UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN SEAMLESS CARBON AND ALLOY STANDARD, LINE, AND PRESSURE PIPE
FROM JAPAN AND SOUTH AFRICA
Investigation No. 731-TA-847 and 850 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3311, JUNE 2000)

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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan and South Africa of certain small diameter seamless carbon and alloy steel standard, line, and pressure pipe ("small diameter pipe"), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2] The Commission made negative determinations concerning critical circumstances. The Commission also determines that an industry in the United States is materially injured by reason of imports from Japan of certain large diameter seamless carbon and alloy steel standard, line, and pressure pipe ("large diameter pipe"), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at LTFV.[3]

BACKGROUND

The Commission instituted these investigations effective June 30, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for Koppel Steel Corp., Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of small diameter pipe from Japan and South Africa and large diameter pipe from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 25, 2000 (65 FR 10107). The hearing was held in Washington, DC, on May 4, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[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] Commissioners Jennifer A. Hillman and Thelma J. Askey dissenting with respect to small diameter pipe of alloy steel. They determine that an industry in the United States producing such pipe is neither materially injured nor threatened with material injury by reason of imports of such pipe from Japan and South Africa sold at LTFV.

[3] Commissioner Thelma J. Askey dissenting with respect to large diameter pipe of alloy steel. She determines that an industry in the United States producing such pipe is neither materially injured nor threatened with material injury by reason of imports of such pipe from Japan sold at LTFV.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 16, 2000. The views of the Commission are contained in USITC Publication 3311 (June 2000), entitled *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Japan and South Africa*: Investigations Nos. 731-TA-847 and 850 (Final).

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is materially injured by reason of imports of certain small diameter seamless carbon and alloy steel standard, line, and pressure pipe ("small diameter pipe") from Japan and South Africa that the Department of Commerce ("Commerce") found to be sold in the United States at less than fair value ("LTFV").[1] We further determine that an industry in the United States is materially injured by reason of imports of certain large diameter seamless carbon and alloy steel standard, line, and pressure pipe ("large diameter pipe") from Japan that Commerce found to be sold at LTFV.[2]

I. DOMESTIC LIKE PRODUCT

A. In General

To determine whether 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 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]

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[1] Commissioner Hillman determines that the industry in the United States producing small diameter seamless carbon steel standard, line and pressure pipe is materially injured by reason of subject imports from Japan and South Africa sold at LTFV, and that the industry in the United States producing small diameter seamless alloy steel standard, line and pressure pipe is neither materially injured nor threatened with material injury by reason of subject imports from Japan and South Africa sold at LTFV. See Dissenting Views of Commissioner Jennifer A. Hillman.

[2] Commissioner Askey determines that the industry producing small diameter seamless carbon steel standard, line and pressure pipe in the United States is materially injured by reason of imports of small diameter seamless carbon steel standard, line, and pressure pipe from Japan and South Africa that the Department of Commerce ("Commerce") has found to be sold in the United States at less than fair value ("LTFV"). She further determines that the industry producing large diameter seamless carbon steel standard, line and pressure pipe in the United States is materially injured by reason of imports of large diameter seamless carbon steel standard, line, and pressure pipe from Japan that Commerce found to be sold at LTFV. However, she also determines that the industry producing small diameter seamless alloy steel standard, line, and pressure pipe in the United States is neither materially injured nor threatened with material injury by reason of subject imports of small diameter seamless alloy steel standard, line and pressure pipe from Japan found to be sold at LTFV, and that subject imports of small diameter seamless alloy standard, line and pressure pipe from South Africa are negligible. She further determines that the industry producing small diameter seamless alloy steel standard, line, and pressure pipe in the United States is neither materially injured nor threatened with material injury by reason of subject imports of large diameter seamless alloy steel standard, line and pressure pipe from Japan found to be sold at LTFV. She writes separately to explain her views. See Concurring and Dissenting Views of Commissioner Thelma J. Askey.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

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 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 Commerce's determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[9]

B. Product Description

Petitioners filed petitions regarding small diameter seamless pipe from the Czech Republic, Japan, Romania, and South Africa, as well as petitions regarding large diameter seamless pipe from Japan and Mexico. In its final determination as to Japan and South Africa, Commerce defined the imported merchandise within the scopes of these investigations as follows:[10]

Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe

> For purposes of the small diameter seamless pipe investigations, the products covered are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these investigations are seamless pipes and

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[6] See, e.g., NEC Corp. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). 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 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. 249, 96th Cong., 1st Sess. 90-91 (1979).

[8] 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).

[9] Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (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).

[10] Commerce also provided lengthy, detailed explanations of the specifications, characteristics, and uses of the subject pipe, which are not repeated herein.

redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.[11]

Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe

For purposes of the large diameter seamless pipe investigation, the products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of these investigations are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.[12]

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[11] 65 Fed. Reg. 25907 (May 4, 2000). Commerce specifically excluded from the scope boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods ("OCTG") are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Id.

[12] 65 Fed. Reg. 25907 (May 4, 2000). Specifically excluded from the scope of these investigations are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods (OCTG), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line, or pressure applications.

C. Products produced to the A-335 specification unless they are used in an application that would normally utilize ASTM A-53, ASTM A-106,

C. General Description of Seamless Pipe[13]

Seamless standard pipes are intended for the low temperature and pressure conveyance of water, steam, natural gas, air, and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses.[14] Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat.[15] Seamless pipes are commonly produced and certified to meet all of the most common standard, line, and pressure pipe requirements (*i.e.*, multiple-certified or multiple-stenciled).

The primary application of small diameter seamless pipe is in pressure piping systems; other applications include oil field separator lines, gathering lines, and metering runs, as well as oil and gas distribution lines for commercial applications.[16] The primary application of large diameter seamless pipes is for use as oil and gas distribution lines for commercial applications; other applications include use in pressure piping systems and in oil field separator lines, gathering lines, and metering runs.[17]

ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications.

D. Line and riser pipe for deepwater application, i.e., line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (e.g., "API 5L").

Id. Commerce made exclusions (C) and (D) subsequent to its preliminary determination at petitioners' request.

[13] The information in this section is distilled from Confidential Report ("CR") at I-5 to I-9, I-11 to I-12, and Public Report ("PR") at I-5 to I-11.

[14] Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

[15] Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106.

[16] Such pipes may also be used in some boiler applications. In addition, redraw hollows are any unfinished pipe or "hollow profile" of carbon or alloy steel transformed by hot rolling, cold drawing, hydrostatic testing, or other methods to enable the material to be certified to meet standard, line, and pressure pipe requirements.

[17] These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

D. Domestic Like Product Issues

In the preliminary determination, the Commission found two domestic like products corresponding to the two scopes of these investigations: small diameter seamless pipe, *i.e.*, pipe with an outside diameter of not more than 4.5 inches; and large diameter seamless pipe, *i.e.*, pipe with an outside diameter of more than 4.5 inches, but not more than 16 inches.[18] The Commission also determined that seamless carbon pipe and seamless alloy pipe did not constitute separate domestic like products.[19]

In the final phase of these investigations, petitioners and the Mexican respondent argue that the Commission should continue to find small diameter pipe and large diameter pipe to be separate like products, while no party argues that they should not be separate domestic like products.[20] The Japanese respondents and importer MC Tubular Co. argue that alloy pipe should be a separate like product from carbon pipe, while petitioners oppose defining alloy pipe as a separate like product.[21]

1. Small Diameter vs. Large Diameter Pipe

Physical Characteristics and Uses. The distinguishing characteristic between small diameter and large diameter pipe is size, in that small diameter pipe is less than or equal to 4.5 inches in outside diameter, while large diameter pipe is greater than 4.5 inches in outside diameter. Small and large diameter seamless pipe have overlapping end uses (i.e., standard pipe applications; line pipe applications; and pressure pipe applications). Small diameter seamless pipe is primarily used in industrial applications such as refineries and chemical plants to carry small amounts of liquids or gases under pressure. Large diameter pipe is

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[18] Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Japan, Mexico, Romania, and South Africa, Invs. Nos. 731-TA-846-850 (Preliminary), USITC Pub. 322 (August 1999) ("Preliminary Determination") at 7-8.

[19] Preliminary Determination at 8-9. The Commission also determined that it did not find high-strength line pipe and commodity grade pipe to be separate domestic like products, but stated that it intended to seek more information on this issue in the final phase. Preliminary Determination at 9-10. After the amendment to the scope of the large diameter investigations excluding certain deep water line pipe, none of the parties are arguing that high-strength line pipe should be a separate domestic like product, and there is nothing in the record to provide the Commission with a clearer dividing line between high-strength and commodity grade pipe than the Commission could ascertain in the preliminary determination. Accordingly, the Commission has no basis to make any different finding with respect to high-strength line pipe in this final determination.

In the preliminary determination, the Commission also determined not to include seamless pipe exceeding 16 inches in outside diameter in the large diameter pipe domestic like product, and not to include circular welded pipe in either domestic like product. It further determined that the product most similar in characteristics and uses to the OCTG included in the scopes of the investigations was seamless pipe and not OCTG generally. Finally, the Commission determined to include redraw hollows in the small diameter pipe domestic like product. Preliminary Determination at 8, 10-11. In the absence of any arguments or new information to the contrary, we see no reason to revisit these determinations.

[20] Petitioners' Prehearing Brief at 6-11; Mexican Respondent's Prehearing Brief at 1 n.1.

[21] Japanese Respondents' Prehearing Brief at 6-28; MC Tubular's Posthearing Brief at 1-12; Petitioners' Prehearing Brief at 16-22. Both the petitioners and the respondents focus their domestic like product arguments on the comparison of ASTM A-335 small diameter alloy pipe with ASTM A-106 small diameter carbon pipe.

primarily used in pipeline applications to convey large volumes of oil or gas over long distances.[22] However, multiple stenciling for cross-applications is common in small diameter pipe as well as in certain large diameter pipes.[23]

Interchangeability. There is very limited interchangeability between small and large diameter seamless pipe because of differences in engineering design and specifications.[24]

Channels of Distribution. U.S. producers sell both small diameter pipe and large diameter pipe mainly to distributors that tend to purchase seamless pipe in both size ranges. No purchaser reported any difference in the channels of distribution between small and large diameter pipe.[25]

Common Manufacturing Facilities, Employees and Methods. The range of sizes a particular seamless pipe producer can produce is a function of the equipment it uses. Of the major domestic producers, two produce only small diameter pipe, one produces only large diameter pipe, and one produces both, using different mills to do so. Two domestic producers produce both large and small diameter pipe using the same facilities: Timken, a relatively minor producer, and U.S. Steel Group's Fairfield mill, which produces small diameter pipe only in the 4.5 inch size.[26] The mills that make large diameter pipe are much larger and have substantially larger capital requirements than those that make small diameter pipe.[27]

Producer and Customer Perceptions. Both petitioners and respondents agree that producers and customers perceive small and large diameter pipe to be different products because of the difference in end uses.[28] Commission questionnaires elicited numerous comments that there is no competition between small diameter pipe and large diameter pipe.[29]

Price. The productivity rate (in tons per hour) for manufacturing small diameter pipe is much lower than it is for large diameter pipe, and accordingly variable costs and selling prices are higher for small diameter pipe. This is reflected in higher average unit values ("AUVs") for shipments for the domestic industry producing small diameter pipe.[30]

Conclusion. We find that small diameter seamless pipe and large diameter seamless pipe are separate domestic like products, notwithstanding several similarities between the products. As the

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[22] CR at I-12, PR at I-11. Conference Transcript at 24 (Hill).

[23] CR at I-6, I-8 to I-9; PR at I-6, I-8 . We note that all of the common grade small diameter and large diameter seamless pipe products (Products 1-4) for which the Commission collected pricing and quantity data are triple stenciled. CR at V-8, PR at V-6 to V-7.

[24] CR at I-20, PR at I-17; Preliminary Staff Report, Appendix D, at D-3 to D-4, D-7.

[25] CR at II-2 to II-3, PR at II-2. We note that large diameter pipe projects are frequently put up for bid. CR at I-20, PR at I-18.

[26] CR at I-18 to I-19, PR at I-16.

[27] Conference Transcript at 22-23 (Hill).

[28] CR at II-1, PR at II-1; Conference Transcript at 24 (Hill); Hearing Transcript at 170 (Houlihan).

[29] Preliminary Staff Report, Appendix D, at D-3 to D-4, D-9.

[30] Conference Transcript at 23, 50-51 (Hill); CR and PR at Tables III-4 and III-5.

Commission stated in the preliminary determination, the Commission "generally has not drawn lines based on size, and has looked for other points of distinction before finding separate like products."[31] However, in addition to the size difference, we find other important differences between large diameter and small diameter pipe. Small and large diameter pipe have somewhat different end uses and limited interchangeability, are priced differently, are perceived as different products by producers and consumers, and (with few exceptions) are manufactured in different mills with different equipment.

Each domestic like product determination made by the Commission is *sui generis*, and starts with the scope of the investigation. Here, with the record showing important differences, with the investigations having proceeded on the basis of two separate and distinct scopes for small diameter pipe and large diameter pipe, and with no party objecting to treating small diameter and large diameter pipe as separate domestic like products, we do not conclude that it is appropriate to expand the domestic like product corresponding to either scope to include small and large diameter pipe as a single domestic like product.[32]

2. Carbon vs. Alloy Pipe[33]

In the final phase of these investigations, the parties' arguments with respect to the chemistry of seamless pipe concern only small diameter alloy pipe. Commerce's amendments to the scope of the large diameter pipe investigations excluded nearly all of the subject large diameter alloy imports from the large diameter scope.

Physical Characteristics and Uses. As a general matter, seamless pipes and tubes (the vast majority of which are produced from carbon steel) are used in demanding applications requiring exceptional strength, high pressure containment, and a great degree of reliability.[34] The chemistry of alloy pipe (more specifically, the chemistry of the upstream product -- the billet)[35] makes it particularly suitable for applications in high pressure, high temperature, or low temperature service. These uses include the

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[31] Preliminary Determination at 7; see, e.g., Heavy Forged Handtools from the People's Republic of China, Inv. No.731-TA-457 (Final), USITC Pub. 2357, at 7-8 (Feb. 1991), citing Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea and Taiwan, Invs. Nos. 731-TA-488-450 (Preliminary), USITC Pub. 2334, at 4-5 (Nov. 1989).

[32] We note that in Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 & 731-TA-707-710 (Final), USITC Pub. 2910 (July 1995), at I-7, the Commission determined that the domestic product like imported small diameter seamless pipe -- pipe with an outside diameter of not more than 4.5 inches -- was seamless pipe not more than 4.5 inches outside diameter. In those investigations, the scope was limited to small diameter pipe, no party argued that the domestic like product should be broadened beyond the scope to include large diameter pipe, and the Commission did not address whether large diameter pipe should be included as part of the domestic like product.

[33] Commissioner Hillman does not join this section of the opinion. See her separate views.

[34] CR at I-11 n.14, PR at I-10 n.14. Welded pipes and tubes, in contrast, more commonly are used to transport liquids at or near atmospheric pressure. Id.

[35] Carbon steel contains controlled amounts of carbon and manganese, while alloy steels contain controlled amounts of alloying elements, such as nickel, chromium, and molybdenum, and provide physical properties not achievable with carbon steel. CR at I-12, PR at I-12.

most demanding pressure pipe applications, consistent with the service requirements of the Boiler and Pressure Code.[36]

The primary function of alloys is to enhance the properties of the steel. The inclusion of elevated levels of alloying elements, such as nickel, chromium, and molybdenum, gives alloy pipe higher strength and the ability to withstand higher temperatures. Alloy pipe's physical properties make it suitable for more extreme applications for which carbon pipe is not suitable, such as for high temperature, high pressure or more corrosive service requirements.[37] Carbon pipe becomes metallurgically unstable at higher temperatures because of oxidation and graphitization, and accordingly is not safe to be used in extremely high-temperature applications.[38]

Interchangeability. The manufacture of alloy pipe is limited to smaller production runs, ***, or for quick turnaround sales.[39] Therefore, while it is technically possible for alloy pipe to be used for carbon pipe applications, alloy pipe remains a low-volume specialty product principally used in high pressure, high temperature, or low temperature applications. The record indicates that actual interchangeability is rare, given the price differential between the two, as well as other suitability problems. It is undisputed that carbon pipe cannot be substituted for alloy pipe applications and that it is dangerous to do so.[40]

Channels of Distribution. Both carbon and alloy pipe are sold to distributors rather than directly to end users. Alloy pipe accounts for only a very small percentage of total seamless pipe shipments in the United States (less than *** percent from 1997 to 1999), and the number of alloy distributors is accordingly much smaller than it is for the large network of carbon pipe distributors. Most distributors of alloy pipe also distribute carbon pipe.[41]

Common Manufacturing Facilities, Employees and Methods. Carbon pipe and alloy pipe are both manufactured in the same facilities using the same equipment and the same employees.[42] Alloy pipe

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[36] CR at I-13, PR at I-12.

[37] CR at I-12 to I-13, PR at I-12. Respondents contend that the appropriate temperature threshold is 800 degrees. We are reluctant to accept this as a "bright line" distinction, since it appears that seamless carbon steel ASTM standard A-106 B pressure pipe may be used in temperatures of up to 1,000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy piping made to ASTM standard A-335 must be used if temperature and stress levels exceed those allowed for A-106 and ASME codes. CR at I-12; PR at I-11.

[38] Hearing Transcript at 260-262 (Prager); Japanese Respondents' Prehearing Brief at 9-12.

[39] See, e.g., CR at II-18, PR at II-13; Hearing Transcript at 242 (Christopher).

[40] CR at I-20, PR at I-17; Hearing Transcript at 39, 120 (Hill), 237, 260-261 (Prager).

[41] CR at I-21 to I-22, II-3, PR at I-18 to I-19, II-2 to II-3; Hearing Transcript at 239-240 (Lawrence); CR and PR at Tables C-1, C-4. Given alloy pipe's small share of the seamless pipe market, we do not find significant the fact that the number of alloy distributors is likewise small.

[42] Seamless standard, line, and pressure pipe may be produced from steel made by either the basic-oxygen steelmaking process, which uses iron ore, scrap, and alloying materials as raw materials, or by the electric-arc furnace steelmaking process which uses scrap, direct-reduced iron, cold pig iron, and alloying materials. The chemical composition of steel, including the level of carbon, manganese, and any alloying elements, such as nickel, chromium, and molybdenum, is controlled in the melting process, and is not affected by further processing. CR at I-14, PR at I-13.

has additional processing steps including heat treatment that may take place in different facilities; some carbon pipe is also heat treated.[43] Two U.S. producers, Gulf States Tube Division and Michigan Specialty Tube (both owned by Vision Metals, Inc.), produce small diameter alloy and carbon pipe using the same facilities, production equipment and workers.[44] Koppel Steel Corp. produces small diameter carbon pipe, and has the capacity to produce small diameter alloy pipe.[45]

Producer and Customer Perceptions. Because alloy seamless pipe can withstand an even wider range of temperatures and pressures than can carbon seamless pipe, many customers view alloy pipe as a specialized niche product, although U.S. producers such as Vision Metals, Inc. view carbon and alloy pipe products as part of the continuum of seamless pipe products.[46] A number of questionnaire responses from purchasers and importers suggest that some customers view them as separate products.[47]

Price. It is undisputed that alloy pipe is more expensive than carbon pipe, and that ***.[48]

Conclusion. We find that carbon pipe and alloy pipe comprise a continuum of seamless pipe products. While there are a number of differences between carbon and alloy pipe, we find those differences to be less significant than their similarities. Seamless alloy pipe varies in chemical composition and is used in more extreme environments than seamless carbon pipe, but these differences are not controlling, particularly in the context of the characteristics and uses shared by seamless pipe products in general. The fact that alloy pipe may be used for particularly demanding, high pressure applications does not establish it as a separate domestic like product, since this is characteristic of seamless pipe generally. Moreover, carbon and alloy pipe are manufactured in the same facilities with the same equipment and the same workers. The carbon/alloy price differential, customer perceptions of alloy pipe as a specialty product, and the smaller, more specialized alloy distribution network are consistent with alloy pipe's small niche within the larger seamless carbon and alloy pipe market.

Based on the above analysis, we find that carbon and alloy seamless pipe should not be defined as separate domestic like products. Accordingly, we find two domestic like products corresponding to the two scopes of these investigations: small diameter seamless pipe and large diameter seamless pipe.

III. DOMESTIC INDUSTRY

Section 771(4) of the Act defines the relevant 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 that product."[49] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of

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[43] CR at I-14 to I-15, I-17, PR at I-13 to I-14, I-16.

[44] Hearing Transcript at 39-40 (Hill).

[45] CR at II-5 to II-6, PR at II-4; Conference Transcript at 121 (Ramsey).

[46] Hearing Transcript at 39, 106 (Hill).

[47] Japanese Respondents' Prehearing Brief at 20-23; CR at II-1, PR at II-1.

[48] CR and PR at Tables C-3, C-4; Hearing Transcript at 40 (Hill); MC Tubular's Prehearing Brief at 6.

[49] 19 U.S.C. § 1677(4)(A).

the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[50] Based on our finding of two domestic like products, we define two corresponding domestic industries: a small diameter seamless pipe industry, and a large diameter seamless pipe industry, encompassing all domestic producers of those products, respectively.

In its preliminary determination, the Commission found that the record supported inclusion of two domestic redrawer/finishers in the domestic industry producing small diameter pipe: Sharon Tube Co. and ***.[51] In deciding whether a firm qualifies as a domestic producer, the Commission generally analyzes the overall nature of a firm's production-related activities in the United States.[52] We find that the record in these investigations supports including redrawer/finishers in the domestic industry producing small diameter pipe. Accordingly, we again determine that Sharon Tube is a domestic producer of small diameter pipe based on its production-related activity in the United States. With regard to ***, we note that in the preliminary phase of the investigations, the company identified itself as a domestic producer, and was found by the Commission to be part of the domestic industry producing small diameter pipe, on the basis of ***.[53] However, in response to the Commission's questionnaire in the final phase of the investigations, *** did not identify itself as a domestic producer, and stated that ***. Accordingly, we determine that *** is not a member of the domestic industry producing small diameter pipe.[54]

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[50] See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG"), Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

[51] Preliminary Determination at 12-13.

[52] Preliminary Determination at 12 n.48 and 49. See, e.g., Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904, at I-8 (June 1995). The Commission generally considers six factors: (1) source and extent of the firm's capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product.

[53] Preliminary Determination at 14.

[54] CR at III-4 n.1, PR at III-3 n.1. We also find *** to be a member of the domestic industry producing small diameter pipe on the basis of its activities as a finisher/redrawer, but note that it submitted no financial data to the Commission. CR at III-4 n.1, PR at III-3 n.1.

IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF SMALL DIAMETER PIPE FROM JAPAN AND SOUTH AFRICA[55]

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.[56] In making this determination, the Commission must consider the volume of the subject 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.[57] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[58] In assessing whether 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.[59] 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."[60]

For the reasons discussed below, we determine that the domestic industry producing small diameter pipe is materially injured by reason of LTFV imports from Japan and South Africa.

A. Cumulation

1. 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 cumulate subject imports 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 product in the U.S. market.[61] In assessing whether subject imports compete with each other and with the domestic like product,[62] the Commission has generally considered four factors, including:

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[55] Commissioner Hillman joins in Part IV with respect to carbon pipe. While she analyzed data for carbon pipe alone, any difference from the data for carbon and alloy pipe combined that are contained in this portion of the Commission's views is minimal with respect to both absolute numbers and trends.

[56] 19 U.S.C. § 1673d(b).

[57] 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).

[58] 19 U.S.C. § 1677(7)(A).

[59] 19 U.S.C. § 1677(7)(C)(iii).

[60] 19 U.S.C. § 1677(7)(C)(iii).

[61] 19 U.S.C. § 1677(7)(G)(i).

[62] The Uruguay Round Agreements Act (URAA) Statement of Administrative Action (SAA) 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," SAA, H.R. Rep. 103-316, vol. I at 848 (1994), 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).

(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 geographical 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.[63]

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.[64] Only a "reasonable overlap" of competition is required.[65]

Because the petitions in the investigations concerning small diameter pipe from the Czech Republic, Japan, Romania, and South Africa were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies for purposes of this determination.[66] Therefore, we are required to determine whether there is a reasonable overlap of competition both among the subject imports from the Czech Republic, Japan, Romania, and South Africa, and between the subject imports and the domestic like product.

2. Analysis

Fungibility. The bulk of small diameter pipe imported from each of the subject countries and produced domestically is in commodity grades.[67] These grades conform to standards and specifications published by a number of organizations, including the ASTM, ASME, and API. Comparable organizations in England, Germany, Japan, and Russia have also developed standard specifications for steel pipes and tubes.[68]

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[63] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. 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).

[64] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[65] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (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.").

[66] These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

[67] Hearing Transcript at 41 (Ramsey).

[68] CR at I-12, PR at I-11. The specifications met by a pipe product are commonly marked on each piece of pipe and referred to as a "stencil."

Consequently, small diameter pipe from both subject and domestic sources tends to be generally interchangeable. Indeed, most purchasers indicated that subject imports from each of the four countries were used in the same applications as U.S.-produced pipe.[69] Additionally, purchasers generally found the subject imports from each of the four countries comparable to domestically-produced product in quality.[70]

Several respondents have argued that particular product characteristics of subject imports from individual countries limit their fungibility with the domestic like product. Czech, Romanian, and South African respondents contend that the fungibility of subject imports from those countries is limited because they are not on approved manufacturers' lists (AMLs).[71] AMLs are widely used, particularly in the energy business, and product not on a purchaser's AML may face some limitations in ability to compete for sales. Nevertheless, a large number of purchasers, including independent oil and gas producers and engineering and construction subcontractors, do not use AMLs. Moreover, there is some evidence that purchasers with AMLs may deviate from those AMLs for certain purchases.[72] Czech and South African respondents further argue that imports from those countries had much longer lead times than domestically-produced product. Although this is confirmed by the purchaser questionnaire responses, purchasers did not indicate that delivery time was among the most important purchasing factors for Czech product or South African product.[73] Consequently, although respondents have identified some distinctions between imports from individual subject countries and the domestic like product, we do not believe that these distinctions seriously limit product fungibility, particularly given the general interchangeability of small diameter pipe from domestic and subject sources.

Geographic Overlap. The majority of domestic producers report that they serve the entire United States. Japanese pipe was available in all geographic areas of the United States; Romanian pipe was present on the ***; Czech pipe was present in ***; and South African pipe was available on ***.[74] Thus, at a minimum, the domestic like product and *** were present in the Gulf area.

Channels of distribution. The vast majority of shipments of both subject imports of small diameter pipe and the domestic like product were to distributors.[75]

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[69] CR at II-19, PR at II-13 (Czech Republic); CR at II-20, PR at II-14 (Japan); CR at II-24, PR at II-17 to II-18 (Romania), CR at II-26, PR at II-18 (South Africa).

[70] CR at II-19, II-21, II-25-26, PR at II-13 to II-14, II-17 to II-18. Japan was the only subject source of alloy small diameter seamless pipe. Between 1997 and 1999, alloy pipe accounted for *** percent of U.S. imports of Japanese small diameter seamless pipe. Compare Table C-1 with Table C-4. The Japanese have confirmed that the bulk of Japanese shipments (of small diameter carbon steel seamless pipe) have always been non-specialized. Japanese Respondents' Posthearing Brief, Part II, at 4.

[71] CR at II-14 to II-16, PR at II-9 to II-11; Czech Respondent's Posthearing Brief, Exh. 9; Romanian Respondents' Posthearing Brief, Exh. 4.

[72] Tr. at 42-43 (Ramsey), 48 (Binder).

[73] CR at II-19, II-26, PR at II-13 to II-18.

[74] CR at II-2, PR at II-1 to II-2.

[75] CR at I-20, PR at I-17. The Romanian respondents argue that there are ***, but the limited information in the record is insufficient to corroborate this contention. Romanian Respondents' Prehearing Brief at 3 and Exh. 1. Moreover, in light of the other similarities, such a difference in distribution channels would not be sufficient to support a finding of lack of reasonable overlap of competition.

Simultaneous Presence. Subject imports from Japan occurred in every month during the period of investigation; subject imports from the Czech Republic occurred in 31 of the 36 months of the period; subject imports from Romania occurred in 30 of the 36 months; and subject imports from South Africa occurred in 28 of the 36 months.[76]

Conclusion. Based on the evidence in the record of general fungibility among the subject imports and between the subject imports and the domestic like product, geographic overlap in at least the Gulf region, similar channels of distribution, and the simultaneous presence of subject imports in the U.S. market, we find a reasonable overlap of competition among the subject imports, and between the subject imports and the domestic like product. Consequently, we cumulate subject imports from the Czech Republic, Japan, Romania, and South Africa for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports.

B. Conditions of Competition

Demand for small diameter seamless pipe depends in significant part on the level of activity in the oil and gas sector. Other important components of demand include industrial construction/reconstruction and facility repair and maintenance (especially at petrochemical and refinery installations). As distributors, most purchasers cannot identify precisely the end use applications of their small diameter pipe; however, only one purchaser described itself as not tied to the oil and gas market.[77] Many producers and importers felt that demand had fluctuated over the period examined, with 1996 and 1997 being generally stronger years and 1998 and 1999 being somewhat depressed due to declining oil and gas production in the United States, although a number of producers also attribute shifts in demand to unfairly traded imports. Declining demand is consistent with trends in apparent U.S. consumption, which fell by 43.1 percent between 1997 and 1999.[78] [79]

While factors such as differences in lead times, product quality, and presence on AMLs may limit substitutability somewhat, the record indicates a moderately high level of substitutability between subject imports and the domestic like product.[80] Moreover, while purchasers rated quality as the number one

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[76] Petitioners' Prehearing Brief at 33-34 and Exh. 12.

[77] CR at II-10 and n.40, PR at II-7 and n.40. In addition, 16 purchasers reported that rising oil and gas prices increase demand for large and small diameter pipe. CR at II-11, PR at II-18.

[78] CR and PR at Table C-1. While there can be an inverse relationship between activity in the oil and gas industry and in the petrochemicals industry, such that increased pipe demand in the petrochemical industry offsets a decline in oil and gas industry pipe demand, this phenomenon was not evident during the period of investigation. To the contrary, as demand in the oil and gas industry was declining, so too was petrochemical industry demand. As a consequence, apparent U.S. consumption of small diameter seamless pipe declined sharply during the period of investigation. CR at II-5, PR at II-3; Conference Transcript at 20 (Hill).

[79] Most purchasers reported that there are no viable substitutes for seamless pipe. However, several producers and importers report that welded pipe can be substituted for small diameter seamless pipe in certain applications. Plastic tubing and, less frequently, mechanical tubing and OCTG were also mentioned as potential substitutes. CR at II-12 to II-13, PR at II-9.

[80] CR at II-30; PR at II-20.

consideration in purchasing seamless pipe, price is also important. Further, most common grade products are multi-stenciled to industry standards, which lessens the significance of quality differences.[81] We note that despite respondents' arguments about the importance of AMLs, Romania held as much as *** percent of domestic consumption, and as much as *** percent of total imports in 1997 despite not being on AMLs. Indeed, as explained in the discussion of cumulation, there are a significant number of purchasers who do not rely on AMLs.[82] In addition, "Buy American" restrictions covered only about 5 percent of seamless pipe transactions.[83]

Nonsubject imports declined from 1997 to 1999, and remained well below the level of subject imports. Nonsubject imports' market share fell from 1997 to 1999, declining to 6.9 percent in 1999.[84]

C. Volume of the Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[85]

The quantity of subject imports of small diameter seamless pipe rose from 59,017 short tons in 1997 to 83,228 short tons in 1998.[86] The share of domestic consumption supplied by cumulated subject imports of small diameter pipe increased from 21.8 percent in 1997 to 35.8 percent in 1998. This increase in import market share came largely at the expense of the domestic industry, whose market share declined from 67.8 percent to 54.9 percent in the same period.[87] In 1999, the quantity of subject imports fell to 35,683 short tons.[88] The domestic industry's market share rose to 69.3 percent in 1999,[89] but we find that this was largely as a result of significant decreases in domestic prices to meet the subject import prices.[90] We also find that subject imports declined in 1999 in part as a result of the filing of the petitions on June 30, 1999, as is reflected in the significant decline in subject imports in the fourth quarter

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[81] CR at II-1, II-15, PR at II-1, II-11.

[82] Hearing Transcript at 42-43 (Ramsey), 48 (Binder); CR and PR at Tables IV-3 and IV-7. Moreover, we note that the vast majority of both small diameter subject imports and domestic production was sold to distributors, so there are few significant differences in channels of distribution. CR at I-20, PR at I-17.

[83] Conference Transcript at 56-57 (testimony of Mr. Hill: "We took a look at that and the Commission took a look at that in the 1994/95 case. Back then I personally estimated that the market had declined to less than 15 percent Buy American in the mid-1990s, right now I would estimate it is less than 5 [percent]").

[84] CR and PR at Tables IV-3 and IV-7. We note that nonsubject imports are likely understated in our record. CR at IV-1 n.1, PR at IV-1 n.1. However, census data, which are overinclusive, indicate a similar trend. Id.

[85] 19 U.S.C. § 1677(7)(C)(i).

[86] CR and PR at Table IV-3.

[87] CR and PR at Table IV-7.

[88] CR and PR at Table IV-3.

[89] CR and PR at Table IV-7.

[90] Hearing Transcript at 38 (Hill), 42 (Ramsey), 44-45 (Gajdzik).

of 1999.[91] Even after this decline from 1998 levels, the share of domestic consumption supplied by subject imports in 1999 was 23.8 percent, which was higher than the 1997 import market share, and which we find to be significant.[92]

Accordingly, we find the volume of subject imports of small diameter seamless pipe to be significant.

D. Price Effects of the Cumulated Subject Imports

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

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[93]

Prices for domestically-produced small diameter pipe declined ***, as shown by a review of pricing information for products 1-3. While the domestic producers' prices for these products were stable in 1997 and 1998, those prices declined *** in 1999. Subject import prices for these products also generally declined in 1999.[94] In addition, there was significant underselling by subject imports. There was underselling by the subject imports in 43 of 44 quarterly comparisons for product 1, 41 of 45 quarterly comparisons for product 2, and 24 of 32 quarterly comparisons for product 3.[95] While we view average unit values (AUVs) in this industry with caution, given product mix issues, AUVs confirm the pattern shown by the product-specific pricing data. Cumulated AUVs declined significantly from 1997 to 1999;

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[91] Hearing Transcript at 282 (Nolan). The decline in imports in the fourth quarter of 1999 is confirmed by Census data, which may include nonsubject pipe as well as subject pipe, but are nevertheless indicative of the trends in the subject small diameter pipe market. South African Respondents' Posthearing Brief, Annex 2. Because the 1999 decline in subject import volumes is in part attributable to the filing of the petitions, we have reduced the weight we have accorded to these data pursuant to 19 U.S.C. § 1677 (7)(I), which states: "[T]he Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation … is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States."

[92] CR and PR at Table IV-7.

[93] 19 U.S.C. § 1677(7)(C)(ii).

[94] CR and PR at Tables V-1, V-3, V-5.

[95] CR and PR at Tables V-1, V-3, V-5.

Japan, the largest source of subject imports in 1998 and 1999, showed dramatic declines in AUVs while its subject import volumes were increasing through the first half of 1999.[96] [97]

We have closely examined the decline in demand for small diameter pipe. While this decline did have an effect on small diameter pipe prices, we find that it does not fully explain the price declines evidenced in the record. As previously noted, we find a moderately high level of substitutability between subject imports and the domestic product. Moreover, there was significant underselling by subject imports, as the pricing comparisons for products 1-3 show, and volumes of subject imports increased substantially in 1998 while domestic demand was weak. Quarterly pricing data indicate that subject imports led prices down in 1998 and 1999 as demand softened. Indeed, subject imports from Japan, which had a mixed pattern of underselling and overselling in 1997 and early 1998, consistently undersold the domestic product (with only one exception) by the end of 1998.[98] Given the dramatic decline in price levels, along with pervasive and significant underselling and the substitutability of subject imports, we find that the subject imports depressed domestic prices to a significant degree.

E. Impact of the Cumulated Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[99] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[100]

All the major indicators for the small diameter pipe industry declined significantly between 1997 and 1999. The domestic industry's operating income fell from $14.6 million in 1997 to $6.9 million in 1998, and to an operating loss of $10.8 million in 1999.[101] In 1999, five of the seven firms in the domestic industry sustained operating losses, compared with none of the seven firms in 1997.[102] In addition, from 1997 to 1999 there were significant declines in production, shipments, net sales, capacity utilization, cash

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[96] CR and PR at Table C-1. We give little weight to the fact that AUVs of Romanian subject imports increased during the period, since the volumes of imports were declining, and constituted a much smaller proportion of the subject imports in 1999 than in prior years.

[97] Chairman Bragg has not relied upon AUV data in assessing the price effects of subject imports in these investigations. Chairman Bragg notes that overall, subject imports of small diameter pipe undersold the domestic like product in 171 of 186 quarterly price comparisons.

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

[99] 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).

[100] 19 U.S.C. § 1677(7)(C)(iii).

[101] CR and PR at Table VI-1.

[102] CR and PR at Table VI-1

flow, productivity, number of production workers, hours worked, wages paid, and hourly wages.[103] Furthermore, there were increases in ending inventories, unit labor costs, and unit cost of goods sold.[104] While capital expenditures increased during the period, these expenditures reflected capital decisions made before 1998, and thus before the decline in demand and the surge in subject imports sold at LTFV.[105]

While the declines in industry performance indicators were partly attributable to the decline in demand for small diameter seamless pipe, they were also attributable to the price competition from subject imports, particularly in 1999 as the domestic industry lowered its prices significantly in order to recapture substantial market share lost to the low-priced subject imports. Thus, subject imports significantly exacerbated the effects of the decline in demand on the increasingly unprofitable and poorly performing industry.

The respondents have also argued that any injury to the domestic industry was temporary, and that the industry has already returned to health, in light of recent upturns in oil and gas prices. While small diameter seamless pipe prices have increased somewhat as conditions in the oil and gas industry have improved, they are still far below their levels in 1997 before the surge in subject imports.[106] Moreover, recent improvements in the condition of the domestic industry have been modest, and are partly attributable to the filing of these petitions, which caused subject imports to decline and in some cases withdraw from the market.[107]

Accordingly, we find that the cumulated subject imports have had a significant adverse impact on the domestic small diameter seamless pipe industry.

F. Critical Circumstances

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[103] CR and PR at Tables III-2, III-4, III-7, VI-1. While there were slight increases in the number of production workers, hours worked, wages paid, and hourly wages from 1998 to 1999, these indicators were still significantly below their 1997 levels. CR and PR at Table III-7. The respondents argue that the domestic industry was affected by developments in the OCTG market, in that ***, and may have switched production from OCTG to seamless pipe. However, the record evidence does not support the conclusion that domestic producers shifted production from OCTG to seamless pipe. CR and PR at Table E-1. Morever, the respondents' argument that the decline in the OCTG market as a result of conditions in the oil and gas industry shows that those conditions, and not subject imports, caused any injury to the domestic seamless pipe industries ignores the significant differences in end uses and demand between the seamless pipe markets and the OCTG market (which is far more directly tied to conditions in the oil and gas industry). See Petitioners' Posthearing Brief at 8-10 and Exh. 5.

[104] CR and PR at Tables III-6, C-1. While our examination of the domestic industry's financial performance is based on the industry as a whole, we have examined closely the nature of the relationship between ***, in connection with respondents' contentions concerning USS-Lorain's raw material costs. The Commission staff verified the data submitted by USS-Lorain. We do note the ***. CR at VI-5; PR at VI-1; Mexican Respondent's Prehearing Brief, Exh. 19. In light of the overall industry performance data discussed in the text, and ***, INV-X-128 at Table VI-2-A, the *** do not alter our evaluation of the impact of subject imports on the domestic industry.

[105] Hearing Transcript at 36-37 (Hill); Petitioners' Posthearing Brief, Exh. 8, at 3.

[106] Hearing Transcript at 42 (Ramsey), 45 (Gajdzik).

[107] Hearing Transcript at 42 (Ramsey), 45 (Gajdzik), 282 (Nolan).

In its final antidumping determination as to small diameter seamless pipe from Japan and South Africa, Commerce made affirmative findings of critical circumstances with respect to Japanese small diameter seamless pipe imports from Sumitomo Metal Industries, Kawasaki Steel Corp., and Nippon Steel Corp., and with respect to South African small diameter seamless pipe imports from Iscor Ltd. Commerce made negative findings of critical circumstances with respect to small diameter seamless pipe in the "all others" category in both the Japan and South Africa investigations.[108] Because we have determined that the domestic small diameter seamless pipe industry is materially injured by reason of subject small diameter imports from Japan and South Africa, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued."[109] The SAA indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[110]

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant:

> (I) the timing and the volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[111]

Consistent with Commission practice, in considering the timing and volume of subject imports, we have considered import quantities prior to the filing of the petition with those subsequent to the filing of the petition.[112] The record contains monthly export data for the firms subject to the affirmative Commerce critical circumstances determination. We examined both the six-month periods before and after filing of the petition, and the three-month periods before and after the filing of the petitions within those six-month periods.[113] [114]

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[108] 65 Fed Reg. 25907, 25908 (May 4, 2000).

[109] 19 U.S.C. § 1673d(b)(4)(A)(i).

[110] SAA at 877.

[111] 19 U.S.C. § 1673d(b)(4)(A)(ii).

[112] See, e.g., Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 at 24 (Feb. 1999).

[113] In addition to examining the six month periods before and after the filing of the petition, Chairman Bragg also compared the two, three, four, and five, month periods both preceding and following the filing of the petition. Chairman Bragg notes that with regard to the imports from Japan at issue, each of these periods indicates a decline in imports following the filing of the petition. Accordingly, Chairman Bragg finds that there has not been a massive surge in imports such that the remedial effect of an order on small diameter seamless pipe from Japan will be undermined seriously absent an affirmative critical circumstances determination. With regard to the imports from South Africa at issue, Chairman Bragg notes that a comparison of the three month periods preceding and following the filing of the petition indicates a 90 percent increase in imports. However, the absolute volume of imports accounted for by this increase is equivalent to less than one percent of apparent U.S. consumption in 1999, as well as less than one percent of the domestic industry's production that year. Accordingly, Chairman Bragg finds that there has not been a massive surge in imports such that the remedial effect of an order on small diameter seamless

Imports from Japan subject to Commerce's affirmative critical circumstances determination were lower in the period following filing of the petition than in the period preceding it.[115] Although the record does not contain information specifically concerning inventories of imports of those firms subject to the Commerce affirmative critical circumstances finding, the available information concerning inventories of all subject small diameter pipe imports from Japan in the United States indicates that these inventories did not increase during the post-petition period.[116] Because the record indicates that there was no substantial increase in those imports from Japan subject to the Commerce affirmative critical circumstances finding in the period immediately following filing of the petition, nor that there was any substantial increase in inventories of these imports, we conclude that these imports will not seriously undermine the remedial effect of the antidumping duty order.[117] [118]

Imports from South Africa subject to Commerce's affirmative critical circumstances finding did increase in the post-petition period, although the absolute increase was ***.[119] The record does not indicate any fluctuations in price for small pipe subject products from South Africa in the post-petition period.[120] Moreover, the available data indicate that inventory levels for all subject imports from South Africa increased only *** during 1999.[121] In light of this data, we conclude that the subject imports from South Africa subject to the Commerce critical circumstances finding, notwithstanding the volume increase in the post-petition period, will not seriously undermine the remedial effect of the antidumping order.

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pipe from South Africa will be undermined seriously absent an affirmative critical circumstances determination.

[114] Commissioner Koplan examined the six months before and after the filing of the petition. See Views of Commissioner Stephen Koplan on Critical Circumstances.

[115] CR and PR at Table IV-9.

[116] CR and PR at Table VII-9.

[117] The petitions were filed on June 30, 1999. Comparing the three-month period April 1999 - June 1999 with the three-month period July 1999 - September 1999, imports from Japan fell from *** short tons to *** short tons. Comparing the six-month period January 1999 - June 1999 with the six-month period July 1999 - December 1999, imports from Japan fell from *** short tons to *** short tons. CR and PR at Table IV-9. Furthermore, as of December 31, 1998, U.S. inventories of small diameter pipe from Japan were *** short tons; as of December 31, 1999, U.S. inventories of small diameter pipe from Japan were *** short tons. CR and PR at Table VII-9.

[118] We have also considered information in the record regarding prices of imports in the post-petition period. There are no available specific price data for these companies, but quarterly price data for 1999 show that Japanese prices declined by over $100 per ton for two of the three pricing items between the first half and the second half of 1999. CR and PR at Tables V-1, V-3, V-5. However, given the information regarding the volumes of imports from Japan in the post-petition period, we do not find that the limited pricing information warrants an affirmative critical circumstances determination.

[119] The petitions were filed on June 30, 1999. Comparing the three-month period April 1999 - June 1999 with the three-month period July 1999 - October 1999, imports from South Africa rose from *** short tons to *** short tons. Comparing the six-month period January 1999 - June 1999 with the six-month period July 1999 - December 1999, imports from South Africa rose from *** short tons to *** short tons. CR and PR at Table IV-9. Furthermore, as of December 31, 1998, U.S. inventories of small diameter pipe from South Africa were *** short tons; as of December 31, 1999, U.S. inventories of small diameter pipe from South Africa were *** short tons. CR and PR at Table VII-9.

[120] CR and PR at Tables V-1, V-3.

[121] CR and PR at Table VII-9.

Accordingly, we have made negative critical circumstances determinations concerning small diameter pipe from Japan and South Africa.

V. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF LARGE DIAMETER PIPE FROM JAPAN

The general legal standards for determining material injury were discussed in Part IV and will not be repeated here. For the reasons discussed below, we determine that the domestic industry producing large diameter pipe is materially injured by reason of LTFV imports from Japan.

A. Cumulation

1. In General

Because the petitions in the investigations concerning large diameter pipe from Japan and Mexico were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies for purposes of this determination.[122] Therefore, we are required to determine whether there is a reasonable overlap of competition both between the subject imports from Japan and Mexico, and between the subject imports and the domestic like product.

2. Analysis

Fungibility. As a result of the exclusion of almost all alloy pipe and certain deep water line pipe from the scope of the large diameter pipe investigations, the majority of the subject imports are common grade products. The data submitted by Mexican respondent TAMSA show that specialty products constituted *** of total imports from Mexico during each year of the period of the investigation.[123] The Japanese respondents acknowledge that the amendments to the scope eliminated a large portion of their specialty imports, and that the proportion of common grade products in the mix of their imports rose in 1999.[124]

Purchasers generally view Japanese and Mexican common grade product as interchangeable with domestically-produced product.[125] The record does not indicate that there are any particular product

[122] These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

[123] Mexican Respondent's Posthearing Brief at Q-6 to Q-7.

[124] Japanese Respondents' Posthearing Brief at 8-9.

[125] CR at II-20, II-22, II-27, PR at II-14, II-16, II-18.

characteristics of the common grade large diameter imports from Japan or Mexico that would significantly limit their fungibility with the domestic like product.

Geographic Overlap. Four domestic producers serve the entire United States. Japanese large diameter pipe is present in all geographic regions of the United States, while Mexican large diameter pipe is available in the ***.[126]

Channels of Distribution. In 1999, the majority of domestic large diameter pipe production and subject large diameter imports from Japan, and a substantial proportion of subject large diameter subject imports from Mexico, were shipped to distributors. Although there is a somewhat different distribution pattern for Mexico, there is a reasonable overlap of channels of distribution among the subject imports and between them and the domestic like product.[127]

Simultaneous Presence. Imports from Japan and Mexico occurred in every month of the period of investigation.[128]

Conclusion. Based on the evidence in the record of general fungibility among the subject imports and the domestic like product, geographic overlap, and the simultaneous presence of subject imports in the U.S. market, we find a reasonable overlap of competition between the subject imports, and between the subject imports and the domestic like product, notwithstanding the possible difference in channels of distribution of Mexican large diameter pipe. Consequently, we cumulate subject imports from Japan and Mexico for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports of large diameter seamless pipe.

B. Conditions of Competition

Demand for large diameter pipe generally is more closely linked to the level of activity in the oil and gas industry than is demand for small diameter pipe, although there are additional industrial applications as well.[129] Most producers and importers felt that demand had fluctuated over the period examined, with 1996 and 1997 being generally stronger years and 1998 and 1999 being somewhat depressed due to declining oil and gas production in the United States. This is consistent with trends in overall U.S. consumption, which decreased by *** percent between 1997 and 1998, and then fell by *** percent between 1998 and 1999 (a net decline of *** percent).[130]

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[126] CR at II-2, PR at II-1 to II-2.

[127] About 77 percent of imports of large diameter seamless pipe from Japan are sold to distributors, as are about *** percent of Mexican imports and *** percent of U.S. producers' shipments. CR and PR at Table I-4.

[128] Petitioners' Prehearing Brief, Exh. 23.

[129] CR at II-9, PR at II-6 to II-7.

[130] CR and PR at Table C-2. Reportedly, tax incentives incorporated in the Deep Water Royalty Relief Act of 1995 have lowered the breakeven point for ventures in the Gulf of Mexico and have encouraged long-term projects that have continued despite the steep decline in oil prices in 1998 and early 1999. CR at II-1, PR at II-1; Mexican Respondent's Prehearing Brief at 11-13.

As previously stated, Commerce's amendments to the scope of the large diameter investigations excluded a great deal of specialty pipe (large diameter alloy pipe and certain deep water line pipe). Consequently, a substantial majority of subject imports is common grade product that competes with the domestic product on a price basis.[131] Moreover, the proportion of subject imports from Japan that constituted common grade product substantially increased over the period of investigation.[132] Thus, we find a moderately high level of substitutability, which increased during the period of investigation, between subject imports and the domestic like product.[133]

Nonsubject imports declined from 1997 to 1999, and they remained well below the level of subject imports. Nonsubject imports' market share fell from 1997 to 1999, declining to *** percent in 1999.[134]

C. Volume of the Cumulated Subject Imports

The quantity of subject imports of large diameter seamless pipe rose from *** short tons in 1997 to *** short tons in 1998, then fell to *** short tons in 1999, increasing by *** percent between 1997 and 1999.[135] Apparent U.S. consumption decreased by *** percent during the same period. The share of domestic consumption held by subject imports increased from *** percent in 1997 to *** percent in 1998, while the share held by domestic shipments declined from *** percent to *** percent.[136] Although subject import market share declined *** to *** percent in 1999, this was still higher than the 1997 import market share.[137] Cumulated subject import shipments were higher than the volume in 1997. Thus, over the period of investigation, the absolute volume and market share of subject imports increased while domestic consumption was declining.

The Japanese respondents' argument that large diameter imports from Japan increased while demand was falling because of a lag in their response to the change in demand is not borne out by the record. Subject large diameter imports from Japan continued to increase in volume and in market share over the period, and were at their highest levels in 1999.[138] Even with a 3-6 month lag time for Japanese

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[131] Mexican Respondent's Posthearing Brief at Q-6 to Q-7; Petitioners' Posthearing Brief at 1-3.

[132] Japanese Respondents' Posthearing Brief at 9.

[133] CR at II-30, PR at II-20.

[134] CR and PR at Tables IV-4 and IV-8. We note that nonsubject imports are likely understated in our record. CR at IV-1 n.1, PR at IV-1 n.1. However, Census data, which are overinclusive, indicate a similar trend. Id.

[135] CR and PR at Table IV-4.

[136] CR and PR at Table IV-8. Cumulated subject import shipments increased from *** short tons in 1997 to *** short tons in 1998. CR and PR at Table IV-6.

[137] CR and PR at Table IV-8. We find that the domestic large diameter pipe industry regained market share in 1999 by cutting its prices, although most of this gain came at the expense of nonsubject imports. Hearing Transcript at 28 (Gajdzik); 29-30 (Leland); CR and PR at Table IV-8. The *** decline in subject import market share is attributable in part to the filing of the petitions in June 1999, and we have accordingly reduced the weight we have accorded to these data pursuant to 19 U.S.C. § 1677(7)(I). The 1999 Census data show a sharp decline in cumulated large diameter subject imports from Japan and Mexico in the last three months of 1999. Petitioners' Prehearing Brief, Exh. 23. While Census data may include nonsubject pipe as well as subject pipe, they are nevertheless indicative of the trends in the subject large diameter pipe market.

[138] CR and PR at Tables IV-6 and IV-8.

imports, the response to the 1998 demand drop should have been evident by mid-1999; instead imports from Japan continued at a strong rate into August 1999.[139] Moreover, the Japanese respondents have acknowledged that in 1999, a greater share of their imports were common grade products, which compete with the domestic product directly on the basis of price.[140]

Accordingly, we find the volume of subject imports of large diameter seamless pipe to be significant.

D. Price Effects of the Cumulated Subject Imports

When demand in the large diameter seamless pipe market was at its weakest in late 1998 and 1999, domestic prices declined dramatically in the face of significant underselling by subject imports of common grade large diameter pipe. Data for product 4, the highest volume product for which the Commission gathered pricing data, show that, commencing with the fourth quarter of 1998 and continuing through the first three quarters of 1999, significant volumes of subject imports entered the U.S. market and undersold the domestic like product by significant margins, while prices of U.S. product dropped significantly from 1998 levels.[141] These data are consistent with the data in the preliminary staff report for product 4, a different common grade product, for which we did not collect data in the final investigations. The data for that product show, in the fourth quarter of 1998 and the first quarter of 1999, a huge increase in the volume of subject imports at sharply lower prices, with a consequent shift from overselling to underselling by subject imports and a concurrent drop in domestic prices.[142] [143]

The decline in activity in the oil and gas industry contributed to the decline in the price of large diameter pipe, but we find that it does not fully explain the decline in price. Instead, we find that with demand weak, and subject imports entering the market in significant volumes at low and declining prices, domestic producers were forced to cut their prices to regain market share that had been lost to subject imports. Moreover, the substitutability of subject large diameter pipe is moderately high, and increased over the period due to the shift in product mix by subject imports from Japan towards more common grade product.[144] Thus, the degree of price competition between subject imports and the domestic

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[139] CR and PR at Table IV-9

[140] Japanese Respondents' Posthearing Brief at 9.

[141] CR and PR at Table V-7. In the final phase of these investigations, the Commission collected pricing data on two large diameter pipe products. We have emphasized product 4, a common grade product, because there were few pricing observations on product 5, the other large diameter product. CR and PR at Table V-9. We note that the average unit values of the subject large diameter imports declined significantly from 1998 to 1999. CR and PR at Table IV-4. We do not give great weight to average unit value data for large diameter pipe, because there were significant shifts in product mix during the period of investigation, particularly for subject imports from Japan.

[142] Preliminary staff report, PR and CR at Table V-4.

[143] Chairman Bragg has not relied upon AUV data in assessing the price effects of subject imports in these investigations. Chairman Bragg notes that the subject imports of Product 4 from Japan and Mexico undersold the domestic product in a majority of quarterly comparisons, and that the volume of undersold subject imports of Product 4 substantially exceeded the volume of oversold subject imports of Product 4.

[144] Japanese Respondents' Posthearing Brief at 9.

product was at its highest in late 1998 and 1999 as domestic prices were declining significantly.[145] Consequently, we find that the subject imports depressed domestic prices to a significant degree.

E. Impact of the Cumulated Subject Imports on the Domestic Industry

All the major indicators for the large diameter pipe industry declined significantly during the period of investigation. The industry's operating income declined from $*** in 1997 to $*** in 1998, and declined further to $*** in 1999.[146] In addition, there were declines in production, shipments, net sales, cash flow, capacity utilization, productivity, number of production workers, hours worked, wages paid, and productivity.[147] Furthermore, there were increases in unit labor costs and unit cost of goods sold.[148] [149]

While the declines in industry performance indicators are partly attributable to the decline in demand for large diameter seamless pipe, we find that they are also attributable in significant part to the price competition from subject imports, particularly in 1999 as the domestic industry was forced to lower its prices significantly in order to recapture lost market share originally taken by the lower-priced subject imports. Thus, subject imports significantly exacerbated the effects of the decline in demand on the increasingly unprofitable and poorly performing industry.

The respondents have also argued that any injury to the domestic industry was temporary, and that the industry has already returned to health, in light of recent upturns in oil and gas prices.[150] While large diameter seamless pipe prices have increased modestly as conditions in the oil and gas industry have

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[145] In this regard, while the lost sales and lost revenue information on the record is very limited, one lost sale allegation involving Japan in 1999 was confirmed, as were four lost revenue allegations involving Japan in late 1998 and early-to-mid 1999 (***). CR and PR at Tables V-10 and V-11.

[146] CR and PR at Table VI-2.

[147] CR and PR at Table C-1.

[148] CR and PR at Table C-1. Unit cost of goods sold *** from 1998 to 1999, but were *** 1997 levels. While capital expenditures increased during the period, petitioners state that these expenditures were incurred ***. Petitioners' Posthearing Brief, Exh. 1, at 25-26. The respondents argue that the domestic industry was affected by developments in the OCTG market, in that ***, and may have switched production from OCTG to seamless pipe. However, the record evidence does not support the conclusion that domestic producers shifted production from OCTG to seamless pipe. Morever, the respondents' argument that the decline in the OCTG market as a result of conditions in the oil and gas industry shows that those conditions, and not subject imports, caused any injury to the domestic seamless pipe industries ignores the significant differences in end uses and demand between the seamless pipe markets and the OCTG market (which is far more directly tied to conditions in the oil and gas industry). See Petitioners' Posthearing Brief at 8-10 and Exh. 5.

While our examination of the domestic industry's financial performance is based on the industry as a whole, we have examined closely the nature of the relationship between ***, in connection with the Mexican respondent's contentions concerning USS-Lorain's raw material costs. The Commission staff verified the data submitted by USS-Lorain. We do note the ***. CR at VI-11, PR at VI-5; Mexican Respondent's Prehearing Brief, Exh.19. In light of the overall industry performance data discussed in the text, and ***, INV-X-128, at Table VI-5-A, the *** do not alter our evaluation of the impact of subject imports on the domestic industry.

[149] Chairman Bragg further notes that the number of domestic producers posting operating losses increased from 0 of 4 in 1997 to 2 of 4 in 1999.

[150] Mexican Respondent's Posthearing Brief at 2-3.

improved, they are still far below their levels in 1997 before the surge in subject imports, and demand for large diameter pipe has likewise not returned to past levels.[151] Moreover, we find that the modest improvements in the condition of the domestic industry are partly attributable to the filing of the petitions, which resulted in a decline in subject imports.

Accordingly, we conclude that the subject imports have had a significant adverse impact on the domestic large diameter seamless pipe industry.

CONCLUSION[152]

For the foregoing reasons, we have determined that both the domestic small diameter seamless pipe industry and the domestic large diameter seamless pipe industry are materially injured by reason of the subject imports. Accordingly, we render affirmative determinations with respect to small diameter seamless pipe from Japan and South Africa and large diameter seamless pipe from Japan.

[151] Hearing Transcript at 31 (Leland).

[152] Commissioner Hillman dissenting with respect to small diameter seamless alloy pipe. Commissioner Askey dissenting with respect to small diameter seamless alloy pipe, and with respect to large diameter seamless alloy pipe.

DISSENTING VIEWS OF COMMISSIONER JENNIFER A. HILLMAN

I join my colleagues in finding material injury to the domestic industries producing large diameter seamless pipe and small diameter seamless carbon steel pipe. However, I conclude that small diameter seamless carbon steel pipe and small diameter seamless alloy steel pipe are separate domestic like products, and therefore that there are separate domestic industries producing each of these two products.[1] I conclude that there is no material injury or threat of material injury by reason of subject imports of alloy small diameter pipe.

I. DOMESTIC LIKE PRODUCT – SMALL DIAMETER PIPE

Physical Characteristics and Uses. While both carbon and alloy steel seamless pipe are types of seamless pipe, the chemistry of alloy pipe is significantly different. Alloy steels contain controlled amounts of alloying elements, such as nickel, chromium, and molybdenum, to provide physical properties not achievable with carbon steel. Alloys are used to give the steel increased yield strength, tensile strength, creep strength, toughness, elongation, and hardenability. While both carbon and alloy steel pipes are used for the same general purposes -- transporting gas and liquids, sometimes at elevated pressures or temperatures -- alloy pipe is used only for the most demanding applications, at high temperatures, high pressures, and/or in corrosive environments. Boiler codes and other industry standards specify alloy pipe, not carbon pipe, for such applications.[2]

Interchangeability. There is little actual interchangeability between the two products. Carbon pipe cannot be used in alloy pipe applications.[3] While alloy pipe can theoretically be used in some carbon pipe applications, it is economically unfeasible to do so. Moreover, alloy pipe can underperform carbon pipe in certain applications because it is more difficult to weld.[4]

Channels of Distribution. Both products are sold to distributors. There is a large distributor network for carbon pipe but only a small number of distributors handle alloy pipe.[5] However, given the much smaller volumes of alloy pipe in the market, this difference may not be significant.

Common Manufacturing Facilities, Employees and Methods. The only domestic producer of alloy small diameter pipe manufactures ***. However, production of alloy pipe requires additional processing steps, most notably heat treatment, that may take place in different facilities.[6]

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[1] With respect to large diameter pipe, I find one domestic like product, large diameter seamless pipe. I first looked at the universe of domestic products like the products within the scope of the investigation -- which in this case, I determined to be all large diameter pipe -- and then considered whether there are clear dividing lines within that universe. Unlike the situation for alloy small diameter seamless pipe, there is no clear record evidence of any domestic production of alloy large diameter seamless pipe. Thus, while there remains a minimal amount of alloy large diameter seamless pipe within the scope of investigation, because I find no clear dividing line within the carbon large diameter pipe produced domestically, I find one like product for large diameter pipe.

[2] Confidential report (CR) at I-12 to I-13, public report (PR) at I-12; Japanese Respondents' Posthearing Brief at 12-13.

[3] Hearing Transcript at 120-21 (Hill) and 260-262 (Prager); Japanese Respondents' Posthearing Brief at 9-12.

[4] Japanese Respondents' Prehearing Brief at 13-15.

[5] CR at I-21 to I-22, II-3, PR at I-18 to I-19, II-3.

[6] CR at I-14 to I-19, PR at I-13 to I-16.

Producer and Customer Perceptions. All purchasers and importers that commented on the issue indicated that alloy and carbon pipe are different products with significant distinctions between them. In addition, some distributors market them separately.[7] However, U.S. producers have indicated that they view carbon and alloy pipe as part of the continuum of seamless pipe products.[8] On balance, this information indicates that, to a large extent, the markets for alloy and carbon pipe are perceived to be separate and distinct.

Price. Alloy pipe is much more expensive than carbon pipe. While there are no product-specific data allowing a direct comparison, the average unit values (AUVs) show a huge difference. The AUV of the domestic producer's U.S. shipments of alloy pipe was over *** times greater than the AUV of their U.S. shipments of carbon pipe in each year of our investigation.[9]

Conclusion. I find that the differences between carbon and alloy small diameter pipe, particularly with respect to physical characteristics, end uses, interchangeability, perceptions, and prices, warrant their treatment as separate like products. While there are some similarities in end uses, channels of distribution, and manufacturing methods and facilities, I find that the differences indicate that these are two separate products moving in two separate markets. Although I do not generally find separate like products for products within a continuum, each case is *sui generis*, and I find that the distinctions are significant enough in this case to warrant a finding of separate like products.[10]

II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS TO THE DOMESTIC ALLOY SMALL DIAMETER PIPE INDUSTRY[11]

A. Conditions of Competition

The record contains little information on conditions of competition specific to the alloy pipe industry. The information on the record indicates that there is only one domestic producer of alloy small diameter pipe, Vision Metals (at both its Michigan Specialty and Gulf States units), and it produces alloy pipe ***.[12] In contrast, over half of subject imports are ***,[13] attenuating the competition between domestic product and subject imports. Respondents and some distributors have indicated that the

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[7] CR at II-1, PR at II-1; Purchasers' and Importers' Questionnaire Responses; Japanese Respondents' Prehearing Brief at 20-23.

[8] Questionnaire Responses of Domestic Producers; Hearing Transcript at 39 (Hill).

[9] Tables C-3 and C-4, CR at C-7 to C-10, PR at C-6. The AUVs for subject imports from Japan confirm price differences in the U.S. market; the AUV for alloy pipe from Japan was roughly *** that of carbon pipe from Japan.

[10] Moreover, I note that there are no domestic shipments, either of domestic product or imports, of the alloy grades closest in performance to carbon pipe, A335 P1 and P2. Table E-3, CR at E-5 to E-7, PR at E-3. Thus, the market appears to recognize a gap in the "continuum" that arguably spans carbon and alloy pipe.

[11] The only subject imports of alloy small diameter pipe during the period of investigation were from Japan. Because there were no subject imports of this product from the Czech Republic, Romania, or South Africa, I determine that their imports are negligible under 19 U.S.C. § 1677(24)(A). Accordingly, I determine that the investigation with respect to alloy small diameter pipe from South Africa should be terminated under 19 U.S.C. § 1673b(a) and I do not cumulate subject imports from Japan with those from the Czech Republic or Romania.

[12] CR at III-1 to III-4, PR at III-1 to III-3; Questionnaire Responses of Gulf States and Michigan Specialty.

[13] Questionnaire Responses of Japanese importers.

domestic producer focuses on sales with small turnaround times and high prices.[14] Apparent consumption of alloy small diameter pipe fell from 1997 to 1999, although the drop was *** than that for carbon small diameter pipe. While nonsubject imports had a significant presence in the market, their market share fell from *** percent in 1997 to *** percent in 1999.[15]

B. Volume of Subject Imports

Subject imports increased in absolute terms, rising from *** in 1997 to *** in 1999. Their market share rose from *** percent in 1997 to *** percent in 1999.[16] Viewed in isolation, this increase in volume is significant. However, as discussed below, I find that subject imports have not had a significant price effect and I find no material injury by reason of subject imports.

C. Price Effects of Subject Imports

While AUVs are of limited utility due to product mix concerns, the record contains no product-specific pricing data regarding alloy small diameter pipe. Although subject import AUVs have been below the domestic producer's AUVs throughout the period of investigation,[17] I cannot conclude that this indicates significant price underselling given product mix differences[18] and the focus of the domestic industry on quick turnaround, high price sales. The AUV of subject imports fell *** percent from 1997 to 1998, at the same time that the domestic producer's AUV fell by *** percent. Then, from 1998 to 1999, subject import AUV fell by *** percent, while the domestic producer's AUV rose *** percent.[19] Given this pattern, I conclude that subject imports have not had a significant price depressing or suppressing effect.

D. Impact of Subject Imports on the Domestic Industry

The domestic industry has had *** throughout the period of investigation, with an operating income to sales ratio *** percent throughout.[20] ***, the carbon small diameter industry's operating income ratio never exceeded *** percent.[21] While there has been a decline in some industry indicators, including a drop in ***, the industry is still *** financially.[22] Moreover, given the very small size of the domestic industry, which can serve at most *** percent of domestic consumption,[23] annual fluctuations in such indicators as shipments, production, or profitability are not particularly probative. The record indicates that the industry has maintained its focus on a limited volume of high price sales and it appears to

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[14] Hearing Transcript at 242 (Christopher) and 288 (Lawrence); Japanese Respondents' Posthearing Brief at 7.

[15] Table C-4, CR at C-9 to C-10, PR at C-6.

[16] Table C-4, CR at C-9 to C-10, PR at C-6.

[17] Table C-4, CR at C-9 to C-10, PR at C-6.

[18] Table E-3, CR at E-5 to E-7, PR at E-3. In addition, as noted earlier, the domestic industry produces alloy pipe only up to 2.5 inches in outer diameter, while the subject imports are up to 4.5 inches in outer diameter.

[19] Table C-4, CR at C-9 to C-10, PR at C-6.

[20] Table C-4, CR at C-9 to C-10, PR at C-6.

[21] Table C-3, CR at C-7 to C-8, PR at C-6.

[22] Table C-4, CR at C-9 to C-10, PR at C-6.

[23] Table C-4, CR at C-9 to C-10, PR at C-6.

be well-situated in its niche. Given the *** financial condition of the domestic industry, as well as my finding of no significant price effects, I find no material injury to the domestic industry by reason of subject imports.

III. NO THREAT OF MATERIAL INJURY TO THE DOMESTIC ALLOY SMALL DIAMETER PIPE INDUSTRY[24]

In determining whether a domestic industry is threatened with material injury by reason of the subject imports, section 771(7)(F) of the Act requires an assessment of whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[25] Such a determination may not be made "on the basis of mere conjecture or supposition," and the threat factors must be considered "as a whole in making a determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued."[26] In making my determination, I have considered all statutory factors that are relevant to this investigation.[27]

I note at the outset that, as discussed earlier, the domestic industry continues to be ***.[28] It appears to be well established in its niche, producing a *** of products for quick turnaround, high value sales.[29]

The industry in Japan has maintained a fairly high rate of capacity utilization, exceeding *** percent throughout our period of investigation, with *** increases each year. Capacity utilization is projected to remain steady in 2000 and 2001.[30] The volume of subject imports has increased over the period of investigation.[31] However, given the currently high market share held by subject imports, I find it unlikely that subject imports will continue to capture much more market share, given the remaining substantial presence of nonsubject imports. I found above that subject imports are not having a significant depressing or suppressing effect on prices, and the record does not indicate any imminent change such that subject imports would imminently have any such effect. Inventories of subject imports are extremely low.[32] There is some potential for product-shifting, given the other products that can be produced on common manufacturing equipment.[33] There is no indication on the record of a significant negative effect on the domestic industry's development and production efforts; as discussed above, the domestic industry appears well-situated in its market niche. While small diameter seamless pipe from Japan is subject to

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[24] Because there were no imports of alloy small diameter pipe from the Czech Republic and Romania during the period of investigation, I determine that these imports are negligible under 19 U.S.C. § 1677(24)(A) and decline to cumulate the Czech Republic or Romania with Japan for purposes of my threat analysis.

[25] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

[26] 19 U.S.C. § 1677(7)(F)(ii).

[27] 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and factor VII regarding agriculture products are inapplicable.

[28] Table C-4, CR at C-9 to C-10, PR at C-6.

[29] Hearing Transcript at 242 (Christopher) and 288 (Lawrence); Japanese Respondents' Posthearing Brief at 7.

[30] Questionnaire Responses of Japanese producers.

[31] Table C-4, CR at C-9 to C-10, PR at C-6.

[32] Table C-4, CR at C-9 to C-10, PR at C-6.

[33] CR at I-18, PR at I-16.

antidumping investigations in Mexico and Venezuela,[34] these investigations are ongoing and their results are speculative. Finally, the record does not indicate any other demonstrable adverse trends indicating a likelihood of material injury by reason of subject imports.

Based on this record, and in particular the continued strong condition of the domestic industry and the likely lack of significant price depression or suppression by subject imports, I find that the domestic industry producing alloy small diameter seamless pipe is not threatened with material injury by reason of subject imports.

[34] CR at VII-1, PR at VII-1.

VIEWS OF COMMISSIONER STEPHEN KOPLAN ON CRITICAL CIRCUMSTANCES

Commerce made affirmative final determinations of critical circumstances with respect to Japanese small diameter seamless pipe imports from Sumitomo Metal Industries, Kawasaki Steel Corp. and Nippon Steel Corp., and with respect to South African small diameter seamless pipe imports from Iscor Ltd. When Commerce makes an affirmative critical circumstances determination, the Commission is required to determine, for each domestic industry for which it makes an affirmative determination of material injury by reason of subject imports, "whether the imports subject to the affirmative [Commerce critical circumstances] determination … are likely to undermine seriously the remedial effect of the antidumping order to be issued."[1]

Consistent with Commission practice in considering the timing and volume of imports, I compared import quantities six months prior to the filing of the petition with those six months after the filing of the petition.[2] I note that the Commission is not required to examine the same period that Commerce examined in performing its critical circumstances analysis.[3] In this investigation, the petition was filed mid-year on June 30, 1999. Accordingly, the data I considered relevant to critical circumstances were those for all of 1999.

Subject imports from Japan covered by Commerce's affirmative critical circumstances finding totaled *** short tons in the six months prior to the filing of the petition and *** short tons in the six months after the filing of the petition.[4] I note that during the final three months of 1999, imports of the subject merchandise from Japan subject to Commerce's affirmative critical circumstances determinations were only *** short tons. Thus, I carefully examined import levels for the nine months of 1999 when there were *** subject imports to determine whether there was a post-petition surge. Those data revealed that subject import volumes totaled between *** short tons and *** short tons in each month from January to June of 1999. As to the three months immediately following the filing of the petition, I find that imports in each of these months were within or below the range of import volumes for January through June of 1999. Thus, there was no surge in subject imports after the filing of the petition. Moreover, the record indicates that inventories of subject imports from Japan were lower in 1999 than they were in 1998.[5] In sum, I do not find that the record evidence indicates that the relevant subject imports from Japan would undermine seriously the remedial effect of the order.

Subject imports from South Africa covered by Commerce's affirmative critical circumstances finding totaled *** short tons in the six months prior to the filing of the petition and *** short tons in the six

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[1] 19 U.S.C. § 1673d(b)(4)(A)(I).

[2] *See, e.g.*, Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom, Invs. Nos. 701-TA-380-382 and 731-TA-797-804 (Final), USITC Pub. 3208 (Jul. 1999) at 20-22; Certain Hot-Rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (Jun. 1999) at 33-34 & n. 129; Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999), at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), at 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997); Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

[3] *See* Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

[4] CR and PR at Table IV-9.

[5] CR and PR at Table VII-9.

months after the filing of the petition.[6] I note that during the final three months of 1999, total imports of the subject merchandise from South Africa subject to Commerce's affirmative critical circumstances determinations were *** short tons. Thus, I carefully examined import levels for the nine months of 1999 when there were *** subject imports to determine whether there was a post-petition surge. Those data revealed that subject import volumes totaled between *** short tons and *** short tons in February, March, May and June of 1999. In the three months immediately following the filing of the petition, I note that the monthly volume of imports ranged between *** and *** short tons. The record indicates that inventories of subject imports from South Africa increased by less than *** percent from 1998 to 1999.[7] The record does not indicate any fluctuations in the price of subject imports from South Africa after the filing of the petition. Thus, while I note there was a modest increase in the volume of imports after the filing of the petition, I find that subject imports from South Africa subject to Commerce's affirmative critical circumstances finding will not seriously undermine the remedial effect of the antidumping order.[8]

Accordingly, I make negative critical circumstances findings with respect to the relevant producers of small diameter seamless pipe from Japan and South Africa.

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[6] CR and PR at Table IV-9.

[7] CR and PR at Table VII-9.

[8] CR and PR at Tables V-1 and V-3.

CONCURRING AND DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in these investigations, I determine that an industry in the United States is materially injured by reason of imports of small diameter seamless carbon steel standard, line, and pressure pipe from Japan and South Africa that the Department of Commerce ("Commerce") has found to be sold in the United States at less than fair value ("LTFV"). I further determine that an industry in the United States is materially injured by reason of imports of large diameter seamless carbon steel standard, line, and pressure pipe from Japan that Commerce found to be sold at LTFV.

However, I determine an industry in the United States is neither materially injured nor threatened with material injury by reason of subject imports of small diameter seamless alloy steel standard, line, and pressure pipe from Japan found to be sold at LTFV. I also determine that subject imports of small diameter seamless alloy steel standard, line, and pressure pipe from South Africa are negligible. Finally, I determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of subject imports of large diameter seamless alloy steel standard, line, and pressure pipe from Japan found to be sold at LTFV.[1]

I. DOMESTIC LIKE PRODUCT

A. In General

To determine whether 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."[2] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant 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."[3] 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 . . . ."[4]

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.[5] No single factor is dispositive, and the Commission

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[1] Throughout the remainder of this opinion, I use the term "seamless carbon pipe" to refer to seamless carbon steel alloy standard, line, and pressure pipe and the term "seamless alloy pipe" to refer to seamless alloy steel standard, line, and pressure pipe.

[2] 19 U.S.C. § 1677(4)(A).

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(10).

[5] See, e.g., NEC Corp. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). 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 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).

may consider other factors it deems relevant based on the facts of a particular investigation.[6] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[7] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[8]

B. Product Description

The Department of Commerce has determined that there are two classes or kinds of merchandise subject to the scope of these investigations: (i) certain large diameter seamless carbon and alloy standard, line, and pressure pipe, and (ii) small diameter seamless carbon and alloy standard, line and pressure pipe. The scopes of these investigations cover imports of small diameter seamless carbon and alloy pipe from the Czech Republic, Japan, Romania, and South Africa, and large diameter seamless carbon and alloy pipe from Japan and Mexico.

With respect to large diameter seamless carbon and alloy pipe, Commerce has defined the subject merchandise as generally consisting of:

> large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application . . . . Specifically included within the scope of these investigations are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.[9]

With respect to small diameter seamless carbon and alloy pipe, Commerce has defined the subject merchandise as generally consisting of:

> seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes andredraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333,

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[6] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[7] 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).

[8] Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (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).

[9] For a complete description of the scope of the large diameter seamless carbon and alloy pipe investigations, see the Confidential Staff Report ("CR") at I-5-I-7, PR at I-5-7; see also 65 Fed. Reg. 25907 (May 4, 2000). In addition, several products are excluded from the scope of the investigation, including (i) boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications; (ii) oil country tubular goods (OCTG), if covered by the scope of another antidumping duty order from the same country or not used in standard, line or pressure applications; (iii) products produced to the A-335 specification unless they are used in an application that would normally utilize ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications; and (iv) line and riser pipe for deepwater application Id.

> ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application . . . . Specifically included within the scope of these investigations are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.[10]

Seamless pipes are commonly used in pipe applications requiring exceptional strength, high pressure containment, and a great degree of reliability. They are typically tested and rated for their ability to withstand internal hydrostatic pressure. The small diameter products covered by the scope are used for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gases in industrial piping systems. Large diameter pipes carry the same products but are used primarily for line applications. Both types of product may carry these substances at elevated pressures and may be subject to the application of external heat. According to petitioners, small seamless pipe is used primarily for the purpose of conveying liquids or gases within refinery or chemical plants while large pipe is used in pipeline projects for long distance transmission of high volumes of liquids or gases.[11]

Generally, three categories of small and large diameter seamless pipe are specifically covered by the scope of these investigations: standard pipe, line pipe, and pressure pipe. Standard pipe is most commonly produced to the ASTM A-53 specification and is generally intended for the low temperature and low pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Line pipe is produced to the API 5L specification and is intended for the conveyance of oil and natural gas and other fluids in pipelines. Pressure pipe is commonly produced to the ASTM A-106 specification and is intended for the conveyance of water, steam, petrochemicals, chemicals oil products, natural gas and other liquids and gases in industrial piping systems at elevated pressures and temperatures.[12]

In addition to these categories of seamless pipe, the subject merchandise covered by the scope of these investigations includes two different chemical forms of seamless pipe: seamless carbon pipe and seamless alloy pipe. Seamless carbon pipe is produced from carbon steel, which contains controlled amounts of carbon and manganese.[13] Seamless alloy pipe is produced from alloy steels, which contain controlled amounts of alloying agents, such as nickel, chromium, and molybdenum.[14] These alloying agents provide physical properties to the alloy pipes that are not obtainable with carbon steel, such as

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[10] For a complete description of the scope of the small diameter seamless carbon and alloy pipe investigations, see the Confidential Staff Report ("CR") at I-5-I-7, PR at I-5-7; see also 65 Fed. Reg. 25907 (May 4, 2000). Commerce specifically excluded from the scope boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Id.

[11] CR and PR at I-5-11.

[12] CR and PR at I-11-12.

[13] CR and PR at I-12-13.

[14] Id.

higher resistance to pressure and temperature. The specific forms of alloy steel covered by the scope are ASTM specifications A-335, A-333 and A-334.

C. Domestic Like Product Issues

In the preliminary determination, I found that there were two domestic like products in these investigations, corresponding to the scope definitions issued by Commerce: small diameter seamless pipe; *i.e*., seamless pipe with an outside diameter of not more than 4.5 inches; and large diameter seamless pipe, *i.e.*, seamless pipe with an outside diameter of more than 4.5 inches, but not more than 16 inches.[15] I also found that seamless carbon pipe and seamless alloy pipe were not separate domestic like products but I noted that I might revisit this issue during the final phase investigations.[14]

In these final phase investigations, no party contends that small and large diameter seamless pipe should be considered to be one domestic like product. Instead, the petitioners and the Mexican respondent TAMSA both agree that small diameter pipe and large diameter pipe should be considered separate domestic like products.[15] The Japanese producers do not appear to disagree. They do, however, contend that seamless carbon pipe and seamless alloy pipe should also be considered separate domestic like products. Petitioners argue against such a distinction.[16] I address below the issues of (i) whether small diameter seamless pipe and large diameter seamless pipe should be considered separate domestic like products and (ii) whether seamless carbon pipe and seamless alloy pipe should be considered separate domestic like products.

1. Small Diameter Seamless Pipe/Large Diameter Seamless Pipe

I agree with the parties that small diameter seamless pipe and large diameter seamless pipe are two separate domestic like products. First, the two products are clearly distinguishable from one another because of their size difference, with small diameter seamless pipe being less than 4.5 inches in diameter and large pipe being more than 4.5 inches in diameter. Although such a size distinction might not warrant a separate domestic like product in another investigation involving different facts, the record of this investigation indicates that the size difference between the two products leads to significant difference in end uses generally, with small diameter product being used primarily in the small volume transport of gasses and liquids in factories and production facilities and large diameter pipe being used primarily for the transport of large volumes of gases and liquids over long distances.[17] In addition, there is little actual interchangeability between the two products because of engineering and design differences.[18]

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[15] Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Japan, Mexico, Romania, and South Africa, Invs. Nos. 731-TA-846-850 (Preliminary), USITC Pub. 322 (August 1999) ("Preliminary Determination") at 7-8.

[14] Preliminary Determination at 8-9. I also note that I found that high-strength line pipe and commodity grade pipe were not separate domestic like products. Preliminary Determination at 9-10. I see no reason to revisit this finding.

[15] See Petitioners' Prehearing Brief at 6-11; Mexican Respondent's Prehearing Brief at 1 n.1.

[16] Japanese Respondents' Prehearing Brief at 6-28; MC Tubular Posthearing Brief at 1-12; Petitioners' Prehearing Brief at 16-22.

[17] Confidential Report (CR) at I-12, Public Report (PR) at I-11; Conference Transcript at 24 (Hill).

[18] CR at I-20, PR at I-17, Preliminary Staff Report, Appendix D, at D-3 to D-4, D-7.

Moreover, the record indicates that producers and customers generally consider large and small diameter seamless pipe to be different products. Both petitioners and respondents agree that producers and customers perceive small and large diameter pipe to be different products because of the difference in end uses.[19] Commission questionnaires elicited numerous comments that there is no competition between small diameter pipe and large diameter pipe.[20] Although the Japanese producers have suggested that the two product groupings are simply viewed as part of a continuum of seamless pipe products, the Mexican respondents assert that the small diameter pipe market is "another world" compared to the large diameter market.[21]

Further, there is little overlap of production facilities and employees with respect to the two categories of seamless pipe. In this regard, the record indicates that two of the *** domestic producers, Vision Metals/Gulf States and Koppel, produce only small diameter pipe and do not produce large diameter pipe at all. Similarly, the *** domestic producer of small pipe, North Star, produces only large seamless pipe and does not produce small diameter pipe. Although ***. Moreover, while USS-Fairfield produces small and large diameter pipe in the same facility, it only produces small diameter pipe with a diameter of 4.5 inches, which indicates that there is a significant dividing line at or about that size break point. Indeed, the only other producer who produces small and large pipe in the same facilities is Timken. Timken, however, represents a *** portion of the overall domestic production of both products.[22] Given the foregoing, the record indicates to me there is little actual overlap in production operations, facilities or employees for the two industries.

Finally, the record indicates that there are reasonably significant price differentials between the small and large diameter pipe. The average unit value of domestically produced large diameter seamless pipe was $*** per short ton in 1999 while the average unit value of domestically produced small diameter carbon pipe was $*** in 1999.[23]

On the whole, the record indicates that there are substantial differences between the two products with respect to their physical characteristics, end uses, interchangeability, customer and producer perceptions, and prices.[24] Moreover, the record indicates that the two products are generally produced by different producers, different employees and at different manufacturing facilities. Accordingly, I find that small diameter seamless pipe and large diameter seamless pipe are separate domestic like products.

2. <u>Seamless Carbon Pipe/Seamless Alloy Pipe</u>

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[19] CR and PR at II-1; Conference Transcript at 24 (Hill); Hearing Transcript at 170 (Houlihan).

[20] Preliminary Staff Report, Appendix D, at D-3 to D-4, D-9.

[21] Hearing Tr. at 169 (Houlihan); 172-173 (Gray).

[22] Timken accounted for *** percent of domestic small pipe production and *** percent of large pipe production in 1999. CR and PR at Table III-2. The fact that Timken accounted for *** percentage of small pipe production further supports my conclusion that small diameter pipe and large diameter pipe are separate domestic like products.

[23] CR and PR at Tables C-1 & C-2.

[24] I do recognize that there are similar channels of distribution for both products because they are both sold primarily to distributors. CR at I-20-21 & II-3, PR at I-17-18. However, this fact does not outweigh the significant evidence indicating differences between the two products.

I also find that seamless carbon pipe and seamless alloy pipe are separate domestic like products as well. First, there are significant physical and end use differences between carbon and alloy products. In particular, the inclusion of alloying elements in alloy pipe gives alloy pipe a significantly higher strength than carbon and allows it to withstand elevated temperatures. These characteristics make alloy pipe suited for certain high-temperature, low-temperature or high-corrosive applications (such as boilers) where it would be unsafe to use carbon pipe.[25] As a result of these physical differences and because of the significant price differential between the two products, there is limited, if any, actual or theoretical interchangeability between the two products. In fact, the record indicates that producers and customers view alloy pipe as a specialized niche product.[26] Petitioners do not strongly dispute the physical and end use differences between the products but assert that carbon and alloy pipe are viewed by purchasers and customers as a continuum.

Second, the record indicates that seamless carbon and seamless alloy pipe are not generally produced in the same productions and by the same employees. In this regard, the record indicates that six of the eight producers of large and small seamless pipe produce no seamless alloy pipe whatsoever. Of the eight seamless pipe producers, only two -- Gulf States and Michigan Specialty -- produce alloy pipe. Moreover, they produce minimal levels of the product. Given this, the record suggests that, on the whole, alloy pipe products are not produced in the same production facilities and using the same employees as carbon products.

Finally, I recognize that carbon and seamless alloy pipe do share similar channels of distribution in that they are both sold primarily to distributors, rather than end users. Nonetheless, the record also indicates that there is a much smaller and more specialized distribution network for alloy pipe than for carbon pipe.[27] Moreover, the record indicates that alloy pipe has *** average unit values than carbon pipe, both for the domestic product and imported product.[28]

On the whole, I find that the record clearly establishes that there are significant physical, end use, interchangeability, price, and production-related differences between carbon and alloy pipe. Indeed, I believe that there appears to be no logical basis for treating small and large diameter seamless pipe as separate domestic like products but not seamless carbon and alloy pipe. Accordingly, I find that seamless carbon and seamless alloy pipe should be considered to be separate domestic like products.

3. Conclusion

In light of the foregoing, I find that there are three different domestic like products in this proceeding: small diameter seamless carbon pipe, large diameter seamless carbon pipe, and small diameter seamless alloy pipe. Because there is no evidence of any domestic production of large diameter seamless alloy pipe as defined within the scope of the investigation, I am required to assess what product is most similar in uses and characteristics to the subject imports of large diameter seamless alloy

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[25] CR at I-13, PR at I-12.

[26] Japanese Prehearing Brief at 20-23; Petitioners' Prehearing Brief at 21; CR at II-1.

[27] CR at I-20 & II-3, PR at I-17 & II-3.

[28] CR at C-7 to C-10, Tables C-3, C-4; Petitioners' Prehearing Brief at 21; Hearing Tr. at 40 (Hill); MC Tubular Prehearing Brief at 6.

products.[29] Given that large diameter alloy pipe and small diameter alloy pipe both share the same ability to resist temperature extremes and corrosive elements, have higher strength tolerances than seamless carbon pipe, are used in high-temperature, high pressure or high-corrosion environments, and have significantly higher average unit prices than seamless carbon pipe, I find that small diameter seamless alloy pipe is the domestic product that is most similar in characteristics and uses to large diameter seamless alloy pipe imports.

II. DOMESTIC INDUSTRY

Section 771(4) of the Act defines the relevant 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 that product."[30] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[31]

Based on my finding above that there are three domestic like products, I also find that there are three domestic industries in this investigation: the industry producing small diameter seamless carbon pipe, the industry producing large diameter seamless carbon pipe, and the industry producing small diameter seamless alloy pipe. Accordingly, I include all producers of small diameter seamless carbon pipe within the small diameter carbon pipe industry, all producers of large diameter seamless carbon pipe within the large diameter seamless carbon pipe industry, and all producers of seamless alloy pipe within the seamless alloy pipe industry.[32] Moreover, because I have found that small diameter seamless alloy pipe is the domestic product that is most similar in uses and characteristics to subject imports of large

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[29] *See, e.g.,* Synthetic Indigo from China, Inv. No. 731-TA-851 (Preliminary), USITC Pub. 3222 (August 1999) at 7; Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Invs. Nos. 701-TA-384 (Preliminary) and 731-TA-806-808 (Preliminary), USITC Pub. 3142 (November 1998) at 5, n. 14 (noting "the statutory requirement that if there is no product 'like' the subject imports, the Commission must find the domestic product that is 'most similar in characteristics and uses with' the imports").

[30] 19 U.S.C. § 1677(4)(A).

[31] See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see generally, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG"), Invs. Nos. 701-TA-363-364 (Final) and Inv. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

[32] I also include within the small diameter carbon industry two redrawer/finishers of small diameter carbon pipe: Sharon Tube Co. and ***. In deciding whether a firm qualifies as a domestic producer, the Commission generally analyzes the overall nature of a firm's production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production. See, e.g., Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904, at I-8 (June 1995). I find that the somewhat limited available evidence indicates that these companies added enough value to be considered domestic producers. I do not include within the industry *** because it did not identify itself as a domestic producer in the final phase investigation.

diameter seamless alloy pipe, I assess the current and imminent impact of those imports on the industry producing small diameter seamless alloy pipe.

Accordingly, I consider below:

(i) whether imports of small diameter seamless carbon pipe from Japan and South Africa have caused material injury to the domestic industry producing small diameter seamless carbon pipe;

(ii) whether imports of large diameter seamless carbon pipe from Japan have caused material injury to the domestic industry producing large diameter seamless carbon pipe;

(iii) whether imports of small diameter seamless alloy pipe from Japan and South Africa have caused injury or threaten to cause injury to the domestic industry producing small diameter seamless alloy pipe; and

(iv) whether imports of large diameter seamless alloy pipe from Japan have caused injury or threaten to cause injury to the domestic industry producing small diameter seamless alloy pipe.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF SMALL DIAMETER SEAMLESS CARBON PIPE FROM JAPAN AND SOUTH AFRICA

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.[33] In making this determination, the Commission must consider the volume of the subject 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.[34] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[35] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.[36] 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."[37]

For the reasons discussed below, I determine that the domestic industry producing small diameter seamless carbon pipe is materially injured by reason of LTFV imports of small diameter seamless carbon pipe from Japan and South Africa.

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[33] 19 U.S.C. § 1673d(b).

[34] 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).

[35] 19 U.S.C. § 1677(7)(A).

[36] 19 U.S.C. § 1677(7)(C)(iii).

[37] 19 U.S.C. § 1677(7)(C)(iii).

A. Cumulation

1. 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 cumulate subject imports 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 product in the U.S. market.[38] In assessing whether subject imports compete with each other and with the domestic like product, 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 geographical 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.[39]

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.[40] Only a "reasonable overlap" of competition is required.[41]

Because the petitions in the investigations covering small diameter seamless carbon pipe from Japan, South Africa, the Czech Republic, and Romania were filed on the same day, I am required to assess whether the subject imports from these countries compete with each other and with the domestic merchandise.[42] For the reasons discussed below, I find that there is a reasonable overlap of competition among small diameter seamless carbon pipe from the four countries and the domestic merchandise. I therefore cumulate them for purposes of my injury analysis in this proceeding.

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[38] 19 U.S.C. § 1677(7)(G)(i).

[39] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. 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).

[40] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[41] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (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.").

[42] None of the four statutory exceptions to the general cumulation rule applies for purposes of this determination. These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

First, I find that there is a reasonable degree of fungibility among small diameter carbon pipe from the four subject countries and the domestic merchandise. While I recognize that the record indicates that there are some quality differences between the subject imports and the domestic merchandise, and that the substitutability of the domestic and subject merchandise may be somewhat limited by other non-price factors such as lead times, availability, product range and reliability, most purchasers reported that the subject imports from Japan, the Czech Republic, Romania, and South Africa were always or usually interchangeable and that the subject imports are generally comparable to the domestic merchandise with respect to most significant purchase decision factors.[43] Moreover, the bulk of small diameter pipe imported from each of the subject countries as well as that produced domestically is sold in commodity grades.[44] These grades conform to standards and specifications published by a number of organizations, including the ASTM, ASME, and API. In light of the foregoing, I find that there is at least a moderate to moderately high level of substitutability among the subject imports and the domestic merchandise, which indicates that there is a moderate to moderately high degree of fungibility among the merchandise.

Moreover, the record indicates that the subject imports were simultaneously present throughout most of the period of investigation. The subject imports of small diameter carbon pipe from Japan were present during every month of the period of investigation; the subject imports from the Czech Republic were present during 31 of the 36 months of the period; the subject imports from Romania were present during 30 of the 36 months; and subject imports from South Africa were present during 28 of the 36 months.[45] Further, the subject imports from all four countries were sold in the same channels of trade as the domestic merchandise, with the vast majority of shipments of both subject imports of small diameter pipe and the domestic like product being sold to distributors.[46]

Finally, although there is some variation in the geographic regions in which the subject imports were sold, the record indicates that imports from all four subject countries were sold in reasonable levels in the Gulf region and that three of the four countries were available on the East Coast as well.[47] Japanese pipe was available in all geographic areas of the U.S.; Romanian pipe was present on the ***; Czech pipe was present in ***; and South African pipe was available on ***.[48] The majority of domestic producers report that they serve the entire United States. Thus, at a minimum, the domestic like product and *** were present in the Gulf area.

Accordingly, I find that there is a reasonably high degree of fungibility among the subject imports and the domestic merchandise, that there is a reasonable degree of geographic overlap among the imports and the domestic merchandise, and that the subject imports and the domestic merchandise were sold simultaneously throughout the period of investigation and in the same channels of trade. Consequently, I have cumulated the subject imports of small diameter seamless carbon pipe from the Czech Republic, Japan, Romania and South Africa for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports.

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[43] CR at II-19, II-21, II-25-26, PR at II-12-19.

[44] Hearing Transcript at 41 (Ramsey).

[45] Petitioners' Prehearing Brief at 33-34 and Exh. 12.

[46] CR at I-20, PR at I-17-18.

[47] CR at II-2, PR at II-2.

[48] CR and PR at II-2.

B. Conditions of Competition

The market for small diameter seamless carbon pipe is characterized by the following conditions of competition:

First, demand for small diameter carbon pipe is derived in significant part from demand for pipe in the oil and gas industries.[49] Accordingly, increases and decreases in oil and gas prices generally have a direct effect on demand for small diameter carbon pipe.[50] However, because small diameter carbon pipe is not used solely for oil and gas purposes,[51] demand in other end use industries will also affect demand for demand for seamless pipe products. Generally, both domestic producers and importers agree that demand was strong for seamless pipe in 1996. After that, there is some disagreement about trends in demand, with some producers and importers reporting that demand peaked in 1997 and that demand collapsed in 1997 as oil and gas prices fell.[52] Others report that demand has remained flat in certain end uses.[53] Recently, oil and gas prices have begun to rebound.

During the period of investigation, apparent consumption of small diameter seamless carbon pipe declined dramatically, with the largest decline occurring in 1999.[54] Apparent consumption of small diameter seamless carbon pipe declined from *** thousand short tons in 1997 to *** thousand short tons in 1998 to *** thousand short tons in 1999, for an overall decline in consumption of *** percent. *** percent of the decline occurred between 1998 and 1999.[55]

Second, during this period of significant demand declines, the domestic industry producing small diameter seamless carbon pipe experienced significant declines in capacity utilization. Domestic capacity utilization for small diameter seamless carbon pipe declined from *** percent in 1997 to *** percent in 1998 to *** percent in 1999.[56] Despite the dramatic decline in demand, the domestic producers reported significant amounts of additional small diameter seamless carbon pipe capacity during the period, indicating that their overall capacity level increased by *** percent, from *** thousand short tons in 1998 to *** thousand short tons in 1999.

Third, the record indicates that there is some possible substitution of non-seamless pipe products (like mechanical tubing, stainless pipe, welded pipe, and plastic tubing) for seamless pipe.[57] However, market participants indicate that there is a limit to the ability to substitute such merchandise for seamless pipe.[58]

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[49] CR at II-4 & II-12-14, PR at II-4 & II-8-9.

[50] CR at II-4-5 & 12-14, PR at II-3-4 & II-8-9.

[51] As indicated above, demand for seamless pipe is also derived from demand for pipe in refineries, petrochemicals, large sports stadiums, pipe nipples and couplings, and chemical and plastics plants.

[52] CR at II-11, PR at II-7.

[53] CR at II-11-12, PR at II-7-8.

[54] CR and PR at Table C-3.

[55] Id.

[56] CR and PR at Table C-3.

[57] CR at II-12, PR at II-8-9.

[58] CR at II-12-13, PR at II-8-9.

Fourth, the vast majority of domestic and importer shipments of small diameter carbon pipe are sold to distributors, with only a small portion being sold to end users. *** percent of domestic small diameter pipe shipments were sold to distributors in 1999 while 95.8 percent of importers' shipments were sold to distributors.[59] There are at least 1000 pipe distributors in the U.S. but the major domestic producers sell to between 20 and 40 distributors.[60]

Fifth, the record indicates that there is at least a moderately high degree of substitutability between the domestic and subject merchandise. Staff estimates an elasticity of substitution of between 4 and 8, which indicates a moderately high to high substitutability.[61] Generally, producers, importers and purchasers reported that imports from the subject countries were always or frequently interchangeable for the domestic merchandise.[62] While there were some variations among the countries, purchaser responses on the whole indicate that small diameter seamless pipe imports from the four subject countries are reasonably comparable to the domestic merchandise.[63] Nonetheless, the record also indicates that there are limits on the substitutability of the domestic and subject merchandise. First, the lead times for domestic merchandise are considerably shorter than those for the subject merchandise, as the domestic producers have lead times of between one to 14 days while the subject importers have lead times from 45 days to six months.[64] Moreover, the large majority of purchasers report that they always or usually know the country of origin for their pipe and that it is always or usually important for them.[65] Moreover, most purchasers report using a limited number of suppliers (ranging from 2 to 6) and that they rarely or infrequently change their suppliers.[66]

Sixth, price is an important aspect of the purchase decision for seamless pipe. In this regard, twenty-one of 24 purchasers reported that price is one of the three most important factors in the purchase decision. Nonetheless, I note that only two purchasers rated price as the most important factor in the purchase decision, while twelve of 23 rated quality as the most important factor in the purchase decision.[67] Similarly, 23 of 24 purchasers reported that the lowest price will not always win the sale, noting that other factors (such as quality, presence on the approved manufacturers lists, supplier reputation, etc.) are important considerations in the purchase decision.[68] Moreover, on average, price was rated only the sixth most important of the most important factors in the purchase decision, with product quality and consistency being the most important factors on average.[69] These considerations, together with the quality and lead time issues discussed above, indicate that seamless pipe products are not commodity-style, highly fungible products.

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[59] CR and PR at Table I-4.

[60] CR at II-2, PR at II-2.

[61] CR at II-30, PR at II-20.

[62] CR at II-17-26, PR at II-12-16.

[63] CR at II-17-26, PR at II-12-16.

[64] CR at II-13, PR at II-9.

[65] CR at II-14, PR at II-10.

[66] CR at II-15, PR at II-10.

[67] CR at II-15, PR at II-11.

[68] CR at II-15, PR at II-11.

[69] CR at II-17, PR at II-12.

Seventh, the methodology for establishing prices in the seamless pipe market varies somewhat for the domestic producers and importers. Generally, domestic producers set prices on the basis of published price lists, while importers set prices on a transaction-specific basis.[70] However, domestic producers assert that, in mid-1998, price lists became increasingly less relevant to the prices they negotiated with their purchasers.[71] Most domestic producers offer discounts based on volume while the majority of importers do not.

Eighth, purchasers generally reported that the domestic small diameter pipe producers USS-Fairfield and Gulf States were price leaders in the seamless markets, with a minority reporting that subject importers were price leaders.[72] However, a small number of purchasers reported that subject producers, in particular Japan, had led prices downward in 1998-1999.[73]

Ninth, many purchasers maintain approved manufacturers lists ("AMLs") and only purchase from the limited number of producers on those lists.[74] The record indicates that the Romanian, Czech and South African respondents are not on the AMLs of many purchasers.

Tenth, a number of countries have initiated antidumping investigations or issued antidumping findings against subject imports of seamless pipe from the Czech Republic, Romania and Japan, including the EU, Hungary, Brazil, Venezuela, India, and Mexico.[75]

Finally, there is a small but reasonably significant nonsubject import presence in the market. Nonsubject imports occupied *** percent of the small diameter carbon market in 1997, *** percent in 1998, and *** percent in 1999.[76]

I have taken all of these conditions of competition into account when performing my analysis in this case.

C. Volume of the Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[77]

I find that the volume and market share of the cumulated subject imports is significant. The quantity of the cumulated subject imports of small diameter seamless carbon pipe increased significantly from 1997 to 1998, rising from *** short tons in 1997 to *** short tons in 1998. However, the quantity of the subject imports then fell substantially in 1999, to *** short tons. Although the absolute volume of the

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[70] CR at V-5, PR at V-5.

[71] CR at V-5, PR at V-5.

[72] CR at V-6, PR at V-5-6.

[73] CR at V-6, PR at V-6.

[74] CR at V-6, PR at V-5.

[75] CR at VII-1, PR at VII-1.

[76] CR and PR at Table C-1.

[77] 19 U.S.C. § 1677(7)(C)(i).

subject imports declined in 1999 to a level below their volume in 1997, that decline occurred during a period of very significant declines in consumption. In fact, the overall percentage decline in the absolute quantity of the subject imports during the period of investigation was essentially equivalent to the percentage decline in the apparent consumption level during the same period.[78]

The market share of the cumulated subject imports increased significantly from 1997 to 1998 but then declined to 1997 levels in 1999. The market share of the cumulated subject imports increased from *** percent in 1997 to *** percent in 1998 but then declined to *** percent in 1999. Although these volume trends might otherwise suggest that the cumulated imports had not had a significant volume effect on the industry during the period of investigation, the record of this investigation indicates that the decline in the market share of the subject imports in 1999 back to their 1997 was primarily a result of two factors.

First, the record indicates that the decline in the market share of the imports in 1999 is attributable, in significant part, to a decision on the part of the domestic industry to regain its lost market share through aggressive price competition with the subject and nonsubject imports. In this regard, I note that the subject imports had gained significant amounts of market share in 1998 at the direct expense of the domestic industry. In 1998, the cumulated subject imports gained *** percent of the market while the industry lost *** percentage points of their market share in that year.[79] In 1999, the domestic industry regained significant levels of market share from the subject imports but did only after reducing prices significantly on certain products on which there was head-to-head competition between the domestic and subject producers.[80] Given this, I believe that the record indicates that, during a period of declining demand, the subject imports achieved significant market share increases in 1998 through LTFV pricing practices. The domestic industry was only able to regain that volume through aggressive price competition in 1999.

Second, the record also indicates that the quantities and market share of the subject imports were significantly affected by the filing of the antidumping petition in June 1999. Indeed, the record indicates that there was a decline in the relative volumes of the subject imports after the filing of the petition in 1999.[81] Nonetheless, even after this decline from 1998 levels, the market share of the subject imports in 1999 was *** percent, which was slightly higher than their market share in 1999.[82] This suggests that, absent the filing of the petition, the subject imports would have obtained an even more significant share of the market in 1999 than they did.

Accordingly, I find the volume of subject imports of small diameter seamless pipe to be significant.

D. Price Effects of the Cumulated Subject Imports

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[78] CR and PR at Table C-3.

[79] CR and PR at Table C-3.

[80] CR and PR at Tables V-1-6 & Figures V-2-13.

[81] The decline in imports in the fourth quarter of 1999 is confirmed by Census data, which may include nonsubject pipe as well as subject pipe, but are nevertheless indicative of the trends in the subject small diameter pipe market. South African Respondents' Posthearing Brief, Annex 2.

[82] CR and PR at Table IV-7.

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.[83]

I find that the cumulated subject imports have been underselling the domestic merchandise significantly during the period and that this underselling has had significant adverse price effects on the domestic merchandise. As an initial matter, I note that the record indicates that price is an important factor in the purchase decision and that there is a moderately high to high level of substitutability between the cumulated subject imports and the domestic merchandise. Accordingly, this indicates that the subject imports are more likely to be able to have significant adverse effects on domestic prices through aggressive price competition. In this case, the record indicates that the subject imports have engaged in aggressive price competition with the domestic merchandise and that they have had adverse effects on domestic prices as a result of that competition.

In particular, I note that the our price comparison data indicates that the subject imports engaged in aggressive underselling throughout the period of investigation. The subject imports undersold the domestic merchandise in all possible quarterly price comparisons for price comparison product 1, in 41 of 45 quarterly comparisons for product 2, and in 24 of 32 quarterly comparisons for product 3.[84] Moreover, the Commission's price comparison data in this investigation indicates this consistent underselling by the subject imports, often by significant margins, resulted in a significant downward pressure on domestic prices.[85] In this regard, the price comparison data for products 2 and 3 (the largest volume price comparison products) show that domestic prices for these products began declining in mid- to late-1998 and continued declining throughout 1999, primarily in response to significant and continued price underselling by subject imports during a period of significant demand declines.[86] Given the trends evident from the price comparison data, I find that the subject imports have had a significant depressing effect on domestic prices.

When performing my price analysis in this proceeding, I have closely examined the dramatic decline in demand for small diameter carbon pipe during the period of investigation. While this decline did clearly have an effect on small diameter carbon pipe prices, I believe that it does not fully explain the domestic price declines evidenced in the record. As previously noted, the record indicates that the subject imports consistently undersold the domestic merchandise throughout the period of investigation, that they increased their market share significantly in 1998 when demand was declining, and that they led domestic prices downward during 1998 and 1999 as demand continued to decline. All of this suggests that the

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[83] 19 U.S.C. § 1677(7)(C)(ii).

[84] CR and PR at Tables V-3 and V-5.

[85] CR and PR at Tables V-1 through V-6.

[86] CR and PR at Tables V-1 through V-6.

subject imports significantly exacerbated the domestic price declines that would otherwise have occurred during a period of significantly declining demand.

Accordingly, I find that the subject imports have had significant adverse effects on domestic prices during the period of investigation.

E. Impact of the Cumulated Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[87] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[88]

I find that the subject imports have had a significant negative impact on the condition of the industry during the period of investigation. As I noted previously, the record indicates that the subject imports have had significant adverse volume and price effects on the domestic industry during the period of investigation. Due to this significant competitive impact from the subject imports, the financial condition of the industry has eroded significantly during the period of investigation. In particular, the domestic industry's operating income fell from $*** in 1997 to $*** in 1998, and then declined even further to an operating loss of $*** in 1999.[89] Similarly, the industry's operating income as a percentage of sales declined from *** percent in 1997 to *** percent in 1998 and then to a loss of *** percent in 1999. Moreover, from 1997 to 1999, the industry experienced significant declines in its production and capacity utilization levels, its shipments, inventories and net sales, and its employment data.[90] Furthermore, the industry experienced declines in its average unit prices at the same time that it experienced significant increases in its unit cost of goods sold and SG&A.[91] Accordingly, as a result of price competition from the subject imports, in significant part, the industry was caught in an increasingly difficult cost/price squeeze.

I recognize that a substantial portion of the domestic industry's revenue and production declines occurred during a significant decline in demand for small diameter seamless carbon pipe. As I previously discussed, however, the record of this investigation indicates that the decline in the industry's condition

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[87] 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).

[88] 19 U.S.C. § 1677(7)(C)(iii).

[89] CR and PR at Table VI-1.

[90] CR and PR at Table C-3.

[91] CR and PR at Table C-3. In particular, the industry's unit cost of goods sold increased from $*** in 1997 to $*** in 1998 and then to $*** dollars in 1999. As a result, the industry's ratio of COGS to sales increased from *** percent in 1997 to *** percent in 1998 to *** percent in 1999. In this regard, I have examined closely the nature of the supply relationship between *** to assess the ***. I find that *** However, that impact was not substantial enough to change my determination in these investigations.

was also attributable in significant part to price competition from subject imports, particularly in 1999, when the domestic industry was forced to lower its prices significantly in order to recapture substantial market share lost in 1998 to the low-priced subject imports. As I mentioned previously, competition from the subject imports significantly exacerbated the effects of the decline in demand on an increasingly unprofitable and poorly performing industry.

The respondents have argued that any injury to the domestic industry was temporary, and that the industry has already returned to health, in light of recent upturns in oil and gas prices. While small diameter seamless pipe prices have increased somewhat as conditions in the oil and gas industry have improved, they are still below their 1997 levels before the surge in subject imports.[92] Moreover, recent improvements in the condition of the domestic industry have been modest, and are partly attributable to the filing of these petitions, which caused subject imports to decline and in some cases withdraw from the market.[93]

Accordingly, I find that the cumulated subject imports have had a significant adverse impact on the domestic small diameter seamless carbon pipe industry.

F. Critical Circumstances

Commerce made affirmative findings of critical circumstances with respect to Japanese small diameter seamless pipe imports from Sumitomo Metal Industries, Kawasaki Steel Corp., and Nippon Steel Corp., and with respect to South African small diameter seamless pipe imports from Iscor Ltd. Because I have determined that the domestic small diameter seamless carbon pipe industry is materially injured by reason of subject small diameter imports from Japan and South Africa, I must further determine "whether the imports subject to the affirmative {Commerce critical circumstances} determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued."[94] The SAA indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[95] The statute further provides that in making this determination the Commission shall consider the timing and the volume of the imports, any rapid increase in inventories of the imports, and any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[96]

Consistent with existing Commission practice, when considering the timing and volume of subject imports, I have compared the import quantities during the six-month period prior to the filing of the petition with those during the six-month period subsequent to the filing of the petition.[97] The record contains monthly export data for the firms subject to the affirmative Commerce critical circumstances determination. These data indicate that imports from Japan subject to Commerce's affirmative critical circumstances determination were lower in the period following filing of the petition than in the period

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[92] Hearing Transcript at 42 (Ramsey), 45 (Gajdzik).

[93] Hearing Transcript at 42 (Ramsey), 45 (Gajdzik); 282 (Nolan).

[94] 19 U.S.C. § 1673d(b)(4)(A)(i).

[95] SAA at 877.

[96] 19 U.S.C. § 1673d(b)(4)(A)(ii).

[97] *See, e.g.*, Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 at 24 (Feb. 1999).

preceding it.[98] Although the record does not contain information specifically concerning inventories of imports of those firms subject to the Commerce affirmative critical circumstances finding, the available information concerning inventories of all subject small diameter pipe imports from Japan in the United States indicates that these inventories did not increase during the post-petition period.[99] Because the record indicates that there was no substantial increase in those imports from Japan subject to the Commerce affirmative critical circumstances finding in the period immediately following filing of the petition and there was not a substantial increase in inventories of these imports, I find that these imports will not seriously undermine the remedial effect of the antidumping duty order.[100]

Imports from South Africa subject to Commerce's affirmative critical circumstances finding did increase in the post-petition period, although the absolute increase was ***. These imports were *** short tons in July-December 1999, as compared to *** short tons in the period January-June 1999. Moreover, the available data indicate that inventory levels for all subject imports from South Africa increased only very modestly during 1999.[101] In light of this data, I find that the subject imports from South Africa subject to the Commerce critical circumstances finding will not seriously undermine the remedial effect of the antidumping order,, notwithstanding the volume increase in the post-petition period.[102]

Accordingly, I make negative critical circumstances determinations concerning small diameter seamless carbon pipe from Japan and South Africa.

IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF LARGE DIAMETER SEAMLESS CARBON PIPE FROM JAPAN

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.[103] In making this determination, the Commission must consider the volume of the subject 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.[104] The statute defines "material injury" as

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[98] CR and PR at Table IV-9.

[99] CR and PR at Table VII-9.

[100] The petitions were filed on June 30, 1999. Comparing imports during the six-month period from January 1999 to June 1999 with imports during the six-month period from July 1999 to December 1999, the volume of the Japanese seamless carbon pipe imports subject to the critical circumstances finding fell from *** short tons to *** short tons. Furthermore, as of December 31, 1998, U.S. inventories of small diameter pipe from Japan were *** short tons; as of December 31, 1999, U.S. inventories of small diameter pipe from Japan were *** short tons.

[101] CR and PR at Table VII-9.

[102] The petitions were filed on June 30, 1999. Comparing imports during the six-month period from January 1999 to June 1999 with imports during the six-month period from July 1999 to December 1999, the volume of the South African seamless carbon pipe imports subject to the critical circumstances finding rose from *** short tons to *** short tons. Furthermore, as of December 31, 1998, U.S. inventories of small diameter pipe from South Africa were *** short tons; as of December 31, 1999, U.S. inventories of small diameter pipe from South Africa were *** short tons.

[103] 19 U.S.C. § 1673d(b).

[104] 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).

"harm which is not inconsequential, immaterial, or unimportant."[105] 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.[106] 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."[107]

For the reasons discussed below, I determine that the domestic industry producing large diameter seamless carbon pipe is materially injured by reason of LTFV imports of large diameter seamless carbon pipe from Japan.

A. Cumulation

1. 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 cumulate subject imports 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 product in the U.S. market.[108] In assessing whether subject imports compete with each other and with the domestic like product,[109] 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 geographical 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.[110]

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

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[105] 19 U.S.C. § 1677(7)(A).

[106] 19 U.S.C. § 1677(7)(C)(iii).

[107] 19 U.S.C. § 1677(7)(C)(iii).

[108] 19 U.S.C. § 1677(7)(G)(i).

[109] The SAA 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." SAA at 848, 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).

[110] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. 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).

compete with each other and with the domestic like product.[111] Only a "reasonable overlap" of competition is required.[112]

Because the petitions in the investigations concerning large diameter seamless carbon and alloy pipe from Japan and Mexico were filed on the same day, I am required to assess whether the subject imports of large diameter seamless carbon pipe from Japan and Mexico compete with each other and with the domestic merchandise.[113] For the reasons discussed below, I find that there is a reasonable overlap of competition among imports of large diameter seamless carbon pipe from Japan and Mexico and the domestic merchandise. I therefore cumulate them for purposes of my injury analysis in this proceeding.

First, I find that there is a reasonable degree of fungibility among large diameter seamless carbon pipe from the two subject countries and the domestic merchandise. The record indicates that there are some quality differences between the subject imports and the domestic merchandise and that the substitutability of the domestic and subject merchandise may be somewhat limited by other non-price factors such as lead times, availability, product range and reliability.[114] However, most purchasers reported that the subject imports from Japan and Mexico were always or usually interchangeable with each other and the domestic product.

Moreover, while some purchasers reported that Japan seamless pipe was of higher quality than Mexican, the majority of responding purchasers reported that imports from both countries were comparable to the United States product.[115] Further, the data submitted by Mexican respondent TAMSA show that commodity large pipe products constituted *** of large diameter pipe imports from Mexico during each year of the period of the investigation,[116] while the Japanese respondents acknowledge that the portion of common grade products in the mix of their imports rose in 1999.[117] In light of the foregoing, I find that there is at least a moderate to moderately high level of substitutability among the subject imports and the domestic merchandise, which indicates that there is a moderate to moderately high degree of fungibility among the merchandise.

Second, the record indicates that the subject imports were simultaneously present throughout most of the period of investigation. The subject imports of large diameter carbon pipe from Japan and Mexico were present in the United States during every month of the period of investigation.[118] In addition, the record indicates that Mexican and Japanese imports were generally sold in similar same channels of trade as the domestic merchandise. In 1999, the majority of domestic large diameter carbon pipe production

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[111] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[112] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (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.").

[113] None of the four statutory exceptions to the general cumulation rule applies for purposes of this determination.

[114] CR at II-2, 4-6, 10, 13, PR at II-4-6, 9.

[115] CR at II-20-23, 27-28, PR at II-12-19.

[116] Mexican Respondent's Posthearing Brief at Q-6 to Q-7.

[117] Japanese Respondents' Posthearing Brief at 8-9.

[118] Petitioners' Prehearing Brief, Exh. 23.

and subject large diameter imports from Japan and a substantial proportion of subject large diameter subject imports from Mexico were shipped to distributors.

Finally, the record indicates that the subject imports and the domestic merchandise were available throughout the United States during the period of investigation. The four domestic producers sold large diameter seamless carbon pipe throughout the nation during the period. The Japanese imports of large diameter carbon pipe were present in all geographic regions of the United States, while Mexican large diameter pipe was available in the ***.[119]

Accordingly, I find that there is a reasonably high degree of fungibility between the subject imports and the domestic merchandise, that there was a reasonable degree of geographic overlap among the imports and the domestic merchandise, and that the subject imports and the domestic merchandise were sold simultaneously throughout the period of investigation and in the same channels of trade. Consequently, I have cumulated the subject imports from Japan and Mexico for the purpose of analyzing whether the domestic industry has been materially injured by reason of the subject imports of large diameter seamless carbon pipe.

B. Conditions of Competition

The market for large diameter seamless carbon pipe in the United States is characterized by the following conditions of competition:

First, demand for large diameter seamless carbon pipe is derived to a great degree from demand for pipe in the oil and gas industries.[120] Accordingly, increases and decreases in oil and gas prices generally have a direct effect on demand for large diameter seamless carbon pipe.[121] In fact, because large diameter seamless carbon pipe is more often used in oil and gas uses that small diameter seamless pipe, large diameter pipe demand is more directly linked to oil and gas prices.[122] Nonetheless, because large diameter seamless pipe is not used solely for oil and gas purposes,[123] demand in other end use industries will also affect demand for demand for large diameter seamless pipe products.

Generally, both domestic producers and importers agree that demand was strong for large diameter seamless pipe in 1996. After that, there is some disagreement about trends in demand, with some producers and importers reporting that demand for large diameter pipe peaked in 1997 and that demand collapsed in 1997 as oil and gas prices fell.[124] Other market participants report that demand has remained flat in certain end uses.[125] Recently, oil and gas prices have begun to rebound, which suggests that demand for large diameter carbon pipe will be recovering as well.

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[119] CR at II-2; PR at II-2.

[120] CR at II-4 & II-11-12, PR at II-3 & II-7-8.

[121] CR at II-4-5 & 11-12, PR at II-3 & II-7-8.

[122] CR at II-4-5, PR at II-3.

[123] As indicated above, demand for seamless pipe is also derived from demand for pipe in refineries, petrochemicals, large sports stadiums, pipe nipples and couplings, and chemical and plastics plants.

[124] CR at II-11, PR at II-7-8.

[125] CR at II-11-12, PR at II-7-8.

Apparent consumption of large diameter carbon pipe has fallen significantly during the period.[126] Apparent consumption of large diameter carbon pipe declined from *** short tons in 1997 to *** short tons in 1998 and then to *** short tons in 1999, for an overall decline of *** percent during the period of investigation.[127]

Second, the domestic industry producing large diameter carbon pipe has experienced significant declines in capacity utilization during the period. Domestic capacity utilization for large diameter carbon pipe declined from *** percent in 1997 to *** percent in 1998 to *** percent in 1999.[128] Nonetheless, the industry reports that its capacity increased by *** percent during the period, from *** short tons in 1997 to *** short tons in 1999.[129]

Third, there is some differential between the channels of trade served by the domestic industry and importers, with *** of domestic shipments of large seamless carbon pipe being sold to distributors and *** percent being sold to end users. Approximately *** percent of import shipments of large diameter seamless pipe are sold to distributors and *** percent being sold to end users.[130] There are at least 1,000 pipe distributors in the U.S. but the major producers sell to between 20 and 40 distributors.[131]

Fourth, the record indicates that there is at least a moderately high degree of substitutability between the domestic and subject merchandise. Generally, producers, importers and purchasers reported that imports from the subject countries were always or frequently interchangeable for the domestic merchandise.[132] While there were some variations among the countries, the purchaser responses on the whole indicate that imports from Mexico and Japan were reasonably comparable to the subject merchandise.[133] Nonetheless, the record indicates that there are limits on the substitutability of the domestic and subject merchandise. First, the lead times for domestic merchandise are considerably shorter than that for the subject merchandise, as the domestic producers have lead times of between one to 14 days while the subject importers have lead times from 45 days to six months.[134] Moreover, the large majority of purchasers report that they always or usually know the country of origin for their pipe and that it is always or usually important for them.[135] Moreover, most purchasers report using a limited number of suppliers (ranging from 2 to 6) and that they rarely or infrequently change their suppliers.[136]

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[126] CR and PR at Table C-2.

[127] CR and PR at Table C-3. Because there was no domestic production of large diameter seamless alloy during the period of investigation and *** amounts of subject large diameter alloy pipe from Japan were imported during the period (***), I have relied on the total subject large diameter seamless pipe data in the staff report for my analysis of this domestic like product.

[128] CR and PR at Table C-2.

[129] CR and PR at Table C-2.

[130] CR and PR at Table I-4.

[131] CR at II-2, PR at II-2.

[132] CR at II-17-26, PR at II-12-18.

[133] CR at II-17-26, PR at II-12-18.

[134] CR at II-13, PR at II-9.

[135] CR at II-14, PR at II-10.

[136] CR at II-15, PR at II-10.

Fifth, price is an important aspect of the purchase decision for large diameter seamless pipe. In this regard, twenty-one of 24 purchasers reported that price is one of the three most important factors in the purchase decision for seamless pipe. Nonetheless, I note that only two purchasers rated price as the most important factor in the purchase decision, while twelve of 23 rated quality as the most important factor in the purchase decision.[137] Similarly, 23 of 24 purchasers reported that the lowest price will not always win the sale, noting that other factors (such as quality, presence on the approved manufacturers lists, supplier reputation, etc.) are important considerations in the purchase decision.[138] Moreover, on average, price was rated only the sixth most important of the most important factors in the purchase decision, with product quality and consistency being the most important factors on average.[139] These considerations, together with the quality and lead time issues discussed above, indicate that large diameter seamless carbon pipe products are not simply commodity-style, highly fungible products.

Sixth, the methodology for establishing prices in the seamless pipe market varies somewhat for the domestic producers and importers. Generally, domestic producers set prices on the basis of published price lists, while importers set prices on a transaction-specific basis.[140] However, domestic producers assert that, in mid-1998, price lists became increasingly less relevant to the prices they negotiated with their purchasers.[141] Most domestic producers offer discounts based on volume while the majority of importers do not.

Seventh, purchasers generally report that the domestic large diameter pipe producers USS-Fairfield and Northstar were the price leaders in the large diameter seamless carbon pipe market, with a minority reporting that subject importers were price leaders.[142] However, a small number of purchasers reported that subject producers, in particular Japan, led prices downward in 1998-1999.[143]

Eighth, Venezuela and Mexico have initiated antidumping investigations against the subject imports from Japan in 1999.[144]

Finally, there is a significant nonsubject import presence in the market. Nonsubject imports occupied *** percent of the large diameter market in 1997, *** percent in 1998, and *** percent in 1999.

I have taken all of these conditions of competition into account in my analysis.

C. Volume of the Cumulated Subject Imports

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[137] CR at II-15, PR at II-11.

[138] CR at II-15, PR at II-11.

[139] CR at II-17, PR at II-12.

[140] CR at V-5, PR at V-5.

[141] CR at V-5, PR at V-5.

[142] CR at V-6, PR at V-5-6.

[143] CR at V-6, PR at V-5.

[144] CR at VII-1, PR at VII-1.

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[145]

I find that the cumulated volume of the subject large diameter seamless carbon pipe imports is significant. On an absolute level, the quantity of the subject imports increased from *** short tons in 1997 to *** short tons in 1998. The quantity of the subject imports then declined to *** tons in 1999, which was a *** decline from 1997 but was still *** above 1997 volume levels. Although this quantity fluctuation might not be significant in the context of another case (given the decline back to 1997 quantity levels in 1999), these fluctuations occurred during a period of significant declines in overall demand for large diameter seamless carbon pipe. As a result of these demand decreases, the market share of the subject imports increased significantly between 1997 and 1998, rising from *** percent to *** percent in 1998. The market share of the subject imports remained at this level in 1999, as they continued to occupy *** percent of the market. Given that the industry has experienced significant price declines and lessened profitability during this period of increased subject import market penetration, I find that this increase in their volume and market share is significant.

Although the market penetration of the subject imports remained at a higher level in 1999 than in 1997, I note that the industry was able to able to regain significant levels of market share in 1999, primarily at the expense of nonsubject imports. While this might otherwise indicate that the subject imports have not had a significant volume effect on the industry during the period, I believe that the increase in the industry's market share was due to two factors that indicate that the volume of the subject imports has been significant during the period. First, the record indicates that the increase in the market share of the industry in 1999 is attributable, in significant part, to a decision on the part of the domestic industry to regain its lost market share through aggressive price competition with the subject and nonsubject imports. Second, the record further suggests that the quantities and market share of the subject imports may have been significantly affected by the filing of the antidumping petition in June 1999. Thus, absent the filing of the petition, the subject imports would have obtained an even more significant share of the market in 1999 than they did.

Accordingly, I find the volume of subject imports of large diameter seamless carbon pipe to be significant.

D. Price Effects of the Cumulated Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[146]

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[145] 19 U.S.C. § 1677(7)(C)(i).

[146] 19 U.S.C. § 1677(7)(C)(ii).

I find that the cumulated subject imports have had significant adverse effects on domestic prices during the period of investigation. As an initial matter, I note that the record indicates that price is an important factor in the purchase decision and that there is a moderately high to high level of substitutability between the cumulated subject and the domestic merchandise. Accordingly, given these factors, the subject imports are more likely to be able to have significant adverse effects on domestic prices through aggressive price competition. In this case, the record indicates that the subject imports have engaged in aggressive price competition and that they have had adverse price effects as a result of that competition.

In particular, I note that, while it is somewhat limited, our price comparison data indicates that the subject imports (those from Japan in particular) began aggressively underselling the domestic merchandise during the latter half of 1998 and continued to do so during 1999.[147] This aggressive underselling occurred during a period of significant demand declines.[148] Due to this aggressive price competition by the subject imports during a period of demand declines, the domestic industry was forced to lower its prices significantly in order to meet that price competition and regain market share.[149] As a result of their decision to meet subject prices, the domestic industry regained some market share but did so at the expense of significantly lower domestic prices and profitability.[150] To support this conclusion, I have relied in part on the average unit value of the domestic and subject merchandise.[151] Although this data may have some difficulties because of product mix issues, I do note that the price of both the subject and domestic merchandise exhibited significant downward trends during 1998 and 1999.

I have closely examined the significant decline in demand for large diameter carbon pipe during the period of investigation to assess whether it was responsible for the domestic price declines. While the decline in demand clearly did have some effect on large diameter carbon pipe prices, I believe that it does not fully explain the domestic price declines evidenced in 1998 and 1999. As previously noted, the record indicates that the subject imports undersold the domestic merchandise in a significant number of instances during the latter half of the period of investigation, that they increased their market share significantly in 1998 when demand was declining, and that domestic prices declined during the latter half of 1998 and 1999 as demand continued to decline. All of this suggests that the subject imports significantly exacerbated the domestic price declines that would otherwise have occurred during a period of significantly declining demand.

Accordingly, I find that the subject imports have had significant adverse effects on domestic prices during the period of investigation.

E. Impact of the Cumulated Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on

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[147] CR and PR at Table V-7 & Figure 4.

[148] CR and PR at Table C-2.

[149] CR and PR at Table V-7 & Figure 4. In this regard, I note that domestic prices declined significantly during the period of investigation, from $*** per short ton in 1997 to $*** per short ton in 1999.

[150] CR and PR at Table C-2.

[151] CR and PR at Table C-2.

the state of the industry."[152] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[153]

I find that the subject imports have had a significant negative impact on the condition of the industry during the period of investigation. As I noted previously, the record indicates that the subject imports have had a significant adverse volume and price effects on the domestic industry during the period of investigation. As a result of this competitive impact from the subject imports, the financial condition of the industry has eroded significantly during the period of investigation. In particular, the industry's operating income declined from $*** in 1997 to $*** in 1998, and declined further to $*** in 1999.[154] Similarly, the industry's operating income as a percentage of sales declined from *** percent in 1997 to *** percent in 1998 and then to *** percent in 1999. Moreover, from 1997 to 1999, the industry experienced significant declines in its production and capacity utilization levels, its shipments, inventories and net sales, and its employment data.[155] Furthermore, the industry experienced declines in its average unit prices at the same time that it experienced increases in its unit cost of goods sold and S,G&A.[156] Thus, as a result of price competition from the subject imports and a decline in demand, the industry was caught in an increasingly difficult cost/price squeeze during the latter half of the period of investigation. Given the foregoing, I find that the declines in the industry's financial results were due, in significant part, to the adverse impact of the subject imports.

As indicated, I recognize that a substantial portion of the domestic industry's price declines were attributable to the significant decline in demand for large diameter seamless carbon pipe. As I previously discussed, however, the record of this investigation indicates that these price declines were also attributable in significant part to price competition from subject imports, particularly in 1999, when the domestic industry was forced to lower its prices significantly in order to recapture substantial market share lost to the low-priced subject imports. As I mentioned previously, I believe the subject imports significantly exacerbated the effects of the decline in demand on an increasingly unprofitable and poorly performing industry.

The respondents have also argued that any injury to the domestic industry was temporary, and that the industry has already returned to health, in light of recent upturns in oil and gas prices.[157] While large diameter seamless pipe prices have increased modestly as conditions in the oil and gas industry have

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[152] 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).

[153] 19 U.S.C. § 1677(7)(C)(iii).

[154] CR and PR at Table VI-2.

[155] CR and PR at Table C-3.

[156] CR and PR at Table C-3. During the period of investigation, the industry's ratio of cost of goods sold to sales increased from *** percent in 1997 to *** percent in 1998 and then to *** percent in 1999. As I discussed previously, I closely examined the *** INV-X-128, I find that it did not change the operating results of the overall industry significantly enough that it would affect my final determination in this investigation.

[157] Mexican Respondent's Posthearing Brief at 2-3.

improved, they are still below their levels in 1997 before the surge in subject imports, and demand for large diameter pipe has likewise not returned to its past levels Moreover, the modest improvements in the condition of the domestic industry are partly attributable to the filing of the petitions, which caused subject imports to decline.[158]

Accordingly, I find that the cumulated subject imports from Japan and Mexico have had a significant adverse impact on the domestic large diameter seamless carbon pipe industry.

V. NO MATERIAL INJURY OR THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF SMALL DIAMETER SEAMLESS ALLOY PIPE FROM JAPAN AND SOUTH AFRICA

For the reasons discussed below, I determine that the domestic industry producing small diameter seamless alloy pipe is not materially injured or threatened with material injury by reason of LTFV imports of small diameter seamless alloy pipe from Japan. Moreover, I determine that the subject imports of small diameter seamless alloy pipe from South Africa are negligible.

A. Negligibility of Imports of Small Diameter Seamless Alloy Pipe from South Africa, the Czech Republic and Romania

As an initial matter, I note that the record indicates that there were only imports of subject small diameter seamless alloy pipe from Japan during the period of investigation and that only Japan and Romania had producers that produce seamless alloy pipe. Nonetheless, the scope of this investigation covers all small diameter seamless alloy pipe imports from the Czech Republic, Japan, Romania, and South Africa. Accordingly, I am required to consider whether imports from these countries of small diameter pipe are negligible and whether any of these countries should be cumulated with imports of small diameter alloy pipe from Japan.

Under the URAA, antidumping investigations terminate by operation of law without an injury determination if the Commission finds that the subject imports are negligible.[159] Imports from a subject country are considered negligible if they are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent twelve-month period for which data are available that precedes the filing of the petition.[160] Negligibility decisions are to be made with respect to imports that correspond to a domestic like product identified by the Commission.[161] Moreover, any countries that are identified as being negligible and for which investigations are terminated are not eligible for cumulation with non-negligible countries subject to investigation.[162]

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[158] Hearing Transcript at 31 (Leland)

[159] 19 U.S.C. §1673b(a).

[160] 19 U.S.C. §1677(24)(A)(ii).

[161] 19 U.S.C. §1677(24)(A)(I).

[162] 19 U.S.C. §1677(7)(G)(ii)(II). Moreover, I also note that there is not a reasonable degree of overlap between imports frm South Africa, Romania and the Czech Republic with the Japanese imports or the domestic merchandise because there have been no imports of small diameter alloy pipe from these countries during the period of investigation. CR and PR at Table C-3.

I find that the subject small diameter seamless alloy pipe imports from South Africa, the Czech Republic and Romania are negligible. As I indicated above, the record indicates that there were no imports of small diameter seamless alloy pipe from any of these countries during 1999, which is the most recent twelve-month period prior to the filing of the petition for which import information is available. In fact, there were no imports from any of these countries during the entire three year period of investigation. Given this, I find that imports of small diameter seamless alloy pipe from the three countries are negligible and will not imminently exceed the negligibility threshold.[163] Accordingly, I find that the investigation with respect to small diameter seamless alloy pipe from South Africa should be terminated. Moreover, I find that none of these countries are eligible for cumulation with the Japanese imports of small diameter seamless alloy pipe.[164]

B. No Material Injury By Reason of the Subject Imports of Small Diameter Seamless Alloy Pipe from Japan

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.[165] In making this determination, the Commission must consider the volume of the subject 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.[166]

1. Conditions of Competition

The market for small diameter seamless alloy pipe in the United States is characterized by the following conditions of competition:

First, the market for small diameter alloy pipe is relatively small. Total small diameter seamless alloy pipe consumption was only *** short tons in 1999, which compares with an overall total consumption for small diameter seamless carbon pipe in 1999 of *** short tons and total large diameter seamless carbon pipe consumption of *** short tons in 1999.[167] The small diameter seamless alloy market is, therefore, less than *** percent of the size of the small diameter carbon pipe market and less than *** percent of the size of the large diameter carbon pipe market.[168] Apparent consumption of alloy small diameter seamless alloy pipe fell from 1997 to 1999.

Second, the domestic seamless pipe producers have generally chosen not to participate in this market and the producers who have chosen to participate make only a limited amount of seamless alloy

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[163] See 19 U.S.C. §1677(7)(24)(A)(iv).

[164] I do not make a finding that the investigation with respect to small diameter seamless alloy pipe imports from the Czech Republic and South Africa should be terminated because Commerce has not yet issued its final determination for these countries.

[165] 19 U.S.C. § 1673d(b).

[166] 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).

[167] CR and PR at Table C-2-C-4.

[168] CR and PR at Table C-3.

pipe. Only two of the eight domestic seamless producers -- Michigan Specialty Steel and Gulf States -- produce small diameter alloy pipe.[169] More importantly, these two producers only produced a total of *** short tons of small diameter seamless alloy pipe in 1999, which represents only *** percent of the total small diameter seamless alloy market in 1999.[170]

Third, the small diameter seamless alloy pipe market is *** by imports and in recent years, by Japanese imports. The record indicates that the market share of all imports consistently ranged between *** and *** percent during the period of investigation. Moreover, the market share of the Japanese imports has consistently increased during the period, from *** percent in 1997 to *** percent in 1999. While nonsubject imports had a significant presence in the market, their market share fell from *** percent in 1997 to *** percent in 1999.[171] I find that the record of this investigation indicates that the domestic seamless pipe producers have ceded this market to imports and that they appear to have little interest in it.

I have taken all of these conditions of competition into account in my analysis.

2. Volume of Subject Imports

I find that the volume of the subject imports of small diameter seamless alloy pipe from Japan was not significant during the period of investigation. I recognize that, in this market, the volume of the subject imports was substantial and increasing, rising from *** in 1997 to *** in 1999. Moreover, the record indicates that the market share rose from *** percent in 1997 to *** percent in 1999.[172] However, the record does not indicate that these volume changes have had a significant volume impact on the domestic industry producing small diameter seamless alloy pipe.

In this regard, almost all of this increase came at the expense of nonsubject imports, not the domestic industry. During the period of investigation, the subject imports from Japan obtained almost all of their *** percentage point market share increase from nonsubject imports. Moreover, although the domestic industry did lose approximately *** percentage points of market share during the period, the record indicates that it is unlikely that this market share decline was due to unfair competition from the subject imports from Japan. In fact, respondents and some distributors have indicated that the domestic industry focuses its small diameter alloy production efforts on sales with small turnaround times and high prices.[173] Moreover, the record also indicates that the domestic firms only produce alloy pipe ***,[174] while more than half of subject imports are ***.[175] Given these facts, the record clearly indicates that there is little, if any, actual competition for sales between the domestic product and subject imports.

Accordingly, I find that the volume of the subject imports is not significant.

2. Price Effects of Subject Imports

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[169] CR at III-1-2, PR at III-1.

[170] CR and PR at C-4.

[171] CR and PR at Table C-4.

[172] CR and PR at Table C-4.

[173] Hearing Transcript at 242 (Christopher) and 288 (Lawrence); Japanese Respondents' Posthearing Brief at 7.

[174] CR at III-1 to III-4, PR at III-1 to III-3; Questionnaire responses of *** and ***.

[175] Questionnaire responses of Japanese producers.

I also find that the subject imports have not had significant adverse price effects on the domestic merchandise. First, I note that there is little available price data for these products. However, the limited available data indicates that the subject imports have undersold the domestic merchandise significantly throughout the period (when average unit values are compared) but that domestic prices have actually increased significantly over the period of investigation.[176] This limited data suggests first that the price trends of the domestic merchandise have not been directly impacted by pricing pressures from the subject merchandise. Moreover, it also suggests that the domestic merchandise has a significantly different product mix and competes in very different segments of the market than the subject Japanese imports. As a result, I cannot find that the subject imports have had any impact on domestic prices during the period of investigation.

Accordingly, I find that the subject imports have not had a significant price depressing or suppressing effect on domestic prices.

3. Impact of the Subject Imports on the Domestic Industry

I also find that the subject imports have not had a significant impact on the domestic industry producing small diameter seamless alloy pipe. First, as I discussed above, the record indicates that the subject imports have had little or no volume or price effects on the domestic merchandise. As a result, the record also indicates that they have had little impact on the financial condition and operations of the industry. In this regard, I note that the domestic industry has enjoyed a *** profitability level throughout the period of investigation, with an operating income ratio remaining above the *** percent level throughout the period.[177] While there has been a decline in some industry indicators, including a drop in its ***, the industry is still *** profitable.[178] Although the domestic industry is a small player in this market, with the ability to serve at most *** percent of the market,[179] it remains a healthy and well-established player that is not subject to impact from the Japanese imports.

Accordingly, I find that the subject imports of small diameter seamless alloy pipe have not caused material injury to the domestic industry.

C. NO THREAT OF MATERIAL INJURY BY REASON OF THE SUBJECT JAPANESE IMPORTS OF SMALL DIAMETER SEAMLESS ALLOY PIPE

In determining whether a domestic industry is threatened with material injury by reason of the subject imports, section 771(7)(F) of the Act requires an assessment of whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[180] Such a determination may not be made "on the basis of mere conjecture or supposition," and the threat factors must be considered "as a whole in making a determination whether further dumped or subsidized imports are imminent and whether material

[176] CR and PR at Table C-4.

[177] CR and PR at Table C-4.

[178] CR and PR at Table C-4.

[179] CR and PR at Table C-4.

[180] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

injury by reason of imports would occur unless an order is issued."[181] In making my determination, I have considered all statutory factors that are relevant to this investigation.[182]

As I discussed previously, the domestic industry continues to be extremely profitable. Although a small player in the small diameter seamless alloy market, the industry appears to be well established in its niche, producing a limited size range of products for quick turnaround, high value sales. Accordingly, I find that the industry is not vulnerable to the future impact of the subject imports or likely to become so in the imminent future.

I find that the subject Japanese imports do not threaten material injury to the industry. First, the small diameter alloy pipe industry in Japan has maintained a consistent and reasonably high rate of capacity utilization. Its capacity utilization rates exceeded *** percent during each year of the period of investigation and have, in fact, increased *** each year. Capacity utilization is projected to remain steady in 2000 and 2001.[183] Moreover, the share of the Japanese industry's alloy production that had been sent to the United States has declined each year of the period of investigation.

The volume of the subject imports has increased over the POI.[184] However, given the currently high market share held by subject imports, I find it unlikely that subject imports will continue to capture significant additional amounts of the market, given the remaining substantial presence of nonsubject imports. Moreover, because the limited record indicates that the domestic industry has established itself as a niche player in this market, I do not find that the capacity or volume data for the subject Japanese produces indicates that they are likely to increase their volumes to the United States in the imminent future in a manner that will have a significant impact on the industry.

I found above that subject imports are not having a significant depressing or suppressing effect on prices. The record does indicate that there is any imminent change in the conditions of competition in this market place that would cause the subject imports to have such an effect in the imminent future.

I also note that inventories of subject imports are extremely low and that the record contains no evidence of a significant negative effect on the domestic industry's development and production efforts. Indeed, the domestic industry appears to performing very profitably and clearly has the ability to undertake any necessary development or production efforts.[185]

There is some potential for product-shifting with respect to small diameter alloy pipe because other products can be produced on the same manufacturing equipment as small diameter seamless alloy pipe. However, the record contains little indication that the subject producers have actually shifted production between products or that they have the ability to do so rapidly. Finally, although small diameter seamless pipe is subject to antidumping investigations in Mexico and Venezuela,[186] these investigations are ongoing and it would be speculative to assume that they will result in affirmative findings. Finally, the

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[181] 19 U.S.C. § 1677(7)(F)(ii).

[182] 19 U.S.C. § 1677(7)(F)(I).

[183] INV-X-128 at 7.

[184] CR and PR at Table C-4.

[185] CR and PR at Table C-4.

[186] CR at VII-1, PR at VII-1.

record does not indicate that there are any other demonstrable adverse trends indicating a likelihood of material injury by reason of subject imports.

Accordingly, I find that the domestic industry producing small diameter seamless alloy pipe is not threatened with material injury by reason of subject imports of small diameter seamless alloy pipe from Japan.[187]

VI. NO MATERIAL INJURY OR THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF LARGE DIAMETER SEAMLESS ALLOY PIPE FROM JAPAN

For the reasons discussed below, I determine that the domestic industry producing small diameter seamless alloy pipe is not materially injured or threatened with material injury by reason of LTFV imports of large diameter seamless alloy pipe from Japan. As I discussed previously, the record of this investigation indicates that there was no domestic production of large diameter seamless alloy pipe covered by the scope of this investigation during the period of investigation. Accordingly, I have analyzed the current and likely impact of the subject imports of large diameter seamless alloy pipe from Japan on the industry producing small diameter seamless alloy pipe, which is the domestic product most similar in characteristics and uses to the subject imports.

As an initial matter, I note that the record indicates that there were no imports of large diameter seamless alloy pipe from Mexico during 1998, which is the most recent twelve month period prior to the filing of the petition for which we have import data. Accordingly, I find that the subject imports of large diameter seamless alloy pipe from Mexico are negligible and are not likely to exceed that threshold in the imminent future. Accordingly, they are not eligible for cumulation with those imports from Japan.[188]

As for Japan, the record indicates that there were only a minimal level of imports of large diameter seamless alloy pipe from Japan during the period of investigation. For example, in 1999, there were only *** tons of large alloy pipe imported from Japan.[189] Moreover, the record contains no evidence indicating that this minimal volume of imports had any significant volume or price impact on the industry producing small diameter seamless alloy pipe. Accordingly, I find that the subject large diameter seamless alloy pipe imports from Japan have had no significant volume or price impact on the small diameter alloy pipe industry, which remains a highly profitable industry, as I discussed previously. Accordingly, I find that the small diameter seamless alloy pipe industry is not being materially injured by reason of the subject imports from Japan.

I have also considered whether large diameter seamless alloy pipe imports from Japan threaten material injury to the industry producing small diameter seamless alloy pipe. As I have previously discussed, the small diameter alloy pipe industry is not currently vulnerable to the future effects of imports. Moreover, although the Japanese large seamless alloy pipe industry does have substantial

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[187] Because I do not make an affirmative finding for small diameter seamless alloy imports from Japan and South Africa, I do not need to make a finding with respect to critical circumstances. However, I note that I would have not found that critical circumstances exist with respect to Japanese alloy imports because of the significant decline in the volume of those imports during the six month period after the filing of the petition compared with the six-month period prior to the filing of the petition. CR and PR at Table IV-9.

[188] 19 U.S.C. §1677(7)(G)(i)(II).

[189] CR and PR at Table E-4.

available capacity that could be used to ship additional imports to the United States,[190] the limited record with respect to this merchandise indicates that there is little, if any, perceptible impact from the subject imports on the small diameter alloy pipe industry and that there has not been a significant or rapid increase in the volume of the subject imports during the period of investigation. I do not find that it is likely that either of these circumstances are likely to change significantly in the imminent future. Further, as I have discussed above, there is little evidence that the subject large diameter alloy imports have had any perceptible impact on domestic prices of small diameter seamless alloy pipe. I see nothing in the record that suggests that this will change in the imminent future. Finally, I have considered all of the other threat factors with respect to this product and see nothing in the record that indicates that there is a clear and imminent threat of injury by reason of the large diameter imports to the industry.

Accordingly, I find that an industry in the United States is not materially injured or threatened with material injury by reason of the subject imports of large diameter seamless alloy pipe from Japan.

[190] INV-X-128 at 7.