UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN WELDED LARGE DIAMETER LINE PIPE FROM JAPAN AND MEXICO

Investigations Nos. 731-TA-919-920 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3400, MARCH 2001)

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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan and Mexico of certain welded large diameter line pipe,[2] that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

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

BACKGROUND

On January 10, 2001, a petition was filed with the Commission and the Department of Commerce by Berg Steel Pipe Corp., Panama City, FL; American Steel Pipe Division of American Cast Iron Pipe Co., Birmingham, AL; and Stupp Corp., Baton Rouge, LA; alleging that an industry in the United States is materially injured by reason of LTFV imports of certain welded large diameter line pipe from Japan and

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

[2] For purposes of these investigations, certain welded large diameter line pipe is welded carbon and alloy steel line pipe, of circular cross section and with an outside diameter greater than 406.4 mm (16 inches), whether or not stenciled. This product is normally produced according to American Petroleum Institute specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product is provided for in subheadings 7305.11.10, 7305.11.50, 7305.12.10, 7305.12.50, 7305.19.10, and 7305.19.50 of the Harmonized Tariff Schedule of the United States.

Mexico. Accordingly, effective January 10, 2001, the Commission instituted antidumping duty investigations Nos. 731-TA-919-920 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 18, 2001 (66 FR 4860). The conference was held in Washington, DC, on January 31, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain welded large diameter line pipe ("CWLDLP") from Japan and Mexico that are allegedly sold in the United States at less than fair value ("LTFV").

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[3] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[4]

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[5] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[6] 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 . . . ."[7]

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

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[3] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int'l Trade 1999).

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

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(4)(A).

[7] 19 U.S.C. § 1677(10).

[8] See, e.g., NEC Corp. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4;

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.[9] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[10] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[11]

B. Product Description

Commerce's notice of initiation defines the imported merchandise within the scope of these investigations as:

> welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches in diameter, whether or not stenciled. This product is normally produced according to American Petroleum Institute ("API") specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. . . . Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe.[12]

C. Domestic Like Product

Line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Line pipes, both welded and seamless, are produced to the American Petroleum Institute ("API") 5L specification.[13] Welded, large diameter pipes are formed into cylinders by the application of pressure to flat-rolled steel, then welded, tested, and finished.[14] The predominant form of welded line pipe in sizes greater than 16" in outside diameter is produced using the submerged arc welding ("SAW") method; such pipe accounted for 63.8 percent of reported U.S. mill shipments of the domestic like product between 1998 and 2000.[15] The remainder of reported U.S. shipments of the domestic like product consisted of

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(...continued)
Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

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

[10] Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

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

[12] Notice of Initiation of Antidumping Duty Investigations: Welded Large Diameter Line Pipes from Mexico and Japan, 66 Fed. Reg. 11266, 11267 (Feb. 23, 2001).

[13] CR at I-6, PR at I-5 (citing *Specification for Line Pipe*, API Specification 5L, 42nd edition, January 2000, at 1).

[14] CR at I-9-14, PR at I-9-I-12.

[15] CR/PR at Table D-1.

pipe produced through the electric resistance welding ("ERW") process, although the API 5L specification addresses a variety of acceptable welding methods.[16]

Both the Mexican Respondents[17] and the Japanese Respondents[18] argue that ERW and SAW line pipe should be treated as separate domestic like products.[19] Petitioners[20] maintain that ERW and SAW line pipe comprise a single like product.[21]

Physical Characteristics and Uses. ERW line pipe is normally produced in sizes between 2 3/8" through 24" in outside diameter ("OD"), while SAW line pipe is produced in OD sizes from 18" to 72".[22] Therefore, ERW line pipe and SAW line pipe overlap in sizes 18" in OD up to 24" in OD. Between 1998 and 2000, more than one-third of U.S. producers' U.S. CWLDLP shipments were in sizes between 18" and 24" in OD;[23] ERW pipe accounted for *** percent of such shipments while SAW pipe accounted for *** percent.[24]

With respect to wall thickness, the Japanese Respondents state that ERW manufactured by domestic producers has a maximum wall thickness of 0.625" and even less for some producers,[25] while SAW pipe has a wall thickness range of 0.25" to 1.5".[26] There is no information in the record as to the proportion of SAW pipe sold between 1998 and 2000 with wall thicknesses not exceeding 0.625".

The nature of the ERW and SAW production methods results in physical distinctions along the subject pipes' weld areas. ERW pipe is produced without using a filler metal in the weld, whereas SAW pipe is welded with such a filler. BP America, Inc. (a purchaser of CWLDLP) states that "[t]he welds [of ERW and SAW pipe], a critical element of the pipe, are physically different and are considered to differ in their strength and reliability."[27]

There apparently is no difference in the chemistry of the steel in ERW and SAW pipe. ERW is made from coiled plate, and SAW is made from cut-to-length plate.[28] The API specifications for line pipe permit both ERW and SAW processes in all grades and classes of CWLDLP.[29]

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[16] *Specification for Line Pipe*, API Specification 5L, 42nd edition, January 2000, at 5-7.

[17] The Mexican Respondents are Procarsa SA de CV, Productora Mexicana de Tuberia SA de CV, Tubacero SA, Tuberia Laguna SA de CV, and Tubesa SA de CV.

[18] The Japanese Respondents are Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Corporation, and Sumitomo Metal Industries, Ltd.

[19] Japanese Respondents' Postconference Brief at 30-40; Mexican Respondents' Postconference Brief at 4-13.

[20] Petitioners are American Steel Pipe Division of American Cast Iron Pipe Company, Berg Steel Pipe Corporation, and Stupp Corporation.

[21] Petitioners' Postconference Brief at 5-8.

[22] CR at I-7, PR at I-5-I-6.

[23] U.S. producers shipped 2,114,800 tons of CWLDLP between 1998 and 2000; shipments of line pipe greater than 16" in OD and up to 24" in OD accounted for 817,115 tons. CR/PR at Table D-1.

[24] See CR/PR at Tables D-1 and D-2. In 2000, however, total U.S. shipments of U.S. producers in this size range consisted of *** percent ERW pipe and *** percent SAW pipe. See CR/PR at Table D-2.

[25] Japanese Respondents' Postconference Brief at 34.

[26] CR at I-7, PR at I-6.

[27] BP America, Inc. Postconference Brief at 10.

[28] CR at I-9 and I-13, PR at I-9 and I-13.

[29] CR at I-8, PR at I-7.

Both ERW and SAW pipe are used for the same end use, namely the transmission of oil and natural gas.[30] However, the respondents in these investigations assert that the specific applications of SAW pipe and ERW pipe are not the same because SAW pipe is required for more demanding conditions (e.g., high pressure or extreme temperatures) than ERW pipe.[31]

In sum, the two types of pipe have some common and some divergent physical characteristics. The common characteristics include steel chemistry, API specifications, and some dimensional overlap in OD and wall thickness. The differences are in the ranges of OD and wall thickness, and in the nature of the pipes' weld.

Interchangeability. Once end use size needs are established, interchangeability between ERW and SAW pipe can only occur within the 18" to 24" OD range in which the two types of pipe overlap. Petitioners state that "[t]here is complete interchangeability in the market place between ERW and DSAW products that meet the same specifications," but provide no additional support for this assertion.[32] The Mexican Respondents provided statements from two distributors who contend that there is very little interchangeability between ERW and SAW pipe. One distributor stated that although SAW, ERW, and seamless pipe are made to the same specifications, their uses and acceptance vary greatly. In this distributor's opinion, SAW pipe has more in common with seamless pipe than with ERW pipe, in that SAW pipe and seamless pipe are regarded as suitable for critical applications. The distributor noted that "ERW seldom replaces a SAW requirement," but that "SAW often replaces ERW requirements."[33] Both distributors state that their customers will, when placing an order, sometimes or (in the case of one distributor) always specify whether they want ERW or SAW pipe.[34] In sum, the record suggests that interchangeability between ERW and SAW pipe may be limited and primarily in a single direction.

Channels of Distribution. The channels of distribution for ERW and SAW pipe are similar. Both types of pipe are sold predominantly to end users, but also to distributors. Seventy-seven percent of U.S. mill shipments of ERW line pipe are to end users and twenty-three percent are to distributors. Similarly, eighty percent of U.S. mill shipments of SAW line pipe are to end users and twenty percent are to distributors.[35]

Common Manufacturing Facilities, Employees, and Methods. The ERW production process and the SAW production process employ different techniques to produce welded line pipe from flat-rolled steel.[36] [37] None of the seven U.S. producers maintain both ERW production lines and SAW production

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[30] CR at I-8, PR at I-5.

[31] CR at I-7, PR at I-4.

[32] Petitioners' Postconference Brief at 6. The terms "SAW" and "DSAW" (double submerged arc welding) refer to production processes that are essentially similar. CR at I-8 n.25, PR at I-7.

[33] Declaration of *** at ¶7, Attachment 4 to Mexican Respondents' Postconference Brief.

[34] Id. and Declaration of *** at ¶ 6 and 7, Attachment 5 to Mexican Respondents' Postconference Brief.

[35] CR at I-18 and I-20, Table I-5, PR at I-16.

[36] CR at I-8 to I-14, PR at I-6 to I-12.

[37] We note that the use of multiple methods of manufacturing and/or finishing tubular products, sometimes as a reflection of dimensional requirements, is not unique to the line pipe industry in question. See, e.g., Certain Welded Stainless Steel Pipe from Korea and Taiwan, Invs. Nos. 731-TA-540 and 541 (Review), USITC Pub. 3351 at I-12 (Sept. 2000); Circular Seamless Stainless Steel Hollow Products from Japan, Inv. No. 731-TA-859 (Final), USITC Pub. 3344 at I-6 (Aug. 2000); Certain Seamless Carbon and Alloy Standard, Line, and Pressure Pipe from Japan and South Africa, Invs. Nos. 731-TA-847 and 850 (Final), USITC Pub. 3311 at I-13 (June 2000); Circular Welded Carbon Quality Line Pipe, Inv. No. TA-201-70, USITC Pub. 3261 at II-7 (Dec. 1999); Circular Welded Nonalloy Steel Pipe from Romania and South Africa, Invs. Nos. 731-TA-732 and 733 (Final), USITC Pub. 2973 at

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lines.[38] Therefore, ERW and SAW pipe are not made in the United States in the same manufacturing facilities, using the same employees, or by common manufacturing methods.

Producer and Customer Perceptions. Petitioners state that "[b]ecause pipe is ordered to API specifications and this is the only requirement for meeting customer's usage, the customers and producers perceive ERW and DSAW products as being interchangeable."[39] As noted above, in connection with the discussion of interchangeability, there are statements by distributors on the record claiming that customers perceive ERW and SAW pipe as different products, and that they often, or always, specify the type of pipe when placing orders. The limited evidence on the record as to producer and customer perceptions is thus inconclusive.

Price. SAW pipe is more expensive than ERW pipe. Between 1998 and 2000, based on aggregate average unit values, the price differential for domestic products was 29.6 percent.[40] We note, however, that this differential declined from 38.8 percent in 1999 to 18.4 percent in 2000.[41] SAW pipe was more expensive than ERW pipe for each of the four API grade ranges for which the Commission gathered information, and in each year between 1998 and 2000.[42]

Conclusion. Although there are merits to both respondents' and petitioners' arguments concerning the domestic like product, because of the mixed evidence on the record, we determine for purposes of these investigations that CWLDLP comprises a single domestic like product. Two of the six factors which the Commission traditionally considers weigh in favor of finding separate like products: the two types of pipe do not have common manufacturing facilities, employees, or methods; and one type of pipe is more expensive than the other. With respect to an additional factor, physical characteristics and uses, the evidence is mixed. One of the six factors points clearly in favor of finding one like product: both types of pipe have similar channels of distribution. An analysis of the remaining two factors, interchangeability and customer/producer perceptions, is inconclusive.

Accordingly, for purposes of these preliminary determinations, we determine that there is one domestic like product coextensive with the scope of these investigations. We intend to examine this issue more closely in any final phase of these investigations.[43]

III. DOMESTIC INDUSTRY

Section 771(4) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major

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[37] (...continued)
I-5 (July 1996); and Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Invs. Nos. 701-TA-363 and 364 & 731-TA-711-717 (Final), USITC Pub. 2911 at II-7 and II-14 (Aug. 1995).

[38] CR at I-8, PR at I-7.

[39] Petitioners' Postconference Brief at 6.

[40] CR at I-21, PR at I-19.

[41] Id.

[42] CR/PR at Table I-6.

[43] The Mexican Respondents argue, in the alternative, that if the Commission finds a single domestic like product, it should expand the like product definition beyond the scope of these investigations to include standard, structural, and water pipe. Mexican Respondents' Postconference Brief at 13-17. However, the Mexican Respondents provide very little information to support this argument, and we see no basis in the record for such a definition.

proportion of the total domestic production of that product."[44] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[45] Based on our like product determination, we determine that there is a single domestic industry consisting of all domestic producers of CWLDLP.[46]

IV. CUMULATION[47]

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like product in the U.S. market.[48] In assessing whether subject imports compete with each other and with the domestic like product,[49] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

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[44] 19 U.S.C. § 1677(4)(A).

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

[46] There are no related party issues in the preliminary phase of these investigations. CR/PR at III-1.

[47] Based on our like product finding, the negligibility of subject imports is not an issue in these investigations. See 19 U.S.C. § 1677(24).

[48] 19 U.S.C. § 1677(7)(G)(i).

[49] The Uruguay Round Agreements Act (URAA) Statement of Administrative Action (SAA) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition," SAA, H.R. Rep. 103-316, vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

(4) whether the subject imports are simultaneously present in the market.[50]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[51] Only a "reasonable overlap" of competition is required.[52]

Because the petitions in the investigations concerning CWLDLP from Japan and Mexico were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies for purposes of these determinations.[53] Therefore, we are required to determine whether there is a reasonable overlap of competition both between the subject imports from Japan and Mexico, and between the subject imports and the domestic like product.

B. Analysis

*Fungibility***.** There appears to be a moderate to high level of substitutability between domestic CWLDLP and the subject imports, and between the subject imports. A majority of domestic producers reported that domestically produced CWLDLP is "always" interchangeable with imports from each of the subject countries, and that CWLDLP from Japan is always interchangeable with CWLDLP from Mexico.[54] A majority of the importers responding to the Commission's questionnaire reported that the subject imports are "sometimes," "frequently," or "always" interchangeable with the domestic product, and with each other.[55]

Although imports from Japan between 1998 and 2000 were predominantly in the 24"-and-under OD range, and imports from Mexico were predominantly in the greater-than-24" OD sizes, there was nonetheless a reasonable overlap in shipments from the two countries in both size ranges.[56] There is some evidence in the record (consisting of a minority of importer questionnaire responses, and testimony by Mexican producers at the staff conference) that line pipe from Japan and Mexico are not viewed by customers as being interchangeable.[57] On the other hand, record information suggests that Mexican line pipe may be suitable for the oil and gas pipeline project market, despite the Mexican Respondents' arguments to the contrary.[58]

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[50] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

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

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

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

[54] CR/PR at Table II-2.

[55] Id.

[56] Between 1998 and 2000, 61 percent of imports from Japan, and 22 percent of imports from Mexico, were in the 24"-and-under OD range. See CR/PR at Table D-1.

[57] *See* Japanese Respondents' Postconference Brief at 42, Mexican Respondents' Postconference Brief at 24.

[58] There was one sale for a project application by a Mexican mill between 1998 and 2000. This was of approximately *** short tons of API X-70 pipe for Phase 4 of the Florida Gas project. Mexican Respondents'

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The substitutability of CWLDLP from Japan with the domestic products and with CWLDLP from Mexico is limited somewhat by the fact that Japanese mills reportedly supply a number of products to the U.S. market that are not produced domestically. Imports from Japan of products allegedly not produced in the United States accounted for 24.0 percent of total imports of subject merchandise from Japan in 1998, 33.5 percent in 1999, and 24.9 percent in 2000.[59]

Geographic Overlap. Most imports from Mexico and Japan between 1998 and 2000 entered the United States through ports in the same geographic area, in Texas and Louisiana.[60] The Houston area is identified in the record as being a distribution hub for CWLDLP, including the domestic product.[61] The record shows that subject imports and domestically-produced CWLDLP are sold throughout the United States by large distributors of CWLDLP.[62]

Channels of Distribution. CWLDLP from domestic suppliers and from both of the subject countries moved in both the distributor and end user channels of distribution between 1998 and 2000. The ratios of shipments to distributors and end users were as follows: twenty percent to eighty percent for domestically produced CWLDLP, fifty-five percent to forty-five percent for imports from Japan, and sixty-seven percent to thirty-three percent for imports from Mexico.[63]

Simultaneous Presence. The record shows that there were substantial volumes of imports of CWLDLP from both of the subject countries in each year between 1998 and 2000.[64]

Conclusion. There is a moderate to high level of fungibility among domestic products and the subject imports. In terms of geographic overlap, most of the imports from Mexico and Japan entered the United States in the same region, in which the domestic product also is sold. Subject imports and the domestic like product were sold in the same two channels of distribution, although the imported products from both Mexico and Japan were more heavily concentrated in the distributor channel, while domestic production moved predominantly in the end user channel of distribution. Finally, the subject imports from Japan and Mexico were simultaneously present in the U.S. market between 1998 and 2000. Based on the foregoing, the record indicates that there is a reasonable overlap of competition between the subject imports from Japan and from Mexico, and between the subject imports and the domestic like product. Therefore, we have cumulated the volume and effect of imports of CWLDLP from Mexico and Japan.

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

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[65] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers

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[58] (...continued)
Postconference Brief at 31.

[59] CR at I-15 and Table I-3, PR at I-13.

[60] CR at IV-6 and Table D-3, PR at IV-5.

[61] Transcript of January 31, 2001 Staff Conference ("Transcript") at 25 (Stavinoha, American Steel Pipe Division of American Cast Iron Pipe Company).

[62] E.g.,Transcript at 31-32 (Brock, Wilson Supply Corp.) and 115-116 (Fields, J.D. Fields and Co.).

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

[64] CR/PR at Table IV-2.

[65] 19 U.S.C. §§ 1671b(a) and 1673b(a).

of the domestic like product, but only in the context of U.S. production operations.[66] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[67] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[68] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[69]

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

A. Conditions of Competition

CWLDLP is used primarily for the transmission of oil and gas in pipelines. Accordingly, customers require CWLDLP both to complete new pipeline projects and for the repair and maintenance of existing pipelines. Sales for the former application typically are made directly to the end user, while sales for the latter application typically are made through distributors. There is greater demand volatility in sales for new pipeline projects than in sales to distributors.[70]

Because most CWLDLP is used in the oil and gas sector, demand for CWLDLP depends to a large degree on oil and gas prices and the level of activity in that sector. Demand for CWLDLP in the United States declined between 1998 and 2000; apparent U.S. consumption of CWLDLP decreased from 1.4 million short tons in 1998 to 0.8 million short tons in 2000.[71] This decline in demand was attributed to a lack of large-scale pipeline projects since early 1999.[72] There is some evidence in the record that the decline in demand for CWLDLP in the latter part of the period of investigation was worldwide: the domestic industry's export shipments fell precipitously, from 310,276 short tons in 1998, to 3,747 short tons in 2000.[73] Similarly, exports of CWLDLP from Japan to non-U.S. markets declined from 804,353 short tons in 1998 to 300,611 short tons in 2000, while exports of CWLDLP from Mexico to non-U.S. markets declined from 40,669 short tons in 1998 to 5,734 short tons in 2000.[74]

The largest source of supply of CWLDLP in the U.S. market has been the U.S. industry, which held as much as 75 percent of the market in 1999.[75] However, the domestic industry's share of the U.S. market fell below 40 percent in 2000.[76] U.S. producers' production capacity declined moderately

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[66] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[67] 19 U.S.C. § 1677(7)(A).

[68] 19 U.S.C. § 1677(7)(C)(iii).

[69] 19 U.S.C. § 1677(7)(C)(iii).

[70] We intend to explore further in any final phase investigations the extent to which the U.S. market for CWLDLP is segmented, and the relevance of any segmentation to our injury analysis.

[71] CR/PR at TableIV-4.

[72] CR at II-3, PR at II-2.

[73] CR/PR at Table III-3.

[74] CR/PR at Tables VII-2 and VII-4. We note that exports of CWLDLP from Japan and Mexico to the United States did not fall precipitously. Id.

[75] CR/PR at Table IV-4.

[76] Id.

throughout the period examined, but production declined steeply, effectively idling more than 80 percent of reported capacity in 2000.[77]

Nonsubject imports are a significant source of supply, falling from 15.5 percent of apparent U.S. consumption in 1998, to 9.1 percent in 1999, but then rising to 31.2 percent in 2000.[78]

B. Volume of the Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[79]

The quantity of subject imports declined from 324,262 short tons in 1998 to 198,468 short tons in 1999, and then increased to 247,058 short tons in 2000.[80] The share of domestic consumption supplied by subject imports declined from 23.0 percent in 1998 to 16.1 percent in 1999, and then rose to 29.4 percent in 2000.[81] The increase in the absolute volume and the market share of subject imports from 1999 to 2000 coincided with a substantial decline in apparent U.S. consumption, which dropped from 1,233,069 short tons in 1999 to 839,410 short tons in 2000, or by almost 32 percent, and with a sharp decline in the domestic industry's market share, which fell from 74.8 percent in 1999 to 39.4 percent in 2000. In light of the sharp increase in the subject imports' market share from 1999 to 2000, we find the volume of subject imports of CWLDLP to be significant.

C. Price Effects of the Cumulated Subject Imports

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

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[82]

The record indicates that subject imports and the domestic like product are generally substitutable, since API specifications establish a baseline, if not a standard, for sales in the United States. This substitutability, however, may be moderated by apparent limitations in the domestic industry's product line and by the fact that CWLDLP from Mexico may be viewed as being of lesser quality than the domestic like product.[83]

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[77] CR/PR at Table III-2.
[78] CR/PR at Table IV-4.
[79] 19 U.S.C. § 1677(7)(C)(i).
[80] CR/PR at Table IV-2.
[81] CR/PR at Table IV-4.
[82] 19 U.S.C. § 1677(7)(C)(ii).
[83] CR at I-15, Table I-3, and II-4-7, PR at I-15, Table I-3, II-3-6.

The means by which prices for CWLDLP are established vary according to the portion of the market in which a sale takes place. Distributors typically purchased CWLDLP on a spot basis. Line pipe project sales are typically made through a standard bidding process using sealed bids. Recently, some project sales have been made using on-line reverse auctions, although this appears to account for only a small portion of current sales.[84]

The information on the record for the two pricing products indicates that prices for the domestic like product declined between 1998 and 2000.[85] [86] Reported pricing data for the ERW product from Japan commenced in the third quarter of 1998, and prices of these imports immediately began to decline, consistently underselling the equivalent domestic pipe by significant margins, starting in the fourth quarter of 1998. Domestic prices fell irregularly beginning in the third quarter of 1998, bottoming out in the fourth quarter of 1999 and recovering somewhat in 2000. Mexican pipe was sold through the first quarter of 2000, but at more stable prices than either the Japanese or the U.S. product. Mexican pipe consistently undersold the U.S. pipe, but at about half the levels of the Japanese product.[87]

Reported pricing data for the SAW product from Japan commenced in the third quarter of 1998 at a level higher than domestic pipe, then immediately began to decline, consistently underselling the equivalent domestic pipe by significant margins starting in the fourth quarter of 1998. Domestic prices fell irregularly beginning in the second quarter of 1999, not bottoming out until the fourth quarter of 2000. Mexican pipe was sold beginning in the third quarter of 1999, underselling the domestic pipe but initially at prices higher than the Japanese pipe. Mexican prices declined rapidly, however, between the second quarter of 2000 and the end of the year.[88]

The limited data gathered for the two pricing products also shows consistent underselling. Imports from Japan were priced below the U.S. product in 17 out of 18 quarters in which comparisons were possible, with margins averaging 19.2 percent for the ERW product and 15.6 percent for the SAW product. Imports from Mexico were priced below the U.S. product in all 14 quarters in which comparisons were possible, with margins averaging 13.6 percent for the ERW product and 23.8 percent for the SAW product.[89] While AUV data is of limited utility in these investigations due to product mix issues, we note that AUVs for the subject imports were also consistently below those for the domestic like product.[90] The record also contains some evidence of lost sales due to the subject imports.[91]

Based on the record in these preliminary investigations, we find there has been significant price underselling by imports of the subject merchandise, and that increasing volumes of the subject merchandise depressed prices to a significant degree.

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

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

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[84] See CR at V-4, PR at V-3 for a description of on-line reverse auctions.

[85] CR/PR at Figures V-3 and V-4.

[86] In any final phase investigations, we intend to examine the effects that declining demand in the latter part of the period of investigation had on prices for CWLDLP.

[87] CR/PR at table V-1.

[88] CR/PR at table V-2.

[89] CR at V-6 and V-19, PR at V-4 and V-7.

[90] CR/PR at Table I-6.

[91] CR at V-10, PR at V-7.

state of the industry."[92] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the industry."[93] [94] [95]

All of the indicators regarding the health of the domestic industry declined from 1999 to 2000. The domestic industry's operating income fell from $65.1 million in 1999 to an operating loss of $22.9 million in 2000.[96] The number of firms that sustained operating losses doubled from three in 1999 to six in 2000.[97] Domestic producers reported that subject imports negatively affected their returns on investment and their ability to raise capital.[98] Production fell from 927,083 short tons in 1999 to 331,350 short tons in 2000, and all of the domestic industry's other production-related indicators declined from 1999 to 2000.[99] The domestic industry's market share dropped from 74.8 percent in 1999 to 39.4 percent in 2000, while the market share of subject imports rose.[100] Employment-related indicators also showed sharp erosion in this period.[101]

The record indicates that increased volume of lower-priced subject imports depressed prices to a significant degree, while the domestic industry suffered declines in all indicators. We thus find that the cumulated subject imports have had a significant adverse impact on the domestic CWLDLP industry.

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[92] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[93] 19 U.S.C. § 1677(7)(C)(iii).

[94] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated dumping margins of 30.80 percent for Japan and 49.86 percent for Mexico. 66 Fed. Reg. 11266, 11268 (Feb. 23, 2001).

[95] Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

[96] CR/PR at Table VI-1.

[97] CR/PR at Table VI-1

[98] CR/PR at Appendix E.

[99] CR/PR at Table III-2. Domestic producers' U.S. shipments declined from 922,515 short tons in 1999 to 330,635 short tons in 2000. CR/PR at Table III-3. Total net sales fell from 969,613 short tons in 1999 to 333,303 short tons in 2000. PR/CR at Table VI-1. The domestic industry's capacity utilization was 43.7 percent in 1999 and 15.7 percent in 2000. CR/PR at Table III-2. Although the absolute levels of end-of-period inventories declined slightly from 1999 to 2000 (falling from 56,153 to 48,605 short tons), the ratio of inventories to production increased from 6.1 percent in 1999 to 14.7 percent in 2000. CR/PR at Table III-4.

[100] CR/PR at Table IV-4.

[101] From 1999 to 2000, the number of production and related workers dropped from 984 to 566; productivity fell from 493.8 tons per hour to 311.1 tons per hour; hours worked declined from 1.9 million to 1.1 million; wages paid fell from $37.8 million to $19.3 million; and hourly wages declined from $20.13 to $18.12. CR/PR at Table III-5.

CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain welded large diameter line pipe from Japan and Mexico that are allegedly sold in the United States at less than fair value.