small-diameter butt-weld fittings, there is some indication of a difference in producer perceptions between the products. The prices of large-diameter butt-weld fittings are alleged to be higher than small-diameter butt-weld fittings.¹⁹

Although the end uses and physical characteristics of large- and small-diameter butt-weld fittings appear to be generally similar, the record indicates limited interchangeability, and differences in channels of distribution, production processes, equipment and workers, producer perceptions, and prices. Based on these considerations, we conclude that large-diameter butt-weld fittings should not be included in the domestic like product. Accordingly, we find that there is one domestic like product, coextensive with the scope of these investigations.

D. Domestic Industry and Related Parties

1. In General

The domestic industry is defined as “the producers as a {w}hole of a domestic like product.”²⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²¹ Based on our finding that the domestic like product consists of finished and unfinished butt-weld fittings having an outside diameter of less than 14 inches, we conclude that the domestic industry consists of all domestic producers of those products.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to 19 U.S.C. § 1677(4)(B). Section 1677(4)(B) 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.²² Exclusion of such producers is within the Commission’s discretion based upon the facts presented in each case.²³

¹⁸ Conference Transcript at 10-11, 45-46; Petitioners’ Postconference Brief at 4-6.

¹⁹ CR at I-9; PR at I-6; Conference Transcript at 10-11; Petitioners’ Postconference Brief at 4-6.

²⁰ 19 U.S.C. § 1677(4)(A).

²¹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

²² 19 U.S.C. § 1677(4)(A).

²³ 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 related 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 producers vis-a-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

(continued...)

*** domestic producers imported subject merchandise during the period of investigation, and are therefore related parties under 19 U.S.C. § 1677(4)(B)(i). These firms are ***.²⁴ We find that appropriate circumstances exist to exclude ***, but not ***, from the domestic industry for purposes of these preliminary determinations.

*** subject imports from *** its domestic production ***.²⁵ Further, its subject imports from *** were equivalent to approximately *** percent of its domestic production in 1998, the only year in which it imported subject merchandise from ***.²⁶ *** reports that it imports ***.²⁷ *** financial performance ***, and had the *** most successful financial performance in 1998.²⁸ *** is *** domestic producers represented in the questionnaire data collected in these preliminary investigations.²⁹ Because of the magnitude of *** subject imports relative to its domestic production, and because the evidence suggests that *** may have benefitted from its subject imports, we find that *** primary interest lies in importing rather than domestic production. Accordingly, we find that appropriate circumstances exist to exclude *** from the domestic industry for purposes of these preliminary determinations.

In 1998, the only year in which it imported subject merchandise, *** imported ***, which was equivalent to approximately *** percent of its domestic production of ***.³⁰ *** contends that it imported the subject merchandise ***.³¹ Based on the data collected in these investigations, *** is the *** largest domestic producer of butt-weld fittings. Its financial performance has generally been *** than most of the other domestic producers, but because it imported from a subject country only in 1998, there is no clear indication that *** benefitted from such importation.³² Moreover, the sporadic nature of the firm's imports indicates that its principal interest is in domestic production. Accordingly, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

We also considered whether several domestic producers, including ***, were related parties by virtue of their purchases of subject imports. To the extent that domestic producers directly or indirectly control foreign producers or importers through their purchases of subject imports, they may be considered related parties.³³ Over the period of investigation, the volume of these domestic producers' purchases of

²³ (...continued)

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 interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016, at 14 n.81 (Feb. 1997).

²⁴ ***. CR and PR at Table III-4.

²⁵ *** imported *** pounds from *** in 1996 (equal to *** percent of its 1996 domestic production), *** pounds from *** in 1997 (equal to *** percent of its 1997 domestic production), and *** pounds from *** in 1998 (equal to *** percent of its 1998 domestic production). CR at IV-3, n.5; PR at IV-1 n.5.

²⁶ CR and PR at Table III-4.

²⁷ CR at IV-3 n.5; PR at IV-1 n.5.

²⁸ CR and PR at Table VI-3.

²⁹ CR and PR at Table III-1.

³⁰ CR and PR at Table III-4.

³¹ CR at IV-3 n.5; PR at IV-1 n.5.

³² CR and PR at Table VI-3.

³³ See Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan,

(continued...)

subject imports was not significant in relation to their domestic production and/or either the volume exported by the foreign producers or the importer's volume.³⁴ We find no indication of any direct or indirect control relationship between these domestic producers and any foreign producer or importer of subject merchandise, and accordingly, we do not find that any of these firms are related parties.

III. NEGLIGIBLE IMPORTS

The statute provides that imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.³⁵ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.³⁶ The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.³⁷

To evaluate negligibility, we considered importer questionnaire responses to be the appropriate source of data for measuring subject imports because official statistics appear to under-report significantly ***. Additionally, the questionnaire data provide more accurate coverage of subject imports from the remaining subject countries because, in contrast to the official statistics, questionnaire data do not include merchandise outside the scope of these investigations.^{38 39} We find, based on questionnaire data for the most recent twelve-month period preceding the filing of the petition for which data are available (October 1998 to September 1999), that subject imports from each of the four subject countries are greater than three percent of total imports of such merchandise,⁴⁰ and accordingly, are not negligible.

³³ (...continued)

Korea, and Macedonia, Inv. Nos. 701-TA-387-392, 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 at 12 (June 1992). The threshold question is whether the purchases establish that the purchaser is "related" for purposes of the statute by directly or indirectly controlling an exporter or importer. The Commission has found direct or indirect control to exist where a domestic purchaser was responsible for a predominant share of the imports of the entity arguably within its control, and these purchases were substantial. Compare Cut-to-Length Plate, USITC Pub. 3181 at 12 (imports not found to be sufficiently substantial to warrant treating purchaser as related party) with Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Preliminary), USITC Pub. 2957 at 11 & n.55 (April 1996) (purchaser treated as related party).

³⁴ CR and PR at Tables III-4, IV-1, IV-2.

³⁵ 19 U.S.C. § 1677(24)(A)(i)(I).

³⁶ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

³⁷ 19 U.S.C. § 1677(24)(C); see also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 856 (1994) ("SAA").

³⁸ See Memorandum INV-X-031.

³⁹ Chairman Bragg considered official import statistics maintained by Commerce, which indicated that imports from Germany represent a somewhat higher share of imports of such merchandise. She did not consider official import statistics to be as probative as the questionnaire data, however, because the official import statistics correspond to a subheading that is broader than the scope of these investigations and clearly overstate subject imports.

⁴⁰ CR and PR at Table IV-2 (revised).

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁴¹ In assessing whether subject imports compete with each other and with the domestic like product,⁴² the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject 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 geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁴³

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁴⁴ Only a “reasonable overlap” of competition is required.⁴⁵

B. Analysis

We have determined to cumulate the subject imports from all four subject countries. The petitions were filed on the same day, and we find that there is a reasonable overlap of competition among imports from each of the subject countries and between subject imports and the domestic like product.

The record in these preliminary investigations indicates that the subject imports from Germany, Italy, Malaysia, and the Philippines are at least moderately fungible with each other and with the domestic like product. In this regard, butt-weld fittings sold in the U.S. market -- whether foreign or domestic -- meet the standards maintained by the American Society of Testing and Materials and the American

⁴¹ 19 U.S.C. § 1677(7)(G)(i).

⁴² The SAA at 848 expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁴³ See 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), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁴⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁴⁵ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

National Standards Institute.⁴⁶ Questionnaire responses indicate that the imports from the subject countries are viewed as interchangeable with the domestic like product and with each other,⁴⁷ although we intend to explore further this issue in the final phase of these investigations.⁴⁸

The record demonstrates that appreciable quantities of subject imports from Germany, Italy, Malaysia, and the Philippines were present throughout the period of investigation in the same geographic markets. The record also demonstrates that subject imports and the domestic like product are generally sold through the same channels of distribution -- specifically, distributors.⁴⁹

Accordingly, we find a reasonable overlap of competition and cumulate subject imports from Germany, Italy, Malaysia, and the Philippines for purposes of our preliminary determinations.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁵⁰ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵¹ The statute defines

⁴⁶ CR at II-1; PR at II-1; Conference Transcript at 13, 18, 20, 22-23, 42, 76, 95-96, 98.

⁴⁷ CR at II-4 to II-8 and Tables II-1, II-2 (indicating that producers and importers found imports from the subject countries to be “always” interchangeable with one another and with imports from non-subject countries, and found imports from the subject countries to be at least frequently interchangeable, if not always interchangeable, with the domestic like product); PR at II-3 to II-5 and Tables II-1, II-2.

⁴⁸ In particular, we intend to explore the degree to which fungibility is affected by the existence of approved manufacturers lists (“AMLs”). The parties disagree on whether the market is segmented between AML and non-AML purchasers. They disagree about the size of any AML segment, the degree to which purchasers adhere to AMLs, the extent to which domestic and subject foreign producers are certified to provide AML products, and the extent to which AML products are priced higher than non-AML products. Compare Conference Transcript at 47-52, 117-18 and Petitioners’ Postconference Brief at 17-22, Exhibit 1 with Conference Transcript at 80-81, 83, 92-93; Respondents’ Joint Postconference Brief at 2-5, 11, Exhibit 1; Postconference Brief of Schulz at 6; and Postconference Brief of Merit Brass at 1-4.

In any final phase investigations, we also intend to explore the extent to which the product mix of imports from the subject countries overlaps with one another and the domestic like product in terms of size, type, whether they are finished or unfinished, and whether they are produced from seamless versus welded pipe. Compare Petition at 50-51; Conference Transcript at 13-14, 17, 22, 41-42, 118; and Petitioners’ Postconference Brief at 31-39 with Conference Transcript at 70, 76, 79, 81, 93, 108; Respondents’ Joint Postconference Brief at 4, 5 n.11, 9-11; Postconference Brief of Kanzen at 5-8; Postconference Brief of Coprosider and Norca at 2-5; and Postconference Brief of Schulz at 4, 6-7.

⁴⁹ CR at I-6, II-1, V-1 to V-2, and Tables III-3, IV-2; PR at I-5, II-1, VI-1, and Tables III-3, IV-2.

⁵⁰ 19 U.S.C. § 1673b(a).

⁵¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor . . . {a}nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

“material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵² In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵³ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵⁴

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing butt-weld fittings is materially injured by reason of subject imports from Germany, Italy, Malaysia, and the Philippines that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

There are several conditions of competition that are relevant to our analysis in these investigations. First, while U.S. producers and importers generally agree that demand for butt-weld fittings in the United States has decreased somewhat since 1996, available data indicate that apparent U.S. consumption of butt-weld fittings increased by 12.5 percent between 1996 and 1998, and was 7.7 percent higher in interim (January to September) 1999 as compared to interim 1998.⁵⁵

There are no known commercial substitutes for butt-weld pipe fittings.⁵⁶ Most producers and importers stated that the primary end users of the product -- the chemical, petrochemical, nuclear, food and dairy, and pulp and paper industries -- demand stainless steel butt-weld fittings because of their metallurgical properties such as non-corrosiveness.⁵⁷

Additionally, the domestic market is characterized by many participants, and, therefore, multiple sources of supply. These include at least eleven domestic producers of the domestic like product, imports from the subject countries, and non-subject imports.⁵⁸

Sales of butt-weld fittings in the U.S. market by U.S. producers and importers take place primarily through distributors.⁵⁹ Distributors generally stock large quantities of items from many different sources and then resell them to final customers.⁶⁰

Although the parties disagree about whether butt-weld fittings are a commodity or heterogeneous

⁵² 19 U.S.C. § 1677(7)(A).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ Id.

⁵⁵ CR at II-3 to II-4; PR at II-2. Apparent U.S. consumption increased from 10.0 million pounds in 1996 to 11.2 million pounds in 1998. It was 9.3 million pounds in interim 1999, as compared to 8.6 million pounds in interim 1998. CR and PR at Table IV-3.

⁵⁶ CR at II-4; PR at II-2.

⁵⁷ It was reported that in theory, certain alloyed fittings, such as nickel fittings, could be substitutes but that these alloyed fittings are expensive and would rarely be used. CR at II-4; PR at II-2 to II-3.

⁵⁸ CR at IV-1, III-1 to III-2, VI-1, VII-1 to VII-5, and Tables III-1, IV-1; PR at IV-1, III-1, VI-1, VII-1 to VII-3, and Tables III-1, IV-1.

⁵⁹ CR at II-1; PR at II-1.

⁶⁰ CR at II-1; PR at II-1.

product, and about the extent to which non-price considerations are important to purchasers,⁶¹ the questionnaire responses indicate that both importers and producers report a high degree of interchangeability between the subject imports and the domestic like product and among the subject and non-subject imports.⁶² This suggests that price is a significant factor in purchasing decisions.⁶³

B. Volume of Subject Imports

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁶⁴ The volume of subject imports increased from 2.1 million pounds in 1996 to 3.0 million pounds in 1997, and then to 3.2 million pounds in 1998, before declining slightly between interim 1998 and interim 1999.⁶⁵ The volume of imports from nonsubject countries increased between 1996 and 1997, but declined significantly between 1997 and 1998 and was slightly higher in interim 1999 than in interim 1998.⁶⁶

Subject imports’ share of apparent U.S. consumption, measured by quantity, increased from 21.8 percent in 1996 to 26.0 percent in 1997, and then to 27.7 percent in 1998; the share in interim 1999 was 26.1 percent, as compared to 28.0 percent in interim 1998.⁶⁷ In contrast, U.S. producers’ share of apparent U.S. consumption declined from 57.5 percent in 1996 to 53.7 percent in 1998. It was slightly higher -- 55.7 percent -- in interim 1999 than in interim 1998 -- 53.4 percent.⁶⁸

We find that the volume of subject imports, and the increase in volume in both absolute terms and relative to apparent U.S. consumption, is significant.

⁶¹ See *supra* cumulation discussion.

⁶² CR at II-4 to II-8, Tables II-1, II-2; PR at II-3 to II-5, Tables II-1, II-2.

⁶³ In any final phase investigations, we intend to investigate other possible conditions of competition, including the possible effects on competition between the domestic like product and subject imports due to domestic product preferences or “Buy America” requirements, *compare* Conference Transcript at 25-26, 42-43; and Petitioners’ Postconference Brief at 22-24 *with* Conference Transcript at 81; and Respondents’ Joint Postconference Brief at 2, 4-5, 7-9, as well as the existence of market segmentation between AML and non-AML purchasers, as indicated in the cumulation section *supra*.

⁶⁴ 19 U.S.C. § 1677(7)(C)(i).

⁶⁵ CR and PR at Table IV-2 (revised).

⁶⁶ CR and PR at Table IV-2 (revised). Nonsubject imports increased from 2.2 million pounds in 1996 to 3.3 million pounds in 1997 and then declined to 1.9 million pounds in 1998; interim 1999 nonsubject imports of 1.7 million pounds were higher than interim 1998 nonsubject imports of 1.6 million pounds. CR and PR at Table IV-2 (revised); see also Memorandum INV-X-032. The share of apparent consumption attributable to U.S. shipments of nonsubject imports decreased from 20.7 percent in 1996 to 18.7 percent in 1997 and then declined to 18.5 percent in 1998; nonsubject imports’ share of apparent consumption of 18.2 percent in interim 1999 was lower than the interim 1998 share of 18.5 percent. CR and PR at Table IV-4. Nonsubject imports were reported from nine different countries, two of which (Japan and Taiwan) are subject to outstanding antidumping duty orders. CR at I-2, IV-4; PR at I-2, IV-1; see also Stainless Steel Butt-Weld Pipe Fittings from Japan, Taiwan, and the Republic of Korea, Inv. Nos. 731-TA-376 and 563-64 (Review) (publication forthcoming) (reviewing antidumping orders on stainless steel butt-weld pipe fittings from Japan, Taiwan, and the Republic of Korea and concluding that revocation of those orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time).

⁶⁷ CR and PR at Table IV-4.

⁶⁸ CR and PR at Table IV-4.

C. Price Effects of the Subject Imports

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

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁶⁹

In these preliminary investigations, we find that the subject imports are reasonably good substitutes for the domestic like product, as discussed in the cumulation and conditions of competition sections *supra*.

We find that there has been significant underselling by the subject imports throughout the period of investigation. For the five products for which the Commission collected data, the subject imports undersold the domestic like product in 115 out of 154 quarterly pricing comparisons (*i.e.*, in roughly three-quarters of pricing comparisons). In many comparisons, the margins of underselling, particularly for the subject merchandise from Malaysia and the Philippines, exceeded *** percent.⁷⁰

Prices for both the domestic like product and the subject imports decreased steadily throughout the period of investigation.⁷¹ Moreover, the decrease in domestic prices exceeded the decrease in raw material costs.⁷² Accordingly, we find there is a reasonable indication that the subject imports have depressed prices for the domestic like product in the U.S. market to a significant degree during the period of investigation.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷³ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{74 75 76}

⁶⁹ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁰ CR and PR at Table V-1.

⁷¹ CR at V-8 to V-21, Table V-1; PR at V-6 to V-13, Table V-1.

⁷² Raw material costs, on a per unit basis, decreased by 8.6 percent from 1996 to 1998 and were 9.6 percent lower in interim 1999 than in interim 1998. CR and PR at Table VI-2. By contrast, prices for the five domestically produced products for which data were collected were between 24.3 and 46.9 percent lower in the third quarter of 1999 than in the first quarter of 1996. CR and PR at Table V-1.

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

⁷⁴ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

⁷⁵ The statute instructs the Commission to consider the “magnitude of the dumping margin”

(continued...)

We find that the subject imports had a significant adverse impact on the domestic industry. While the volume and market share of subject imports increased during the period of investigation, the domestic industry experienced declines in several key indicators. Despite increasing apparent U.S. consumption, increasing sales quantities, and aggregate and per unit declines in cost of goods sold and selling, general, and administrative expenses, the domestic producers lost market share and revenues in the face of the substantial price declines caused in significant part by subject imports.⁷⁷ Consequently, the domestic industry's operating performance deteriorated sharply. Operating income declined from *** in 1996 to *** in 1997 and to *** in 1998, and the industry experienced a *** operating loss in interim 1999. Moreover, although *** of the domestic producers reported operating losses for interim 1998, *** domestic producers reported operating losses for interim 1999.⁷⁸

In sum, there is a reasonable indication that the significant and increasing volume of subject imports has caused the domestic industry to lose market share and have depressed prices to a significant degree, resulting in a significant decline in the domestic industry's profitability and deteriorating financial condition.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of butt-weld fittings from Germany, Italy, Malaysia, and the Philippines that are allegedly sold in the United States at less than fair value.

⁷⁵ (...continued)

in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce relied on petitioners' estimates of dumping margin ranges: Germany (8.35 to 76.24 percent); Italy (61.41 to 86.88 percent); Malaysia (39.6 to 60.1 percent); and the Philippines (18.24 to 60.17 percent). The margins for Germany are based on a comparison of U.S. price to constructed value, whereas the margins for the other countries are based on price-to-price comparisons. 65 Fed. Reg. 4595 (Jan. 31, 2000).

⁷⁶ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See, e.g., Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁷⁷ CR at VI-6, Table VI-2; PR at VI-4, Table VI-2. Additionally, the number of production related workers, hours worked, and wages paid decreased between 1997 and 1998, and again between interim 1998 and interim 1999. CR and PR at Table III-7. Domestic producers' capacity utilization was low throughout the period of investigation. CR and PR at Table III-2.

⁷⁸ Feb. 10, 2000 Table distributed by ITC Accountant to the Commission; CR and PR at Table VI-3.