

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STAINLESS STEEL BUTT-WELD PIPE FITTINGS FROM GERMANY

Investigation No. 731-TA-864 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3372, November 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that imports of the subject merchandise from Germany were negligible for purposes of the Commission's analysis of material injury by reason of imports of certain stainless steel butt-weld pipe fittings from Germany but that there is a potential that such imports will imminently account for more than three percent of total imports. The Commission also determines that an industry in the United States is not threatened with material injury by reason of imports of certain stainless steel butt-weld pipe fittings from Germany, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective December 29, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Alloy Piping Products, Inc., Shreveport, LA; Flowline Division of Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; and Taylor Forge Stainless, Inc., North Branch, NJ. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain stainless steel butt-weld pipe fittings from Germany were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 23, 2000 (65 FR 51328). The hearing was held in Washington, DC, on October 17, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 29, 2000. The views of the Commission are contained in USITC Publication 3372 (November 2000), entitled *Certain Stainless Steel Butt-Weld Pipe Fittings from Germany: Investigation No. 731-TA-864 (Final)*.

By order of the Commission.

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

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that subject imports from Germany are negligible for purposes of our present material injury analysis. We also determine that there is a potential that imports from Germany will imminently exceed three percent of total imports of certain stainless steel butt-weld pipe fittings, but we determine that an industry in the United States is not threatened with material injury by reason of subject imports from Germany that are sold in the United States at less than fair value.^{1 2}

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁵

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

¹ Although Commerce made a final affirmative critical circumstances determination with regard to subject butt-weld fittings imported from German producers Hage Fittings, Nirobo Metalverarbeitungs, and Schulz, we need not assess whether critical circumstances exist with respect to those subject imports because we made a negative determination with respect to the subject imports from Germany.

² On December 29, 1999, petitions were filed regarding certain stainless butt-weld pipe fittings from Germany, Italy, Malaysia, and the Philippines. The final investigations of subject imports from Italy, Malaysia, and the Philippines were extended at the Department of Commerce (“Commerce”), and correspondingly at the Commission, but the final phase investigation of subject imports from Germany was not extended at Commerce or the Commission. These views, therefore, focus on issues related to our determination with respect to subject imports from Germany; issues related to subject imports from the other countries will be addressed when we make our determinations with respect to those countries.

³ 19 U.S.C. § 1677(4)(A).

⁴ Id.

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 & n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct Int’l Trade 1996).

may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its final determination regarding subject imports from Germany, Commerce described the merchandise within the scope of this investigation as follows:

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

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

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

The stainless steel butt-weld pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.¹⁰

Stainless steel butt-weld pipe fittings (“butt-weld fittings”) can be produced in various shapes, such

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

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

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

¹⁰ Stainless Steel Butt-Weld Pipe Fittings from Germany, 65 Fed. Reg. 61142, 61142 (Oct. 16, 2000).

as 90-degree long and short radius elbows, 45-degree long and short radius elbows, 180-degree long radius returns, caps, straight tees, reducing outlet tees, stub-ends, concentric reducers, eccentric reducers, straight crosses, and reducing outlet crosses.¹¹

Butt-weld fittings are used to join pipes in straight lines and to change or divide the flow of fluids. They may be used in piping systems requiring permanent welded connections and involving potential for corrosion or contamination, extremely high or low temperatures, or high pressure. Applications for butt-weld fittings include piping systems for chemical plants, petroleum refineries, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor manufacturing equipment, and nuclear power plants.¹²

C. Domestic Like Product

In the preliminary phase of this investigation, the Commission found a single domestic like product coextensive with the scope, consisting of all finished and unfinished butt-weld fittings having an outside diameter (based on nominal pipe size) of less than 14 inches (“small-diameter butt-weld fittings”).¹³ Applying its six-factor like product test, the Commission considered and rejected arguments by Malaysian producer Kanzen that butt-weld fittings having an outside diameter of 14 inches or greater (“large-diameter butt-weld fittings”) should be included in the domestic like product.¹⁴ In the final phase of this investigation, we consider again whether to include large-diameter butt-weld fittings in the domestic like product.

1. Parties’ Arguments

Petitioners argue that the Commission’s definition of the domestic like product in the preliminary phase of this investigation was correct. They argue there is a bright-line distinction between small- and large-diameter butt-weld fittings, and the domestic like product should not include large-diameter butt-weld fittings, consistent with the Commission’s findings in previous investigations.¹⁵

German respondent Schulz contends petitioners misled the Commission in the preliminary phase of this investigation by providing false information, and as a result, the Commission incorrectly did not

¹¹ Confidential Staff Report (“CR”) at I-5; Public Staff Report (“PR”) at I-4.

¹² CR at I-5, I-8, I-10, PR at I-4, I-7, I-8.

¹³ Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines, Inv. Nos. 731-TA-864 to 867 (Prelim.), USITC Pub. 3281 (Feb. 2000) (“Preliminary Determination”) at 3-6.

¹⁴ Kanzen’s Postconference Brief at 2-5; Preliminary Determination at 5-6 (noting “[a]lthough the end uses and physical characteristics of large- and small-diameter butt-weld fittings appear to be generally similar, the record indicates limited interchangeability, and differences in channels of distribution, production processes, equipment and workers, producer perceptions, and prices. Based on these considerations, we conclude that large-diameter butt-weld fittings should not be included in the domestic like product.”).

¹⁵ See, e.g., Petitioners’ Prehearing Brief at 2-10; Petitioners’ Posthearing Brief at 1-2; Hearing Tr. at 8 (Kerwin), 12-18 (Schlesinger), 21 (Barfield), 66 (Mavrich) 95-96 (Sharkey); see also Petition at 39-40; Conference Transcript at 9-12, 44-46; Petitioners’ Postconference Brief at 3-12. In the preliminary phase of this investigation, Italian respondent Coprosider agreed with the domestic like product definition proposed by the petitioners, and in the final phase of this investigation, Coprosider takes no position regarding the definition of the domestic like product. See, e.g., Coprosider’s Posthearing Brief at 1; Postconference Brief of Norca and Coprosider at 2, Exhibit A at 2.

include large-diameter butt-weld fittings in the domestic like product.¹⁶

2. Analysis and Finding

As indicated below, we find one domestic like product coextensive with the scope and consisting of all finished and unfinished butt-weld fittings having an outside diameter (based on nominal pipe size) of less than 14 inches. Although there are merits to both arguments regarding the domestic like product, on balance, we find that differences in the factors normally considered by the Commission warrant not including large-diameter butt-weld fittings in the domestic like product.

First, the end uses of large- and small-diameter butt-weld fittings appear to be generally similar inasmuch as both are used in process operations to join pipes in straight lines and to change or divide the flow of liquids where conditions require permanent, welded connections.¹⁷ However, large-diameter butt-weld fittings are larger, heavier, and are not usually seamless; these differences limit interchangeability.¹⁸ Although both are sold through distributors, small-diameter butt-weld fittings are more consistently inventoried by producers and distributors in multiple product permutations and sold pursuant to price lists, whereas large-diameter butt-weld fittings generally are made to order and sold based on negotiated prices.¹⁹

Second, the record also indicates that there are distinctions between the two products with respect to manufacturing facilities, processes, and employees. Finished small-diameter butt-weld fittings generally are produced from seamless or welded stainless steel pipe or unfinished blanks,²⁰ while large-diameter butt-weld fittings generally are produced from stainless steel plate.²¹ The Commission verified that ***, use separate production equipment and workers to produce large- and small-diameter butt-weld fittings; moreover, large-diameter butt-weld fittings generally undergo integral production processes – cutting and forming of the plate into the two halves of a tubular shape, welding the two halves together, and inspecting the welds through radiographic testing to meet ASTM A403 standards – not required of small-diameter

¹⁶ See, e.g., Schulz's Prehearing Brief, at 21-25 and Exhibit 7 (at 5-12 and Attachments 1-8).

¹⁷ See, e.g., CR at I-4 to I-5; PR at I-4; Hearing Tr. at 15.

¹⁸ See, e.g., Petitioners' Prehearing Brief at 5-6; Hearing Tr. at 14-15.

¹⁹ See, e.g., Petitioners' Prehearing Brief at 6-7, 9; Petitioners' Posthearing Brief at 1-2; Hearing Tr. at 12-18 (Schlesinger), 21 (Barfield), 174 (Palma); Petition at 39-40; Conference Transcript at 11; Petitioners' Postconference Brief at 5-6; Joint Respondents' Postconference Brief at Exhibits 5 (Alloy Piping Product's stainless butt-weld fittings price list) and 7 (Jero's web site; Robert James Sales' web site; and Alloy Product's web site); Schulz's Prehearing Brief, Exhibit 7 at Attachments 1 (Alaskan Copper's web site); 2 (Multalloy's web site); 3 (Robert James Sales' web site); and 7 (Alloy Piping Product's web site). We note that inventories as a share of domestic production reported by domestic producers in this investigation were greater for small-diameter butt-weld fittings than for large-diameter butt-weld fittings. Compare, e.g., CR and PR at Table C-1 with CR and PR at Table C-2.

²⁰ See, e.g., CR at I-7 to I-8; PR at I-6.

²¹ See, e.g., Petitioners' Prehearing Brief at 5-6; Petitioners' Posthearing Brief at 1-2; Hearing Tr. at 15 (Schlesinger), 21 (Barfield); Petition at 39-40; Conference Transcript at 10-11; Petitioners' Postconference Brief at 4-6; January 11, 2000, field trip notes to *** and October 4, 2000, verification report of ***; see also, e.g., Alloy Piping Product's 1999 Price List ("Most of the products above can be manufactured in welded or seamless construction through 12". Large O.D. (14" and above is welded and x-rayed)'), a copy of which was appended to Joint Respondents' Postconference Brief.

butt-weld fittings.²² Some domestic producers manufacture exclusively small-diameter butt-weld fittings, including ***, and other domestic producers primarily produce large-diameter butt-weld fittings and only produce minor quantities of small-diameter butt-weld fittings, including ***.²³

Further, some producers and purchasers perceive large- and small-diameter butt-weld fittings to be different products.²⁴ In addition, prices for large-diameter butt-weld fittings are higher on a per unit basis than for small-diameter butt-weld fittings.²⁵ Based on the foregoing considerations, we determine that large-diameter butt-weld fittings are not included in the domestic like product.

D. Domestic Industry

1. Generally

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”²⁶ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁷ We find one domestic industry in this investigation and define it as all domestic producers of finished and unfinished butt-weld fittings having an outside diameter (based on nominal pipe size) of less than 14 inches.

2. Related Parties

We also must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry a producer that is related to an exporter or importer of subject merchandise, or which is itself an importer.²⁸ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.²⁹

²² See, e.g., January 11, 2000, field trip notes to *** and October 4, 2000, verification report of *** at 4.

²³ See, e.g., Petitioners’ Prehearing Brief at 8-9; Domestic Producer Questionnaire responses at 4 and 11 and *** letter in response to Preliminary Producers’ Questionnaire.

²⁴ See, e.g., Petitioners’ Prehearing Brief at 7; Hearing Tr. at 17; see also, e.g., Alloy Piping Product’s 1999 Price List, a copy of which was appended to Joint Respondents’ Postconference Brief (distinguishing between small-diameter butt-weld fittings and “Large O.D.” butt-weld fittings).

²⁵ Per pound prices for large-diameter butt-weld fittings were lower than for small-diameter butt-weld fittings until prices declined. CR and PR at Tables C-1 and C-2.

²⁶ 19 U.S.C. § 1677(4)(A).

²⁷ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

²⁸ 19 U.S.C. § 1677(4)(B).

²⁹ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct Int’l. Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct Int’l. Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the less than fair value sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the

(continued...)

In the preliminary phase of this investigation, the Commission considered whether to exclude *** domestic producers that imported subject merchandise during the period of investigation – *** – from the domestic industry under the related party provision of the statute. The Commission found that appropriate circumstances existed to exclude *** but not *** from the domestic industry.³⁰ Because the record reflects that the same *** domestic producers – *** – imported subject butt-weld fittings during the period of investigation, they continue to be related parties under 19 U.S.C. § 1677(4)(B)(i).^{31 32} Accordingly, we again must assess whether appropriate circumstances exist to exclude these producers from the domestic industry.³³

We find that appropriate circumstances do not exist to exclude *** from the domestic industry. *** only imported subject butt-weld fittings ***, and its subject imports were equivalent to approximately *** percent of its domestic production in that year.³⁴ ***.³⁵ Although its financial performance has been ***,³⁶ there is no clear indication that *** benefitted from its subject imports.

*** only imported subject butt-weld fittings from ***, and its subject imports were equivalent to

²⁹(...continued)

industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct Int'l. Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-43 (Final), USITC Pub. 3016, at 14 n.81 (Feb. 1997).

³⁰ Preliminary Determination at 6-8.

³¹ CR and PR at Table III-5.

³² Commissioner Bragg finds that because neither *** directly imported or purchased subject merchandise from Germany during the period of investigation, neither company is a related party as set forth in 19 U.S.C. § 1677(4)(B)(i). Commissioner Bragg therefore does not join the related parties discussion with respect to these two domestic producers, with the exception of footnote 40, which she joins.

³³ Four domestic producers purchased subject imports during the period of investigation: ***, ***, CR and PR at Table III-5. ***. CR at III-6 n.4; PR at III-5 n.4. In prior investigations, the Commission found domestic producers that purchased subject imports to be related parties if they directly or indirectly controlled the foreign producers or importers through their purchases of subject imports. *See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia*, Inv. Nos. 701-TA-387-392, 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); *Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand*, Inv. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 at 12 (June 1992). The threshold question is whether the purchases establish that the purchaser is “related” for purposes of the statute by directly or indirectly controlling an exporter or importer. The Commission has found direct or indirect control to exist where a domestic purchaser was responsible for a predominant share of the imports of the entity arguably within its control, and these purchases were substantial. *Compare, e.g., Cut-to-Length Plate*, USITC Pub. 3181 at 12 (imports not found to be sufficiently substantial to warrant treating purchaser as related party) *with Certain Brake Drums and Rotors from China*, Inv. No. 731-TA-744 (Preliminary), USITC Pub. 2957 at 11 & n.55 (April 1996) (purchaser treated as related party). We find that the size of these domestic producers’ purchases of subject imports were too small during the period of investigation to infer that any of them directly or indirectly control, or are controlled by, any foreign respondent producers or importers of subject merchandise. Accordingly, we determine that *** are not related parties within the meaning of the statute.

³⁴ CR and PR at Tables III-1, III-5.

³⁵ CR at III-6, PR at III-5.

³⁶ CR and PR at Table VI-5.

approximately *** percent of its domestic production in that year.³⁷ ***.³⁸ *** financial performance improved throughout the period of investigation, even though it imported subject butt-weld fittings from *** only in 1998.³⁹ Based on the record before us,⁴⁰ we determine that appropriate circumstances do not exist to exclude *** from the domestic industry.⁴¹

II. NEGLIGIBLE IMPORTS⁴²

The URAA amended the statutory provisions pertaining to final phase antidumping and countervailing duty determinations to require that investigations terminate by operation of law without an injury determination if the Commission finds that the subject imports are negligible.⁴³ Negligibility decisions are to be made with respect to subject imports “corresponding to a domestic like product identified by the Commission.”⁴⁴ The provision defining “negligibility” provides that imports from a subject country that are less than three percent of the volume of all such merchandise imported into the United States in the most recent twelve-month period for which data are available that precedes the filing of the petition or self-initiation, as the case may be, shall be deemed negligible.⁴⁵ The statute further provides, however, that imports from a single country which comprise less than three percent of total imports of the product may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries collectively accounts for more than seven percent of the volume of all such merchandise imported into the United States.⁴⁶

The statute also provides that, even if imports are found to be negligible, they shall not be treated as negligible for purposes of a threat of material injury analysis if the Commission determines that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed seven percent of all such merchandise imported into the United States.⁴⁷ In all cases, the statute allows the Commission to make “reasonable estimates on the basis of available statistics” of pertinent import levels for the purpose of

³⁷ CR and PR at Table III-5.

³⁸ See, e.g., *** importer questionnaire response. The primary source of the company’s imported butt-weld fittings was ***. CR and PR at Table III-5.

³⁹ CR and PR at Table VI-5.

⁴⁰ ***. We note that, unlike in the preliminary phase of this investigation, imports from Malaysia are not cumulated with subject imports from Germany for purposes of our final determination regarding Germany. Commerce issued a negative preliminary determination with respect to imports from Malaysia, and the statute prohibits us from cumulating imports subject to a preliminary negative determination. See 19 U.S.C. §§ 1677(7)(G)(ii)(I), 1677(7)(H). ***.

⁴¹ CR and PR at Table III-1. In any event, we note that ***. Thus, its exclusion would have had an insignificant effect on our analysis of the domestic industry as a whole.

⁴² Commissioner Bragg notes that this final phase of the investigation revealed negligibility-related data issues not apparent at the time of the preliminary determination.

⁴³ 19 U.S.C. §§ 1671d(b)(1) and 1673d(b)(1).

⁴⁴ 19 U.S.C. § 1677(24)(A)(i).

⁴⁵ 19 U.S.C. § 1677(24).

⁴⁶ 19 U.S.C. § 1677(24)(A)(ii).

⁴⁷ 19 U.S.C. § 1677(24)(A)(iv).

making negligibility determinations.⁴⁸

We find that subject imports from Germany are negligible for purposes of our present material injury determination. To analyze this issue, we relied on the data provided in the final Staff Report, in which questionnaire responses were used for imports from Malaysia and the Philippines, and official import statistics were the basis for imports from Germany, Italy and non-subject countries, in 1999 and throughout the period of investigation.^{49 50} Based on these data, we find that subject imports from Germany are less than three percent of total imports of butt-weld fittings for the most recent twelve-month period preceding the filing of the petition for which data are available. Thus, we determine that imports from Germany are negligible for purposes of our present material injury analysis.

Nonetheless, we also determine that there is a potential that subject imports from Germany will imminently account for more than three percent of total imports.⁵¹ Although subject imports from Germany were below the three percent negligibility threshold during the twelve months prior to the filing of the

⁴⁸ 19 U.S.C. § 1677(24)(C); see also SAA at 856.

⁴⁹ Official statistics correspond to a U.S. tariff subheading, 7307.23.00, that includes subject imports as well as large-diameter butt-weld fittings. Preliminary Determination at IV-1. Where possible, therefore, official statistics were reduced to account for non-subject imports.

Official statistics for Italy were reduced to reflect reported nonsubject imports and identified misclassification errors. Official statistics for Italy and non-subject countries also were reduced by *** percent in quantity and *** percent in value to account for estimated imports of nonsubject butt-weld fittings; the factors were based on reported non-subject imports for all countries as a share of the sum of reported subject and non-subject imports for all countries.

Official statistics for Germany were reduced to reflect questionnaire responses from importers of non-subject imports and information gathered through interviews with other importers. Official statistics for Germany were further reduced to reflect identified misclassification errors by ***. CR at IV-1 to IV-2; PR at IV-1; CR and PR at Table IV-1.

⁵⁰ Petitioners disagreed with this methodology. See, e.g., Petitioners' November 9, 2000 submission; Petitioners' Final Comments. We note that petitioners raised these objections one business day before the administrative record closed, arguing that "due to the timing of Schulz's submissions to the Commission, the importance of the development of this information on Canadian imports was not clear until very late in this investigation, and petitioners were not able to place some of the relevant information on the record until after the completion of the staff report." Petitioners' Final Comments at 6 n.7.

Petitioners' arguments are misplaced. First, the methodology in the staff report adjusted the official statistics for Italy and non-subject countries to address concerns about the low level of questionnaire responses, particularly from importers of non-subject products.

Second, petitioners identified five importers who reported that they did not import small-diameter butt-weld fittings – *** – and argued that their imports should have been subtracted from the denominator under the assumption that their imports were non-subject imports (consisting of large-diameter butt-weld fittings or misclassified products). Even if imports attributable to those importers were subtracted from the denominator, we note that imports from Germany would still be negligible.

Third, the denominator was not adjusted to reflect petitioners' argument that imports from Canada consisted primarily of large-diameter (non-subject) merchandise. We determined that the information identified by petitioners did not enable us to more reliably estimate imports of small- versus large-diameter butt-weld fittings from Canada than the methodology used in the staff report. ***.

⁵¹ Commissioner Bragg determines that the behavior of subject imports from Germany throughout the period of investigation, and in particular their behavior in 1997 and 1998, demonstrates an ability to imminently exceed the three percent of total imports threshold.

petition, they ***.⁵² Furthermore, subject imports from Germany were *** percent of total imports of butt-weld fittings in January to June (“interim”) 2000, immediately after the filing of the antidumping petitions in December 1999, and ***.⁵³ Given these facts, we find that the record indicates that there is a likelihood that subject imports from Germany will imminently exceed the three-percent threshold. Accordingly, for purposes of our threat of material injury analysis, we conclude that imports from Germany are not negligible. Pursuant to Section 771(24)(A)(iv) of the Act, we consider imports from Germany only for purposes of determining threat of material injury.⁵⁴

III. CONDITIONS OF COMPETITION

There are several conditions of competition that are relevant to our threat analysis of subject imports from Germany. First, the demand for butt-weld fittings is a derived demand. Most producers and importers stated that the primary end users of the product – the chemical, petrochemical, nuclear, food and dairy, and pulp and paper industries – demand butt-weld fittings because of their metallurgical properties such as non-corrosiveness for use in piping systems where extreme temperatures and high pressures are present.⁵⁵ There are no known commercial substitutes for butt-weld fittings.⁵⁶ Available data indicate that apparent U.S. consumption of butt-weld fittings increased from 17.0 million pounds in 1997 to 18.0 million pounds in 1999, and was 12.0 million pounds in interim 2000 compared to 8.5 million pounds in interim 1999.^{57 58}

Second, the domestic market is supplied by multiple sources. These include at least twelve domestic producers of the domestic like product, imports from the subject countries, and non-subject imports.⁵⁹

Third, sales of butt-weld fittings in the U.S. market by domestic producers and importers take place primarily through distributors, who generally stock large quantities of items from many different sources and then resell them to final customers.⁶⁰ Some of the distributors are also importers of butt-weld fittings from both subject and nonsubject countries.⁶¹

Fourth, butt-weld fittings are typically produced to standard specifications, most notably ASTM A403/A403M. Butt-weld fittings are distinguishable by type (elbows, tees, reducers, caps, etc.); by size (outside diameter); by steel grade (commonly 304, 304L, 316, and 316L); by raw material (seamless pipe

⁵² CR and PR at Table IV-1.

⁵³ CR and PR at Tables IV-1, VII-2.

⁵⁴ 19 U.S.C. § 1677(24)(A)(iv).

⁵⁵ CR at II-4; PR at II-3; CR and PR at Table I-1.

⁵⁶ CR at I-10, II-4; PR at I-8, II-3.

⁵⁷ CR at II-3 to II-4; PR at II-2; CR and PR at Table IV-6.

⁵⁸ Commissioner Bragg notes that internal consumption and shipments to related firms *** accounted for less than *** percent of U.S. shipments in all reporting periods. CR at III-5; PR at III-3; CR and PR at Table III-4. She does not find this level of related party transactions to be significant as required by the statutory captive production provision, 19 U.S.C. 1677(7)(C)(iv). She notes that no party argued that the statutory captive production provision applies in this investigation.

⁵⁹ CR at III-1, IV-1; PR at III-1, IV-1; CR and PR at Tables III-1, IV-1.

⁶⁰ CR at II-1; PR at II-1.

⁶¹ CR at I-8 to I-9, II-1; PR at I-7 to I-8, II-1; CR and PR at Table I-1.

or welded pipe); by degree of processing (unfinished or finished); or even by wall thickness.⁶² The parties disagree about whether butt-weld fittings are a commodity product, and about the extent to which non-price considerations are important to purchasers. The record indicates that the degree of substitution among domestic and imported butt-weld fittings depends upon such factors as price, quality (whether the product meets the ASTM/ANSI standards, and in some cases, if the product is produced by an Approved Manufacturers List (“AML”) producer), availability, and serviceability. Although some consumers insist on domestic product, foreign-produced butt-weld fittings generally are acceptable if the quality is the same (if it meets the ASTM/ANSI standards), and if the products are produced by an AML manufacturer (if AML is a requirement of the purchaser).⁶³

Finally, the volume of nonsubject imports was substantial throughout the period of investigation.⁶⁴ The record indicates that nonsubject imports are substitutable for the domestic like product and subject imports.⁶⁵

IV. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM GERMANY

Because we determine that subject imports of butt-weld fittings from Germany did not exceed the three percent negligible imports threshold during the twelve months prior to the filing of the petition, but that there is a potential that such imports will imminently exceed the threshold, we analyze whether the domestic industry is threatened with material injury by reason of subject imports of butt-weld fittings from Germany.

A. Cumulation for Purposes of Threat Analysis

In assessing whether a domestic industry is threatened with material injury by reason of subject imports, the Commission has discretion to cumulate the volume and price effects of subject imports from multiple countries if such imports meet the standard for cumulation that is applied by the Commission in analyzing present material injury.⁶⁶ In deciding whether to cumulate for purposes of making threat determinations, the Commission often has considered whether the subject imports are increasing at similar rates and have similar pricing patterns.⁶⁷

In this investigation, we do not exercise our discretion to cumulate butt-weld fittings from Germany with subject butt-weld fittings from Italy and the Philippines for purposes of our threat determination

⁶² CR at I-5, I-7; PR at I-4, I-6; CR and PR at Figure I-1.

⁶³ CR at II-1, II-6; PR at II-1, II-3.

⁶⁴ CR and PR at Table IV-1.

⁶⁵ CR and PR at Tables II-3, II-4.

⁶⁶ 19 U.S.C. § 1677(7)(H).

⁶⁷ See, e.g., Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Inv. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126 (Sept. 1998); Torrington Co. v. United States, 790 F. Supp. 1161 (Ct Int'l Trade 1992), aff'd 991 F.2d 809 (Fed. Cir. 1993) (table case); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct Int'l Trade 1988).

regarding subject imports from Germany.⁶⁸ The underlying petitions were filed on the same day, and subject imports from Italy, the Philippines, and Germany, and the domestic like product, were all sold throughout the period of investigation in the same geographical market.⁶⁹ While some subject imports were sold directly to end users, and some domestic producers purchased unfinished butt-weld fittings, in general, butt-weld fittings from all sources were sold through distributors.⁷⁰ The record indicates that the degree of substitution between domestic and imported butt-weld fittings depends upon such factors as price, quality (whether the product meets the ASTM/ANSI standards, and in some cases, if the product is produced by an AML producer), availability, and serviceability.⁷¹ While we are mindful of product mix issues, we note that the available data suggest that all subject imports were at least moderately fungible with one another and with the domestic like product.⁷² Accordingly, the record indicates that there is a reasonable overlap of competition between the subject imports from Germany and the domestic like product and other subject merchandise.

Nevertheless, we do not exercise our discretion to cumulate subject imports from Germany for purposes of our threat analysis because there are significant differences between the volume and pricing trends for subject imports from Germany and those for the other subject countries. First, subject imports from Germany meet the negligibility standard for present material injury purposes while those from Italy, Malaysia, and the Philippines do not.⁷³ Moreover, between 1997 and 1999, subject imports from Germany decreased in absolute terms and as a share of apparent U.S. consumption while subject imports from Italy and the Philippines each increased.⁷⁴

Furthermore, the pricing patterns exhibited by subject imports from Germany vary significantly from those of the other subject countries. The Commission's pricing data reflect extensive overselling by subject imports from Germany compared to widespread underselling by subject imports from Italy and the Philippines.^{75 76} Under these circumstances, we decline to exercise our discretion to cumulate the imports from Germany with subject imports from the other countries for purposes of our threat determination regarding subject imports from Germany.

B. Statutory Factors

⁶⁸ We note that imports from Malaysia may not be cumulated for purposes of our analysis in this determination because Commerce issued a negative preliminary dumping determination regarding imports from Malaysia. See, e.g., Stainless Steel Butt-Weld Pipe Fittings from Malaysia, 65 Fed. Reg. 47398 (Aug. 2, 2000); see also 19 U.S.C. § 1673d(b)(1); 19 C.F.R. § 207.21(d).

⁶⁹ CR at I-8, V-1 to V-2; PR at I-7, V-1; CR and PR at Table IV-1.

⁷⁰ CR at I-8 to I-9, II-1; PR at I-7 to I-8, II-1; CR and PR at Tables I-1, IV-3.

⁷¹ CR at II-1, II-6; PR at II-1, II-3.

⁷² CR at I-10, II-6 to II-9; PR at I-8, II-3 to II-6; CR and PR at Tables II-2, II-3, II-4.

⁷³ CR and PR at Table IV-1.

⁷⁴ CR and PR at Tables IV-1, IV-5, IV-6.

⁷⁵ CR and PR at Tables V-1, V-3, V-4, V-5, V-6, and V-7, as modified by Memorandum INV-X-239 (Nov. 13, 2000) at Tables V-1, V-3, V-4, V-5, V-6, and V-7.

⁷⁶ Commissioner Bragg notes that the pricing data indicate that subject imports from Germany ***. CR and PR at Tables V-1, V-3, V-4, V-5, and V-6, as modified by Memorandum INV-X-239 (Nov. 13, 2000) at Tables V-1, V-3, V-4, V-5, and V-6; see also Hearing Tr. at 139, 141, 187-88. The record also indicates that ***. CR and PR at Table VII-5.

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”⁷⁷ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”⁷⁸ In making our determination, we have considered all factors that are relevant to this investigation.⁷⁹

Based on an evaluation of the relevant statutory factors, we find that an industry in the United States is not threatened with material injury by reason of imports of butt-weld fittings from Germany that are sold in the United States at less than fair value.

There is a limited amount of German production capacity that is likely to be available for shipment to the United States. The production capacity of the sole German producer that exported to the United States during the period of investigation *** between 1997 and 1999, and is projected to ***.⁸⁰ The production capacity of that producer was *** pounds in 1997 and declined to *** pounds in 1998, ***.⁸¹ The other German producers of butt-weld fittings certified that they did not export butt-weld fittings to the United States in the past ***.⁸² Moreover, although there was a *** in capacity utilization for the sole German exporter to the United States during the period of investigation,⁸³ we note that the excess German capacity in interim 2000 was *** pounds or approximately *** percent of apparent U.S. consumption.⁸⁴ We do not find this excess capacity alone indicates the likelihood of substantially increased imports in the imminent future.

The volume trends do not indicate a likelihood of substantially increased subject imports from Germany in the imminent future. Subject imports from Germany were a small share of total imports, and an even smaller share of apparent U.S. consumption, throughout the period of investigation.⁸⁵ Between 1997 and 1999, subject imports from Germany decreased in absolute terms and as a share of apparent U.S. consumption.⁸⁶ Although subject imports from Germany were noticeably higher in absolute terms and as a

⁷⁷ 19 U.S.C. §§ 1673d(b)(1) and 1677(7)(F)(ii).

⁷⁸ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

⁷⁹ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

⁸⁰ CR and PR at Table VII-1.

⁸¹ CR and PR at Table VII-1.

⁸² CR at VII-1 n.1; PR at VII-1 n.1.

⁸³ Capacity utilization was *** percent in 1997, *** percent in 1998, *** percent in 1999, *** percent in interim 1999, and *** percent in interim 2000. It is projected to increase to *** percent in 2000 and to *** percent in 2001. CR and PR at Table VII-1.

⁸⁴ CR and PR at Tables IV-5 and VII-1.

⁸⁵ CR and PR at Tables IV-1, IV-5, IV-6.

⁸⁶ CR and PR at Tables IV-1, IV-5, IV-6.

share of apparent U.S. consumption in interim 2000 than in interim 1999,⁸⁷ the increase of subject imports from Germany in interim 2000 coincided with a period of increasing demand, and the increased volume was supplied through a short-term draw-down in German inventories – a trend that is not sustainable over time – rather than increased production or diversion from other markets.⁸⁸ Further, we note that there does not appear to be a significant correlation between the level of German end-of-period inventories or capacity utilization, and the volume of German butt-weld fittings exported to the United States.⁸⁹ In light of the competitive conditions in the U.S. market discussed above and trends in German subject import volume throughout the period of investigation, we find that there is not a significant rate of increase of imports of butt-weld fittings from Germany indicating the likelihood of substantially increased subject imports from Germany in the imminent future.

Available information suggests that, while it may be possible for producers to use butt-weld fitting facilities in the production of other products, the equipment generally is used to manufacture a specific size or type of butt-weld fittings in order to meet specified standards.⁹⁰ Moreover, the record indicates that butt-weld fittings already accounted for *** percent of Schulz's sales in 1999.⁹¹ Accordingly, the record does not indicate a potential for product shifting that is likely to result in a significant increase in subject import volumes in the imminent future.

The record does not indicate a likelihood that the subject imports from Germany will enter the U.S. market at prices that will have a significant depressing or suppressing effect on prices for the domestic like product or increase demand for further imports. Subject imports from Germany consistently oversold the domestic like product throughout the period of investigation, frequently at significant margins, and in those instances where subject imports from Germany undersold the domestic like product, the margins of underselling were small.⁹²

With respect to the impact of the German imports on the industry's production and development efforts, the record is mixed. We find that the small volume of subject German fittings has not had actual and potential negative effects on the existing development and production efforts of the domestic industry, and is unlikely to have such effects in the future. Many producers indicated that they have had to reduce the size of their capital investments or cancel expansion projects,⁹³ yet U.S. production capacity increased throughout the period of investigation.⁹⁴ Capital expenditures fluctuated, but were markedly higher in 1999 than in 1997, before decreasing in the first half of 2000.⁹⁵ The domestic industry's *** research and

⁸⁷ CR and PR at Tables IV-1, IV-5, IV-6.

⁸⁸ CR and PR at Tables IV-5, IV-6, VII-1. We note that German end-of-period inventories were high but stable between 1997 and 1998, then fell noticeably in 1999 and 2000. CR and PR at Table VII-1.

⁸⁹ CR and PR at Table VII-1.

⁹⁰ CR at II-3, PR at II-2.

⁹¹ CR at VII-1; PR at VII-1.

⁹² CR and PR at Tables V-1, V-3, V-4, V-5, V-6, and V-7, as modified by Memorandum INV-X-239 (Nov. 13, 2000) at Tables V-1, V-3, V-4, V-5, V-6, and V-7.

⁹³ CR and PR at Appendix D.

⁹⁴ CR and PR at Table III-2.

⁹⁵ CR and PR at Table VI-7.

development expenditures were higher in 1999 than in 1997 or 1998, but lower in the first half of 2000.⁹⁶

We have considered whether there are any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time). We observe in this regard that there are no known dumping findings or antidumping remedies in third-country markets against the subject butt-weld fittings from Germany.⁹⁷

We also note that the present condition of the domestic industry does not indicate that material injury by reason of subject imports of butt-weld fittings from Germany is imminent, given the lack of likely volume and price effects of these subject imports.⁹⁸

In conclusion and based on an evaluation of all of the relevant statutory factors, we do not find that further dumped subject imports of butt-weld fittings from Germany are imminent or that material injury by reason of such imports would occur absent a dumping order. Accordingly, we do not find that subject imports from Germany that are sold in the United States at less than fair value threaten an industry in the United States with material injury.

CONCLUSION

For the reasons stated above, we determine that imports of butt-weld fittings from Germany are negligible for purposes of our present material injury analysis. We also determine that there is a potential that subject imports from Germany will imminently exceed three percent of total imports of such merchandise. Finally, we determine that an industry in the United States is not threatened with material injury by reason of imports of subject butt-weld fittings from Germany that are sold in the United States at less than fair value.

⁹⁶ CR and PR at Table VI-7.

⁹⁷ CR at VII-11, PR at VII-3.

⁹⁸ CR and PR at Table C-1.