

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STAINLESS STEEL PIPE FROM KOREA AND TAIWAN
Investigations Nos. 731-TA-540 and 541 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3351, September 2000)

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CERTAIN WELDED STAINLESS STEEL PIPE FROM KOREA AND TAIWAN

DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on certain welded stainless steel pipes from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

BACKGROUND

The Commission instituted these reviews on July 1, 1999 (64 F.R. 35694) and determined on October 1, 1999, that it would conduct full reviews (64 F.R. 55961, October 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on March 31, 2000 (64 F.R. 17308). The hearing was held in Washington, DC, on August 1, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 22, 2000. The views of the Commission are contained in USITC Publication 3351 (September 2000), entitled *Certain Stainless Steel Pipe from Korea and Taiwan: Investigations Nos. 731-TA-540 and 541 (Review)*.

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

² Commissioner Thelma J. Askey dissenting with respect to Korea.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders covering certain welded stainless steel (“WSS”) pipes from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³

I. BACKGROUND

In December 1992, the Commission determined that an industry in the United States was materially injured by reason of imports of certain WSS pipes from Korea and Taiwan found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value.⁴ Subsequently, effective December 30, 1992, Commerce imposed antidumping duty orders on imports of the subject merchandise from Korea and Taiwan.⁵

On July 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on certain WSS pipes from Korea and Taiwan likely would lead to the continuation or recurrence of material injury.⁶

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁷ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

The Commission received adequate responses to the notice of institution from four domestic producers and from five producers of the subject merchandise in Korea. The Commission found the domestic interested party group response and the Korean respondent interested party group response to be adequate. As the Commission received no responses to the notice of institution from producers or importers of the subject merchandise from Taiwan,⁸ it found the respondent interested party group

³ Commissioner Thelma J. Askey dissenting with respect to Korea. See Concurring and Dissenting Views of Commissioner Thelma J. Askey. She joins sections I, II, III.A, IV.A, and IV.B of these Views.

⁴ Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-540-541 (Final), USITC Pub. 2585 (Dec. 1992) (“Original Determinations”).

⁵ 57 Fed. Reg. 62300-01 (Dec. 30, 1992). Manufacturer Chang Tieh (now Chang Mien) was excluded from the order on WSS pipes from Taiwan.

⁶ 64 Fed. Reg. 35694 (July 1, 1999).

⁷ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁸ Subsequently, one manufacturer of welded stainless steel pipe in Taiwan, Jaung Yaunn, responded to the Commission’s questionnaire, and the American Institute in Taiwan, at the Commission’s request, supplied additional information on the industry in Taiwan. Confidential Report (Aug. 23, 2000), as revised by confidential memorandum INV-X-197 (Aug. 29, 2000) (“CR”) at IV-5 and 7; Public Report (“PR”) at IV-4 and 6.

response to be inadequate with respect to that order. The Commission nevertheless determined to conduct full reviews of both orders to promote administrative efficiency.⁹

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making determinations under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹⁰ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹¹

In its final five-year review determinations for certain WSS pipes from Korea and Taiwan, Commerce defined the subject merchandise as:

certain welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (“ASTM”) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of these orders also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.¹²

WSS pipes and pressure tubes are welded hollow products used to transport liquids and gases. The subject merchandise consists only of pipes produced according to ASTM A-312 or other comparable

⁹ 64 Fed. Reg. 55961 (Oct. 15, 1999) (Commissioner Crawford voted to expedite both reviews).

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² 65 Fed. Reg. 5607, 5608 (Feb. 4, 2000). Commerce provided this additional description of the subject merchandise:

Pipes are produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. Pipes are a commodity product generally used as a conduit to transmit liquids or gases. Major applications for pipes include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of pipes are currently classifiable under the following Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this order is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and United States Customs purposes, our written description of the scope of these orders are [sic] dispositive.

Id.

standards. These pipes are designed for use at elevated temperatures or with corrosive liquids or gases.¹³ Major uses for A-312 pipes include digester lines, pharmaceutical production lines, petrochemical stock lines, automotive paint lines, and other processing lines.¹⁴

The starting point of the Commission's like product analysis in a five-year review is the like product determination in the Commission's original investigations.¹⁵ In its original determinations, the Commission found that the like product corresponding to the subject merchandise (A-312 pipes) was all WSS pipes and pressure tubes.¹⁶ The Commission found no clear dividing line among the different types of WSS pipes and pressure tubes and concluded that similarities in physical characteristics, end uses, channels of distribution, manufacturing processes, and production employees warranted including all WSS pipes and pressure tubes within the definition of the like product.¹⁷

Initially, the Domestic Parties¹⁸ and Korean Respondents¹⁹ commented upon the limited substitutability between ASTM A-312 pipe and certain other forms of welded stainless steel pipes and tubes.²⁰ At the Commission's hearing, the Domestic Parties raised the argument that only A-778 pipes and A-312 pipes should be included within the definition of the domestic like product and that all other pressure tubing and pipes should be excluded.²¹ The Korean Respondents urged the Commission not to depart from the domestic like product definition in the original investigation.²²

The record in these reviews does not indicate any significant changes in the products at issue or in the factors we consider in our determinations, nor any other appropriate circumstance warranting revisiting the Commission's original like product determination.²³ Therefore, we define the domestic like product as all WSS pipes and pressure tubes.

¹³ CR at I-14; PR at I-12.

¹⁴ CR at I-14; PR at I-12.

¹⁵ In its like product determination, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

¹⁶ Original Determinations at 7-8. For purposes of these reviews, "pressure tubes" consist largely of boiler, condenser, and heat exchanger tubing products.

¹⁷ Original Determinations at 10-13. However, the Commission did not include certain other welded stainless steel tubular products, namely A-409 tubing and mechanical tubing. Id. at 13-17.

¹⁸ The Domestic Parties are Avesta Sheffield Pipe Company; Bristol Metals, LP; Davis Pipe, Inc.; Felker Bros. Corporation; Marcegaglia USA; and Swepco Tube Corporation.

¹⁹ The Korean Respondents are SeAH Steel Corp., Ltd. and Hyundai Pipe Co. Ltd.

²⁰ Domestic Parties' Prehearing Brief at 3 n.11, Korean Respondents' Prehearing Brief at 17.

²¹ See Transcript of Hearing of Aug. 1, 2000 ("Tr.") at 12, 51-54, and 91. Because the Domestic Parties raised their like product argument at such a late stage in these reviews, there is limited information on the record of these proceedings as to differences between the products.

²² Korean Respondents' Posthearing Brief at Tab 4 (answers to Commissioners' questions).

²³ See Notice of Final Rulemaking, 63 Fed. Reg. 30599, 30602 (June 5, 1998).

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁴ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the 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.²⁵ Consistent with our definition of the like product, we find the domestic industry to be all domestic producers of WSS pipes and pressure tubes.²⁶

²⁴ 19 U.S.C. § 1677(4)(A).

²⁵ See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 8-9 (July 1999); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.19 (Nov. 1995) (“the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry”). See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (CIT 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

²⁶ No party has argued for exclusion from the domestic industry of any domestic producers as related parties pursuant to 19 U.S.C. § 1677(4)(B). A domestic party may be deemed a related party, independent of ownership, if its purchases of imports are significant enough to constitute “control” of an importer. The Commission has found such control to exist where the domestic producer purchased a predominant portion of an importer’s imported subject merchandise and the importer’s subject imports were substantial. Although *** purchased quantities of A-312 pipe from Taiwan during the period reviewed, the majority of its purchases occurred in only one year and were not substantial compared to its domestic production. CR at III-6 to III-7; PR at III-4.

III. CUMULATION²⁷

A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²⁸

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.²⁹ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.³⁰ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely

²⁷ Commissioner Bragg does not join this section. While she concurs with the majority’s findings of a reasonable overlap of competition and likely discernible adverse impact in the event the orders are revoked, her cumulation determinations are based upon a different analytical framework than that of her colleagues. See Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); see also, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (Apr. 2000). In particular, Commissioner Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation. Having found a reasonable overlap of competition in these reviews for the same reasons as those set forth by the Commission majority, Commissioner Bragg turns to the issue of no discernible adverse impact. Based upon the significant excess capacity in each of the subject countries and strong incentive for subject producers in both countries to increase the volume of subject imports into the United States in the event the orders are revoked, Commissioner Bragg finds that revocation of each of the orders at issue will lead to a likely discernible adverse impact. Accordingly, Commissioner Bragg cumulates all subject imports.

²⁸ 19 U.S.C. § 1675a(a)(7).

²⁹ 19 U.S.C. § 1675a(a)(7).

³⁰ SAA, H.R. Rep. No. 103-316, vol. I (1994).

impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.^{31 32}

The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.³³ Only a “reasonable overlap” of competition is required.³⁴ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.³⁵

³¹ For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review) USITC Pub. 3274 (Feb. 2000). For a further discussion of Chairman Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 303-TA-13 (Review); 701-TA-249 (Review); and 731-TA-262, 263, and 265 (Review) USITC Pub. 3247 (Oct. 1999) (Views of Commissioner Stephen Koplan Regarding Cumulation).

³² Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

³³ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, *e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

³⁴ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, *e.g.*, Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 15 (Feb. 1999), *aff’d sub nom. Ranchers-Cattleman Action Legal Foundation v. United States*, 74 F. Supp.2d 1353 (CIT 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

³⁵ See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied. The Commission instituted both reviews on July 1, 1999.

For the reasons discussed below regarding the likely volume, price effects, and impact of subject imports if the orders are revoked, we do not find that subject imports from Korea or Taiwan are likely to have no discernible adverse impact on the domestic industry if either order were revoked.^{36 37}

B. Reasonable Overlap of Competition and Other Considerations

In the original determinations, the Commission found that A-312 pipe products produced in Korea, Taiwan, and the United States were fungible as they must all meet the same ASTM specifications and are all generally sold as commodity products.³⁸ The current record indicates that subject imports and the domestic like product are relatively fungible if they are made to the same specifications.³⁹ There is a high degree of substitution among A-312 pipes from Korea, Taiwan, and the United States, and A-312 pipes produced in the United States, Korea, or Taiwan are used interchangeably.⁴⁰ While the like product consists of all WSS pipes and pressure tubes and not just A-312 pipes, about three-quarters of U.S. pipe and pressure tube production consists of A-312 pipes.⁴¹

All U.S. producers, and a majority of importers of the subject merchandise from Taiwan and Korea, reported sales of A-312 pipes throughout the continental United States in the original investigations.⁴² In the current reviews, virtually all producers and importers reported that the United States was the geographic market area in which they competed.⁴³

In the original investigations, almost all A-312 pipes were sold through distributors,⁴⁴ and the current record continues to indicate that almost all of the subject imports and 93 percent of domestic producers' WSS pipe and pressure tubes are sold to distributors.⁴⁵ The Commission further found that the subject imports from Korea and Taiwan and the domestic like product were simultaneously present in the market in the original investigations.⁴⁶ The record in the present reviews indicates that the domestic like product and imports of the subject merchandise continue to be simultaneously present in the market.

³⁶ The Korean Respondents argue that the low margins on subject imports from Korea, reduction in capacity in Korea since the time of the original investigations, and growth in demand in Korea suggest that subject imports from Korea will have no discernible adverse impact after revocation. Respondents' Prehearing Brief at 21. We note here that Korean producers still have substantial underutilized capacity and are export-oriented. CR & PR at Table I-2 & Table IV-2 (in 1999, capacity utilization was 58.8 percent and exports were 79.4 percent of total shipments). Further, subject imports from Korea have maintained a significant presence in the U.S. market before and after the imposition of the antidumping duty order. CR & PR at Table I-2.

³⁷ Commissioner Askey does not join this paragraph. She finds that the imports from Korea would not have a discernible adverse impact on the domestic industry. See her concurring and dissenting views for her analysis.

³⁸ Original Determinations at 22.

³⁹ CR at II-9; PR at II-6.

⁴⁰ CR at I-17, II-9, II-10; PR at I-13, II-6, II-7.

⁴¹ CR & PR at Fig. III-1.

⁴² Original Determinations at 22.

⁴³ CR at V-2; PR at V-1.

⁴⁴ Original Determinations at 22.

⁴⁵ CR & PR at II-1.

⁴⁶ Original Determinations at 22.

Therefore, we conclude that there likely would be a reasonable overlap of competition in the absence of the orders and that the subject imports and the domestic like product likely would compete with each other in the U.S. market.

In determining whether to exercise our discretion to cumulate subject imports, we examine whether, upon revocation of the orders, subject imports from Korea and Taiwan likely would compete in the U.S. market under similar conditions of competition relative to each other and to the domestic like product. Subject imports from Korea and Taiwan have maintained their presence in the market; indeed, imports of the subject merchandise increased from both sources over the period examined in these reviews, particularly between 1997 and 1998.⁴⁷ Moreover, imports of the subject merchandise from Korea and Taiwan are used interchangeably with each other and the domestic like product.⁴⁸ Finally, there is substantial capacity to produce subject merchandise in both countries.⁴⁹ Based on the record in these reviews, we find that the likely similarities in conditions of competition outweigh any differences asserted by the Korean Respondents. Accordingly, we exercise our discretion to cumulate the subject imports from Korea and Taiwan in these reviews.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ORDERS ON KOREA AND TAIWAN ARE REVOKED^{50 51}

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁵² The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”⁵³ Thus, the likelihood standard is prospective in nature.⁵⁴ The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period

⁴⁷ CR & PR at Table I-2.

⁴⁸ CR at I-17, II-9, II-10; PR at I-13, II-6, II-7.

⁴⁹ CR at IV-4 to IV-8; Jaung Yaunn’s follow-up to its Questionnaire Response, July 31, 2000, at 2.

⁵⁰ Commissioner Bragg joins the remainder of this opinion.

⁵¹ Commissioner Askey joins subsections IV.A and IV.B of this section.

⁵² 19 U.S.C. § 1675a(a).

⁵³ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

⁵⁴ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

of time.”⁵⁵ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{56 57}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated.”⁵⁸ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.^{59 60}

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.⁶¹ We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most

⁵⁵ 19 U.S.C. § 1675a(a)(5).

⁵⁶ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁵⁷ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁵⁸ 19 U.S.C. § 1675a(a)(1).

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

⁶⁰ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to these reviews. CR at I-11; PR at I-9.

⁶¹ 19 U.S.C. § 1675(e).

persuasive.”⁶² In these reviews, not all respondent interested parties provided questionnaire responses. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the information collected by the Commission since the institution of these reviews, information submitted by the cooperating domestic producers, respondent parties, and other parties in these reviews, and information from the original investigations.

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.⁶³ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁶⁴

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁶⁵

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁶⁶ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁶⁷ As instructed by the statute, we have considered the

⁶² SAA at 869.

⁶³ 19 U.S.C. § 1675a(a)(2).

⁶⁴ 19 U.S.C. § 1675(a)(2)(A)-(D).

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

⁶⁶ 19 U.S.C. § 1675a(a)(4).

⁶⁷ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its expedited review of the antidumping duty order regarding subject imports from Korea, Commerce found the likely margin of dumping to be 2.67 percent for SeAH Steel Corp and 7.00 percent for all other manufacturers/exporters. 65 Fed. Reg. 5607, 5611 (Feb. 4, 2000). For producers in Taiwan, Commerce found the likely margins of dumping to be 31.90 percent for Jaung Yuann Enterprise Co. Ltd., 31.90 percent for Yeun Chyang Industrial Co. Ltd., and 19.84 percent for all other manufacturers/exporters. Id.; CR at I-10; PR at I-9 (indicating typographical error in Commerce’s Notice). While Commerce also found a likely margin for Ta Chen of 3.27 percent, we note, as discussed below, that Commerce

(continued...)

extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁶⁸

For the reasons stated below, we determine that revocation of the antidumping duty orders on certain WSS pipes from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁶⁹

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁰ The following conditions of competition in the WSS pipe and pressure tube industry are relevant to our determinations.

Apparent U.S. consumption has grown *** since the period examined in the original investigations, despite an increase between 1998 and 1999.⁷¹ According to the majority of responding firms, demand is expected to grow at a 3 to 4 percent annual rate.⁷² Given the nature of demand for WSS pipes and pressure tubes in petrochemical, pharmaceutical, and food processing industries, market demand is derived from demand for new plants and equipment in these and other industries, as well as new construction projects.⁷³ Thus, demand for WSS pipes and pressure tubes is subject to the business cycles for other products.

Reported U.S. WSS pipe and pressure tube production capacity is *** to that reported in the early 1990s.⁷⁴ The industry has not, however, operated at full capacity; capacity utilization decreased from 75 percent in 1997 to approximately 65 percent for the remainder of the period examined in these reviews.⁷⁵ The record also indicates that non-subject imports rose steadily during the period reviewed, with non-subject merchandise from Taiwan comprising a significant portion of those increased imports.⁷⁶

⁶⁷ (...continued)

subsequently revoked the order with respect to Ta Chen. 65 Fed. Reg. 39367, 39368 (June 26, 2000).

⁶⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁶⁹ Commissioner Askey dissenting with respect to Korea.

⁷⁰ 19 U.S.C. § 1675a(a)(4).

⁷¹ See CR & PR at Table I-2; CR at II-8; PR at II-5.

⁷² CR at II-8; PR at II-5.

⁷³ CR at II-2, II-6; PR at II-2, II-4.

⁷⁴ See CR & PR at Table I-2. Current capacity and production data include ***, a producer which did not provide data in the original investigations.

⁷⁵ CR & PR at Table C-3.

⁷⁶ Non-subject imports represented approximately *** percent of domestic apparent consumption during each year of the original investigation period. By contrast, they represented 14.6 percent of apparent consumption in 1997, 16.9 percent in 1998, and 22.4 percent in 1999. Non-subject imports from Taiwan were 3.8 percent of apparent consumption in 1997, 5.4 percent in 1998, and 9.4 percent in 1999. See CR & PR at Table I-2. As discussed below, we treat imports from Ta Chen as non-subject.

Increased imports (subject and non-subject) have supplied virtually all of the growth in apparent U.S. consumption of WSS pipes and pressure tubes during the period examined in these reviews.⁷⁷

All A-312 pipes meet the same specifications, and subject merchandise and domestic A-312 pipes are highly substitutable.⁷⁸ Moreover, price is a very important consideration in purchasing decisions.⁷⁹

We find that the foregoing conditions of competition provide an adequate basis upon which to assess the likely effects of revocation within a reasonably foreseeable time.

C. Likely Volume of Cumulated Subject Imports⁸⁰

In the original investigations, the Commission found that cumulated subject imports increased 303.4 percent (by quantity) from 1989 to 1991 and the U.S. producers' share of consumption decreased by 10.0 percentage points (by quantity).⁸¹ In 1989, subject imports were *** percent of apparent U.S. consumption, but by 1991, subject imports accounted for *** percent of the market.⁸² Accordingly, the Commission found the volume of imports and the increase in volume of imports to be significant.⁸³

Capacity in Korea has decreased since the early 1990s,⁸⁴ but remains at significant levels, equivalent to approximately 12.0 percent of U.S. apparent consumption and 15.7 percent of U.S. production in 1999.⁸⁵ In addition, current capacity utilization in Korea is *** lower than during the period examined in the original investigations.⁸⁶ Since the time of the original investigations, the Korean industry has increased its dependence on exports; home market shipments are now significantly lower both in absolute terms and as a proportion of total shipments than they were during the original investigations.⁸⁷ While just two of the nine producers of A-312 pipe in Korea reported exports of A-312

⁷⁷ See CR & PR at Table I-2.

⁷⁸ CR at II-9, II-10; PR at II-6, II-7.

⁷⁹ CR at II-9; PR at II-6, II-7. While quality was cited most frequently as purchasers' primary factor in purchasing decisions, price was cited most frequently as their secondary factor. Id. We note that all A-312 pipes must meet the requirements of the ASTM standard.

⁸⁰ Commissioner Askey does not join the remainder of these views. See her concurring and dissenting views for her analysis.

⁸¹ Original Determinations at 24.

⁸² CR & PR at Table I-2.

⁸³ Original Determinations at 24.

⁸⁴ Compare CR & PR at Table IV-2 (current capacity of 13,167 short tons) with INV-P-182 (Dec. 3, 1992) at Table 15 (capacity in Korea grew rapidly from *** short tons in 1989 to *** short tons in 1991).

⁸⁵ See CR & PR at Tables I-2 & IV-2.

⁸⁶ Capacity utilization was *** percent in 1989, *** percent in 1990, and *** percent in 1991. INV-P-182 (Dec. 3, 1992) at Table 15. In 1997, capacity utilization was 68.3 percent; it was 82.5 percent in 1998, and 58.8 percent in 1999. CR & PR at Table IV-2.

⁸⁷ Compare CR & PR at Table IV-2 with INV-P-182 (Dec. 3, 1992) at Table 15. Exports were 79.4 percent of total shipments in 1999, 91.6 percent in 1998, and 70.7 percent in 1997. CR & PR at Table IV-2. Although exports of subject merchandise from Korea declined in 1999, exports to the United States were *** percent of total Korean shipments in 1998. Id.

pipes to the United States during the period examined in these reviews, these were *** Korean producers.⁸⁸ Moreover, *** other Korean producers reported exporting all or a portion of their production.^{89 90}

There is limited information in the record concerning the industry in Taiwan, since only one manufacturer in Taiwan responded to the Commission's questionnaires (and most of the information the responding manufacturer provided was not specific to A-312 pipe).⁹¹ Nonetheless, available information indicates that the capacity of subject manufacturers in Taiwan remains significant. Just two such manufacturers, Jaung Yaunn Enterprise Co. and Yeun Chyang, had combined capacity of *** short tons in 1991.⁹² There is no indication that this capacity, equivalent to more than *** percent of U.S. consumption and to *** percent of U.S. production in 1999, has decreased.⁹³ In addition, there are at least two other subject producers in Taiwan, *** and ***. The sole responding manufacturer in Taiwan, Jaung Yaunn, estimated production of A-312 pipes by other Taiwan subject producers to be *** metric tons.⁹⁴ Jaung Yaunn reported its own production of all WSS pipes and tubes as *** metric tons in 1999,⁹⁵ but could not provide detailed information regarding its product mix. The record also indicates that the United States remains an important market for manufacturers in Taiwan, as evidenced by the recent increase in their subject A-312 pipe exports to the United States despite the order.⁹⁶

⁸⁸ CR at IV-4 to IV-5; PR at IV-4. The record indicates that these two producers ***. See Questionnaire Responses of SeAh Steel and Hyundai Pipe. See also Korean Respondents' Public Response to the Commission's Notice of Institution, (Aug. 20, 1999) at 9.

⁸⁹ CR at IV-4 to IV-5; PR at IV-4.

⁹⁰ While there is a potential for product shifting given the large volume of non-subject pipe produced in Korea, the record does not indicate that substantial product shifting is likely to occur upon revocation. Importers reported no inventories of subject merchandise. CR at IV-4; PR at IV-1. Korean producers' inventories of subject merchandise were relatively small and generally stable. See CR & PR at Table IV-2.

⁹¹ CR at IV-7; PR at IV-6. Chang Tieh (now Chang Mien) was excluded from the original order. 65 Fed Reg. 5607, 5611 (Feb. 4, 2000). In February 2000, Commerce published the final results of its expedited five-year review in which it determined that the likely margin of dumping for Ta Chen was 3.27 percent. However, in June 2000, Commerce revoked the antidumping duty order with respect to Ta Chen, effective December 1, 1998, because Ta Chen met the requirement of three consecutive years of de minimis or zero margins. 65 Fed. Reg. 39367, 39368 (June 26, 2000). In conducting its analysis, the Commission must consider the effects of revocation of the order. Because Ta Chen is not now subject to the order, revocation likely would have no effect on its exports to the United States in the reasonably foreseeable future. Therefore, we consider future imports from Ta Chen to be non-subject imports.

⁹² INV-P-182 (Dec. 3, 1992) at Table 16. Jaung Yaunn and Yeun Chyang accounted for *** percent of 1991 production in Taiwan of A-312 pipes. Id.

⁹³ See CR & PR at Table I-2.

⁹⁴ Jaung Yaunn's follow-up to its Questionnaire Response, July 31, 2000, at 2. Jaung Yaunn's estimates were *** short tons for ***, *** short tons for ***, and *** short tons for ***. Id.

⁹⁵ CR at IV-8; PR at IV-6.

⁹⁶ Subject imports from Taiwan were 990 short tons in 1997, 1,819 short tons in 1998, and 2,610 short tons in 1999. CR & PR at Table I-2.

While the orders have resulted in a decrease from the level of subject imports attained prior to the orders,⁹⁷ subject imports from both Korea and Taiwan have retained a significant presence in the U.S. market.⁹⁸ Consequently, subject merchandise from Korea and Taiwan is known and accepted in the United States market with an established customer base and distribution network. Finally, subject imports are highly interchangeable with both domestic and non-subject A-312 pipe.⁹⁹

We therefore find it likely that, in the absence of the orders, the cumulated subject imports likely would increase significantly, both in absolute terms and as a share of the U.S. market, as occurred in the original investigations. We therefore conclude, based on the record in these reviews, that the volume of subject A-312 imports from Korea and Taiwan likely would be significant within a reasonably foreseeable time if the orders were revoked.¹⁰⁰

D. Likely Price Effects

U.S. producers' selling prices to distributors and prices reported by purchasers declined over the period examined in the original investigations.¹⁰¹ At the same time, U.S. importers' prices also declined continuously.¹⁰² The Commission found that A-312 pipes from Korea undersold the domestic like product in 34 of 36 price comparisons and that A-312 pipes from Taiwan undersold the domestic like product in 34 of 40 price comparisons.¹⁰³ The Commission concluded that the low import prices were depressing and suppressing domestic prices for WSS pipes and pressure tubes.¹⁰⁴

The record in these reviews indicates that the subject imports are highly substitutable for domestic WSS pipes and pressure tubes.¹⁰⁵ The record also indicates that price is a very important factor in purchasing decisions.¹⁰⁶ Thus, increases in sales volume likely would be achieved through lower prices.

⁹⁷ The cumulated volume of subject imports in 1999 (excluding Ta Chen) was 5,321 short tons, as compared to 14,271 short tons in 1991 (including Ta Chen). CR & PR at Table I-2.

⁹⁸ Cumulated subject imports were 3,455 short tons in 1997, 6,559 short tons in 1998, and 5,321 short tons in 1999. In the first quarter of 2000, subject imports were 1,453 short tons while in the first quarter of 1999 they were 1,727 short tons. CR & PR at Table I-2. These imports were 3.4 percent, 6.6 percent, and 4.8 percent of U.S. apparent consumption in 1997, 1998, and 1999 respectively. CR & PR at Table I-2.

⁹⁹ CR at II-10, II-12; PR at II-7, II-8.

¹⁰⁰ Commissioner Bragg infers that, upon revocation, subject producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determinations. Based upon the record in these grouped reviews, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the orders are revoked.

¹⁰¹ Original Determinations at 24-25.

¹⁰² Original Determinations at 25.

¹⁰³ Original Determinations at 25.

¹⁰⁴ Original Determinations at 24.

¹⁰⁵ CR at II-9, II-10; PR at II-6, II-7. We note that about three-quarters of U.S. pipe and pressure tube production consists of A-312 pipes, making the subject imports highly substitutable with the domestic like product. CR & PR at Fig. III-1.

¹⁰⁶ CR at II-9; PR at II-6, II-7. While quality was cited most frequently as purchasers' primary factor in purchasing decisions, price was cited most frequently as their secondary factor. Id. We note that all A-312 pipes must meet the requirements of the ASTM standard.

U.S. producers' and importers' prices generally declined over the period with some recovery in recent quarters.¹⁰⁷ Price comparisons in these reviews indicate underselling by subject imports, but the domestic parties and respondents believe that the degree of underselling is overstated because prices were reported at different levels of trade.¹⁰⁸ However, even pricing data at comparable levels of trade (with the master distributors' data removed) indicate that in 19 of the 20 instances when pricing comparisons were available, the subject merchandise undersold the domestic product by up to *** percent.¹⁰⁹

Given the likely significant volume of subject imports, the high level of substitutability between the subject imports and domestic like product, the importance of price in purchasing decisions, slow growth in U.S. demand, and the underselling by the subject imports in the original investigations and during the current review period, we find that in the absence of the orders, A-312 pipes from Korea and Taiwan likely would be priced aggressively in order to gain additional market share.¹¹⁰ We find that this likely would have significant depressing or suppressing effects on the prices of the domestic like product.¹¹¹

E. Likely Impact

In the original investigations, the domestic industry's performance was mixed.¹¹² Production, capacity, and productivity increased modestly between 1989 and 1991.¹¹³ However, the industry's shipments and market share declined from 1990 to 1991.¹¹⁴ While the industry remained profitable during the original period of investigation, the Commission determined that the *** percent decline in operating income between 1989 and 1991 demonstrated material injury by reason of the subject imports.¹¹⁵

Currently, the condition of the domestic industry is weak. Production and shipments declined during the period reviewed.¹¹⁶ The industry increased its production capacity, but since production fell,

¹⁰⁷ See CR & PR at Figs. V-3, V-4, V-5 & V-6.

¹⁰⁸ CR at V-5; PR at V-4. The parties claim that subject imports are generally sold to master distributors, which then resell to traditional distributors, whereas U.S. product is generally sold directly to traditional distributors. CR at V-5, V-6; PR at V-4.

¹⁰⁹ See CR & PR at Appendix F, Tables F-1, F-2, F-3 & F-4.

¹¹⁰ Commissioner Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determinations.

¹¹¹ As noted previously, we recognize that non-subject imports are an increasing presence in the domestic market. However, the record indicates that in the absence of the orders, subject imports themselves likely would undersell the domestic like product and have significant adverse effects on domestic prices for the domestic like product.

¹¹² Original Determinations at 18.

¹¹³ Original Determinations at 18.

¹¹⁴ Original Determinations at 18.

¹¹⁵ Original Determinations at 19, 25, and 26.

¹¹⁶ Production was 91,195 short tons in 1997, 81,311 short tons in 1998, and 83,924 short tons in 1999. CR & PR at Table III-1. Production was higher in the first quarter of 2000 at 22,779 short tons in comparison to the first quarter of 1999 when it was 20,197 short tons. Id. U.S. shipments were 82,384 short tons in 1997, 75,729 short tons in 1998, and 79,862 short tons in 1999. CR & PR at Table III-2. U.S. shipments were higher in the first quarter of 2000 at 21,513 short tons in comparison to the first quarter of 1999 when they were 20,082 short tons. Id.

the industry's capacity utilization rate declined.¹¹⁷ The domestic industry's share of the domestic WSS pipe and tube market fell throughout the period.¹¹⁸ The number of production and related workers declined slightly from 1997 to 1999 while worker productivity was relatively flat.¹¹⁹ Lower average unit sales contributed to weak financial performance¹²⁰ as the industry's operating income declined to low levels.¹²¹ While the interim period data indicate some improvement in the industry's condition, because of the generally poor performance of the domestic industry as reflected in most indicators over the period reviewed, we conclude that the domestic industry is vulnerable.^{122 123}

As discussed above, revocation of the orders likely would lead to a significant increase in the volume of subject imports which likely would undersell the domestic like product and significantly depress or suppress the domestic industry's prices. With U.S. demand for WSS pipes and pressure tubes experiencing slow growth in a market in which price is an important consideration in purchasing decisions, the significant increase in subject imports is likely to cause declines in both the price and volume of the domestic producers' shipments. We find that these developments likely would have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry, particularly given its vulnerable condition. This reduction in the industry's production, shipments, sales, market share, and revenues would result in erosion of the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for the industry.

¹¹⁷ Capacity was 121,010 short tons in 1997, 122,950 short tons in 1998, and 129,800 short tons in 1999. CR & PR at Table III-1. Capacity utilization was 75.2 percent in 1997, 65.9 percent in 1998, and 64.4 percent in 1999. Id. Production capacity was higher in the first quarter of 2000 at 34,345 short tons in comparison to 31,770 short tons in the first quarter of 1999. Capacity utilization also was higher, at 65.5 percent in the first quarter of 2000 as opposed to 62.9 percent in the first quarter of 1999. Id.

¹¹⁸ The industry's share was 82.0 percent in 1997, 76.4 percent in 1998, and 72.7 percent in 1999. In the first quarter of 2000, it was 68.1 percent, compared to 73.6 percent in the first quarter of 1999. CR & PR at Table I-2.

¹¹⁹ The number of production and related workers was 1,128 in 1997, 1,116 in 1998, and 1,089 in 1999. CR & PR at Table III-4. Productivity was 36.4 short tons per 1,000 hours in 1997, 34.2 short tons per 1,000 hours in 1998, and 36.7 short tons per 1,000 hours in 1999. Id. Unit labor costs per short ton increased from \$349.32 in 1997 to \$385.43 in 1999.

¹²⁰ The average unit value of U.S. producers' net sales was \$3,511 in 1997, \$3,193 in 1998, and \$2,986 in 1999. CR & PR at Table III-8. In the first quarter of 2000, it was \$3,248, compared to \$2,738 in the first quarter of 1999. Id.

¹²¹ The ratio was 6.5 percent in 1997, negative 2.0 percent in 1998, and 1.7 percent in 1999. The ratio was improved in the first quarter of 2000, at 7.6 percent, compared to the first quarter of 1999, when it was negative 4.4 percent. CR & PR at Table III-6.

¹²² 19 U.S.C. § 1675a(a)(1)(C). See SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.").

¹²³ We do not have financial performance data for the years immediately following the imposition of the orders at issue in these reviews. Therefore, we cannot conclude whether the orders had a beneficial effect on the condition of the industry after they were imposed.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on certain WSS pipes from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to the U.S. industry within a reasonably foreseeable time.¹²⁴

¹²⁴ Commissioner Askey dissenting with respect to Korea.

CONCURRING AND DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Section 751(d) of the Tariff Act of 1930, as amended, requires the Department of Commerce to revoke an antidumping duty or countervailing duty order in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹²⁵ Based on the record in these five-year reviews, I determine that revocation of the antidumping duty order on certain welded stainless steel pipe (“WSS pipe”) from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty order on WSS pipe from Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I write separately to explain my determinations with respect to these orders. I concur with my colleagues with respect to their findings concerning the domestic like product, the domestic industry and related parties, and the legal standards governing the Commission’s cumulation and causation analysis in sunset reviews. Accordingly, I join the Commission’s joint views discussing these issues.

As a preliminary matter, I note that the Commission received questionnaire responses from the large majority of domestic producers, that more than *** of the domestic industry responded to the notice of initiation, that the *** Korean producer that exports to the United States participated in this review and that, while no Taiwanese producer responded to the notice of initiation, the Commission received a questionnaire response from one Taiwanese subject producer.¹²⁶ The Commission, therefore, has a somewhat limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury in the reasonably foreseeable future.¹²⁷ In a case such as this with respect to Taiwan, where only domestic interested parties participate in an investigation or review, those parties have an advantage in terms of being able to present information to the Commission without rebuttal from the other side. However, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.¹²⁸ The Commission cannot properly accept participating parties’ information and characterizations thereof without question and without evaluating other available information.¹²⁹

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

¹²⁶ Office of Investigations Memorandum INV-W-212, Sept. 22, 1999; CR at IV-7; PR at IV-6.

¹²⁷ Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission’s determination would be upheld unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int’l Trade Comm’n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission’s decision on sanctions).

¹²⁸ 19 U.S.C. § 1675a(a).

¹²⁹ See, e.g., Alberta Pork Producers’ Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int’l Trade 1987) (“Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.”).

A. CUMULATION

1. General

In sunset reviews, the Commission has the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.¹³⁰ Thus, in five-year reviews, the relevant inquiry is whether there would likely be competition among the domestic and subject merchandise within the reasonably foreseeable future, even if none currently exists. Because of the prospective nature of five-year reviews and the discretionary nature of the cumulation decision, the Commission has also examined other conditions of competition that are likely to prevail upon revocation when deciding whether to cumulate in sunset reviews.

Although cumulation is discretionary in sunset reviews, the statute unambiguously states that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise if those imports are “likely to have no discernible adverse impact on the domestic industry” upon revocation of the order covering those imports.¹³¹ As can be seen, the statute does not direct the Commission to focus its discernability analysis solely on the likely volume levels of the imports; instead, the statute expressly directs the Commission to assess whether the subject imports will have a discernible adverse “impact” on the industry upon revocation. Accordingly, when I assess whether I am permitted to cumulate the subject imports in sunset reviews, I first focus on whether the imports will impact the condition of the industry in a discernible way as a result of revocation, and not simply on whether there will be a small -- i.e., negligible - - volume of imports after revocation.¹³²

In this case, the reviews of the orders covering WSS pipe from Korea and Taiwan were initiated on the same day. Accordingly, I have considered first whether the subject imports from the subject countries are likely to have a “discernible adverse impact” on the domestic industry upon revocation of the orders. If I find that imports from any one of these countries are not likely to have a discernible adverse impact on the domestic industry upon revocation of the order, then I am precluded from cumulating the imports from that country with those of any other subject country. If I find that they are likely to have a discernible adverse impact on the industry upon revocation of the order, I must then consider whether it is appropriate to exercise my discretion to cumulate the subject countries.

¹³⁰ 19 U.S.C § 1675a(a)(7).

¹³¹ Section 752(a)(7) of the Act, 19 U.S.C. § 1675a(a)(7).

¹³² I discussed the rationale for my approach in more detail in my Additional Views in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 31 (Oct. 1999). I also further explained my views in Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 & 379-380 (Review), USITC Pub. 3290, at 36-37 (Apr. 2000).

2. *Discernible Adverse Impact*

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

I find that the subject imports from Korea are not likely to have a discernible adverse impact on the domestic industry if the order on imports from Korea is revoked.

During the original investigation, Korean import volume was 444 short tons in 1989, 3,328 short tons in 1990 and 5,074 short tons in 1991; these volumes represented shares of apparent domestic consumption of *** percent, *** percent and *** percent in 1989-91, respectively.¹³³ During the review period, import volume was 2,465 short tons, 4,740 short tons and 2,711 short tons in 1997-1999, respectively, corresponding to shares of domestic apparent consumption of 2.5 percent, 4.8 percent and 2.5 percent, respectively.¹³⁴ Accordingly, the Korean import volume and market share were not large during either period and stayed within similar ranges during both periods. In particular, I note that in 1998, even with the order in place, Korean import volume roughly doubled from its 1997 level, to which it returned in 1999, although it still remained below the highest level present during the original investigation period.¹³⁵ This import volume fluctuation is not surprising given that the AD margin in place for *** Korean producer,¹³⁶ SeAH Steel, is only one percent, with an all others rate of seven percent,¹³⁷ making it unlikely that the order has much, if any, effect upon current Korean import volumes. While the presence of an antidumping duty order, even at a low rate of duty, may have a restraining effect on imports, the record in this review indicates that the order has had little effect in recent years on Korean import levels.¹³⁸ The projected rate for SeAH is 2.67 percent, with an all others rate of 7.0 percent.¹³⁹

The decline in Korean capacity since the original investigation period further reinforces the likelihood that import volumes would not change discernibly in the event of revocation. During the original investigation period, Korean producers' capacity peaked at *** short tons in 1991.¹⁴⁰ Capacity subsequently declined by *** percent, to 13,167 short tons during the review period.¹⁴¹ Capacity utilization during the review period ranged from 55.7 to 82.5 percent, with the highest utilization rate coming in 1998, when imports to the United States peaked at 4,740 short tons.¹⁴² However, even assuming that 100 percent capacity utilization is feasible for the Korean industry, available unused

¹³³ CR and PR at Table I-2.

¹³⁴ Id.

¹³⁵ See id.

¹³⁶ *** Compare Foreign Producer Questionnaire Response of Hyundai with Foreign Producer Questionnaire Response of SeAH.

¹³⁷ CR at I-2 n.5 and I-9; PR at I-1 n.5 and I-8.

¹³⁸ While import volumes declined initially, they increased again in recent years to their current levels, which, as discussed above, are roughly comparable to the volumes present during the original investigation period. See CR and PR at Table I-2; Korean Respondent's Response to the Commission's Notice of Institution (Aug. 20, 1999) at exh. 2.

¹³⁹ CR at I-10; PR at I-9.

¹⁴⁰ Confidential Memorandum INV-P-182 (Dec. 3, 1992); Original Determinations at Table 15.

¹⁴¹ CR and PR at Table IV-2.

¹⁴² Compare CR and PR at Table IV-2 with CR and PR at Table I-2.

capacity for all Korean producers, beyond the actual production peak of 10,650 short tons in 1998, would be 2,517 short tons, at most.¹⁴³ Further, available unused capacity for the two firms that actually have exported to the United States in recent years, SeAH Steel and Hyundai Pipe, was only *** short tons.¹⁴⁴ Accordingly, even in the unlikely event that all of this excess capacity were directed at the United States, it would represent only slightly more than *** percent of current domestic apparent consumption.¹⁴⁵ In other words, whether or not the order is revoked, the maximum potential volume increase from Korea would be very small.

I also find that the record indicates that the subject imports from Korea will not have a discernible adverse impact on domestic prices upon revocation of the order. Available pricing data show that Korean imports have been underselling domestic producers during the review period.¹⁴⁶ However, the parties agree that the underselling is most likely overstated, in part because imported welded A-312 pipes from Korea generally go through an additional level of trade since they are generally sold to master distributors, which then resell the products to traditional distributors, while U.S. produced welded A-312 pipes are generally sold directly to traditional distributors.¹⁴⁷ Moreover, the limited volumes of Korean imports that would be present in the market upon revocation of the order is unlikely to have a discernible effect on domestic prices within the reasonably foreseeable future.

For the foregoing reasons, I find it unlikely that revocation of the order will have discernible volume and price effects and, therefore, have a discernible adverse impact on the domestic industry. Therefore, I have not cumulated the subject imports from Korea with imports from Taiwan for purposes of my analysis in these reviews.

B. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING IMPORTS OF WSS PIPE FROM TAIWAN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

1. Likely Volume of the Imports from Taiwan

In evaluating the likely volume of imports of subject merchandise if an antidumping duty order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹⁴⁸ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country,

¹⁴³ CR and PR at Table IV-2.

¹⁴⁴ See Korean Foreign Producers’ questionnaire responses. Only two of the seven reporting producers report subject exports to the United States. CR at IV-5; PR at IV-4; Korean Respondent’s Public Response to Commission’s Notice of Institution (Aug. 20, 1999) at 9.

¹⁴⁵ See CR and PR at Table C-3.

¹⁴⁶ See CR and PR at Tables V-1-8.

¹⁴⁷ CR at V-5-6; PR at V-4.

¹⁴⁸ 19 U.S.C. § 1675a(a)(2).

which can be used to produce the subject merchandise, are currently being used to produce other products.¹⁴⁹

In the original investigations, the Commission found that the volume of cumulated subject imports more than tripled, increasing from 3,538 short tons in 1989 to 14,271 short tons in 1991, and that this increase was significant, both absolutely and relatively.¹⁵⁰ Cumulated subject import market share increased from *** percent in 1989 to *** percent in 1991.¹⁵¹ The volume of subject imports from Taiwan was 3,095 short tons in 1989, 7,979 short tons in 1990 and 9,197 short tons in 1991, which represented market shares of *** percent, *** percent and *** percent, in those years, respectively.¹⁵²

During the review period, subject import volume from Taiwan was 990 short tons, 1,819 short tons and 2,610 short tons in 1997-99, respectively, which represented 1.0, 1.8 and 2.4 percent of domestic apparent consumption in those years.¹⁵³ However, nonsubject imports from Taiwan increased more substantially during the review period, increasing their share of domestic apparent consumption from 3.8 percent in 1997 to 9.4 percent in 1999.¹⁵⁴

There is limited information in the record concerning the industry in Taiwan as only one manufacturer in Taiwan responded to the Commission's questionnaires and most of the information it provided was not specific to A-312 pipe.¹⁵⁵ One major exporter of A-312 pipe (Chang Mien) was never subject to the antidumping duty order¹⁵⁶ and Commerce recently revoked the order as to another producer, Ta Chen.¹⁵⁷

Nonetheless, available information indicates that the capacity of subject manufacturers in Taiwan has remained relatively large. Two subject producers, Jaung Yaunn Enterprise Co. and Yeun Chyang, accounted for *** short tons of capacity in 1991.¹⁵⁸ In contrast to the record information that Korean producer capacity has decreased *** since the time of the original investigation, there is no indication that these companies' capacity, equivalent to more than *** percent of U.S. consumption and to *** percent of U.S. production in 1999, has decreased.¹⁵⁹ It appears that there may be at least two other subject producers in Taiwan, *** and ***.¹⁶⁰ Jaung Yaunn estimated production of A-312 pipes by other subject producers to be *** metric tons.¹⁶¹ It reported its own production of all WSS pipes and tubes as

¹⁴⁹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹⁵⁰ Original Determination at 24.

¹⁵¹ CR and PR at Table I-2.

¹⁵² CR and PR at Table I-2.

¹⁵³ CR and PR at Table I-2.

¹⁵⁴ CR and PR at Table I-2.

¹⁵⁵ CR at IV-7; PR at IV-6.

¹⁵⁶ Chang Mien was excluded from the original order. 65 Fed Reg. 5607, 5611 (Feb. 4, 2000).

¹⁵⁷ In June 2000 Commerce revoked the antidumping duty order with respect to Ta Chen, effective December 1, 1998, because Ta Chen met the requirement of three consecutive years of de minimis or zero margins. 65 Fed. Reg. 39367, 39368 (June 26, 2000). In conducting its analysis, the Commission must consider the effects of revocation of the order. Because Ta Chen is not now subject to the order, revocation would likely have no effect on its exports to the United States in the reasonably foreseeable future since it is nonsubject producer.

¹⁵⁸ INV-P-182 (Dec. 3, 1992) and Original Determinations at Table 16.

¹⁵⁹ See CR and PR at Table I-2.

¹⁶⁰ Jaung Yaunn's follow-up to its Questionnaire Response, July 31, 2000, at 2.

¹⁶¹ Id. Jaung Yaunn's estimates were *** metric tons for ***, *** metric tons for *** and *** metric tons for ***. Id.

*** metric tons in 1999,¹⁶² but could not provide a product specific breakdown. Because the record contains little data concerning current Taiwan producer capacity and production it is difficult to determine how much, if any, excess subject capacity is available that could be directed to the United States. However, the fact that the volume of nonsubject imports from Taiwan has been increasing relatively rapidly during the review period suggests that subject producers could similarly increase exports to the United States should the order be revoked.

In addition, the record indicates that while the volume of subject imports from Taiwan decreased after the order was put in place, Taiwan producers have retained a presence in the U.S. market.¹⁶³ Consequently, subject merchandise from Taiwan is known and accepted in the United States market with an established customer base and distribution network. Subject imports from Taiwan are fully interchangeable with both domestic and non-subject WSS pipe.¹⁶⁴ Accordingly, this suggests that subject producers from Taiwan would be able to expand their presence in the domestic market readily if the order were revoked.

In sum, I find it likely that, in the absence of the order the subject imports from Taiwan would likely increase significantly, both in absolute terms and as a share of the U.S. market. Accordingly, based on the record in these reviews, I conclude that the volume of subject WSS pipe imports from Taiwan likely would be significant in the reasonably foreseeable future if the order was revoked.

2. Likely Price Effects of the Imports from Taiwan

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.¹⁶⁵

In the original investigation, U.S. producers' selling prices to distributors and prices reported by purchasers declined as did U.S. imports' prices.¹⁶⁶ The Commission found underselling in 34 of 40 price

¹⁶² CR at IV-8; PR at IV-6.

¹⁶³ I note also that current and projected margins for subject producers from Taiwan are larger than those for Korean producers, which are relatively insignificant. Projected margins for Jaung Yuann and Yeun Chyang are 31.90, with an all others rate of 19.84 for other Taiwan producers. By contrast, the projected rate for SeAH is 2.67 percent and the Korean all others rate is 7.0 percent. CR at I-10; PR at I-9. Combined with the fact that subject import levels from Taiwan declined sharply after the order went into place and have remained low, in contrast to Korean levels, whose levels during the review period were similar to those during the original investigation period, this suggests that the order on imports from Taiwan has had a more substantial effect on Taiwan import volumes than has that on Korean imports.

¹⁶⁴ CR at II-10 & II-12; PR at II-7 and II-8.

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

¹⁶⁶ Original Determinations at 24-25.

comparisons in the original investigation concerning Taiwan¹⁶⁷ and concluded that the import prices were depressing and suppressing domestic prices.¹⁶⁸

The record indicates that the subject imports are highly substitutable for domestic WSS pipes and pressure tubes.¹⁶⁹ The record also indicated that price is a very important factor in purchasing decisions.¹⁷⁰ Moreover, the record indicates that the subject producers in Taiwan have continued to undersell domestic products even with the orders in place. Both the domestic parties and respondents believe that such underselling is overstated because the U.S. producer and importer sales are measured at different levels of trade.¹⁷¹ Therefore, the underselling data is of limited probative value. Nevertheless, adjusting the available pricing data to account for the difference in levels of trade continues to indicate underselling on the part of the Taiwan imports.¹⁷² This has affected the domestic industry in that U.S. producers' and importers' prices declined over the period examined although there was some recovery in prices in the first quarter of 2000.¹⁷³

In sum, given the likely increased volume of imports, the high level of substitutability between the subject imports and domestic product, the importance of price in purchasing decisions, and the apparent continued underselling by subject imports, I find that in the absence of the order, WSS pipes from Taiwan likely would have significant depressing or suppressing effects on the prices of the domestic like product

3. Likely Impact of the Imports from Taiwan

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹⁷⁴ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.¹⁷⁵

In the original investigations, the industry's performance indicators were mixed.¹⁷⁶ Production, capacity and productivity increased modestly between 1989 to 1991.¹⁷⁷ However, shipments declined

¹⁶⁷ Original Determinations at 25.

¹⁶⁸ Original Determinations at 24-25.

¹⁶⁹ CR at II-9, II-10; PR at II-6-7.

¹⁷⁰ CR at II-9; PR at II-6. Price and quality were purchasers' most frequently cited factors that affected purchasing decisions. *Id.* Most responding purchasers indicated that U.S. products and products from Taiwan are of comparable quality. CR at II-10, n.18; PR at II-7 n.18.

¹⁷¹ CR at V-5; PR at V-4.

¹⁷² See CR and PR at Appendix F, Tables F-1, F-2, F-3 & F-4.

¹⁷³ See CR and PR at Figs.V-3, V-4, V-5, & V-6.

¹⁷⁴ 19 U.S.C. § 1675a(a)(4).

¹⁷⁵ 19 U.S.C. § 1675a(a)(4).

¹⁷⁶ Original Determinations at 18.

¹⁷⁷ Original Determinations at 18.

from 1990 to 1991 and the U.S. producers' market share declined as well.¹⁷⁸ While the industry remained profitable during that period, the Commission considered the *** percent decline in the industry's operating income as evidence of poor financial health.¹⁷⁹

The financial condition of the domestic industry during the review period has been weak but is improving. The domestic industry struggled in 1998 in particular, when it experienced a negative operating margin, but began to recover in 1999 and the first quarter of 2000.¹⁸⁰ Most industry indicators declined during the review period, at least until 1999.¹⁸¹ The number of production and related workers declined slightly from 1997 to 1999 while worker productivity was relatively flat.¹⁸² Lower average unit sales contributed to weak financial performance¹⁸³ as the industry's operating income as a percentage of net sales trended downward. The domestic industry's market share declined from 82.0 percent in 1997 to 72.7 percent in 1999, but this was largely a result of a substantial increase in nonsubject imports' market share. Nonsubject imports, including nonsubject imports from Taiwan, increased their market share from 14.6 percent in 1997 to 22.4 percent in 1999, while subject imports from Taiwan's market share increased only slightly, from 1.0 percent in 1997 to 2.4 percent in 1999.¹⁸⁴ However, the positive indicators in 1999 and 2000, such as the increases in operating margins, gross profits, shipment quantity and value, and other financial indicators comparing interim 1999 with interim 2000, suggest that any lingering vulnerability in the industry is being overtaken by more robust performance.

¹⁷⁸ Original Determinations at 18.

¹⁷⁹ Original Determinations at 19.

¹⁸⁰ See CR and PR at Table C-3. The operating ratio was 6.5 percent in 1997, negative 2.0 percent in 1998, and 1.7 percent in 1999. The ratio in first quarter of 2000 was 7.6 percent in comparison to negative 4.4 percent in the first quarter of 1999. CR and PR at Table III-6. Gross profits were \$41.5 million in 1997, \$18.2 million in 1998 and \$26.1 million in 1999. They were \$11.4 million in first quarter of 2000, compared with only \$3.0 million in first quarter 1999. CR and PR at Table C-3.

¹⁸¹ Production was 91,195 short tons in 1997, 81,311 short tons in 1998, and 83,924 short tons in 1999. CR and PR at Table III-1. Production was higher in the first quarter of 2000 at 22,779 short tons in comparison to the first quarter of 1999 when it was 20,197 short tons. Id. U.S. shipments were 82,384 short tons in 1997, 75,729 short tons in 1998, and 79,862 short tons in 1999. CR and PR at Table III-2. U.S. shipments were higher in the first quarter of 2000 at 21,513 short tons in comparison to the first quarter of 1999 when they were 20,082 short tons. Id.

However, production capacity and capital expenditures both increased throughout the period reviewed. Capacity was 121,010 short tons in 1997, 122,950 short tons in 1998, and 129,800 short tons in 1999. CR and PR at Table III-1. Capacity utilization was 75.2 percent in 1997, 65.9 percent in 1998, and 64.4 percent in 1999. Id. Production capacity was higher in the first quarter of 2000 at 34,345 short tons in comparison to 31,770 short tons in the first quarter of 2000. Capacity utilization also was higher, at 65.5 percent in the first quarter of 2000 as compared to only 62.9 percent in the first quarter of 1999. Id. Capital expenditures increased from \$5.1 million in 1997 to \$26.4 million in 1998 before declining to \$19.8 million in 1999, which represents an almost four-fold increase between 1997 and 1999. CR and PR at Table C-3.

¹⁸² The number of production and related workers was 1,128 in 1997, 1,116 in 1998, and 1,089 in 1999. CR and PR at Table III-4. Productivity was 36.4 short tons per 1,000 hours in 1997, 34.2 short tons per 1,000 hours in 1998, and 36.7 short tons per 1,000 hours in 1999. Id. Unit labor costs per short ton increased from \$349.32 in 1997 to \$385.43 in 1999. Id.

¹⁸³ The average unit value of U.S. producers' net sales was \$3,511 in 1997, \$3,193 in 1998 and \$2,986 in 1999. CR and PR at Table III-8. In the first quarter of 2000, it was \$3,248, compared with \$2,738 in the first quarter of 1999. Id.

¹⁸⁴ See CR and PR at Table I-2.

As discussed above, revocation of the orders would likely lead to a significant increase in the volume of subject imports which would likely undersell the domestic product and significantly depress or suppress the domestic industry's prices. Given that price is an important consideration in purchasing decisions, the likely increase in subject imports from Taiwan is likely to cause declines in both the prices and volumes of the domestic producer's shipments. These developments would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. This reduction in the industry's production, shipments, sales, market share, and revenues would result in further erosion of the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments.¹⁸⁵

In sum, I conclude that revocation of the order on the subject imports from Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

C. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING WSS PIPE FROM KOREA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, I determined that the subject imports from Korea would not be likely to have a discernible adverse impact on the domestic industry if the Korean antidumping duty order were revoked. Accordingly, I have not cumulated the subject imports from Korea with the other subject imports for purposes of my sunset analysis. In addition, for the reasons outlined previously, I find that the subject imports from Korea are not likely to have significant adverse volume or price effects on the domestic industry upon revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁸⁶

¹⁸⁵ I note that the record contains no data regarding whether subject WSS producers in Taiwan would be able to engage in some product shifting in their facilities. I further note that the record indicates that there are no orders in place against subject WSS pipes from Taiwan in any other country.

¹⁸⁶ As discussed above, I find that any lingering vulnerability of the domestic industry is being overtaken by improved market performance in late 1999 and early 2000. I have further taken into account the Commission's findings in its original determination in my analysis. I note that the record indicates that there is only a limited possibility that the Korean subject WSS producers would be able to engage in some product shifting in their facilities. I further note that the record indicates that there are no orders in place against subject Korean WSS pipes in any other country, with the possible exception of South Africa. CR at IV-8; PR at IV-6.

