UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN SEAMLESS CARBON AND ALLOY STEEL STANDARD, LINE, AND PRESSURE PIPE FROM ARGENTINA, BRAZIL, GERMANY, AND ITALY

Investigations Nos. 701-TA-362 and 731-TA-707-710 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3429, June 2001)

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DETERMINATIONS

On the basis of the record[1] developed in these subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe from Argentina, Brazil, and Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The International Trade Commission also determines[2] that revocation of the antidumping duty and countervailing duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe from Italy would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on July 3, 2000 (65 F.R. 41090) and determined on October 5, 2000, that it would conduct full reviews (65 F.R. 63889, October 25, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on January 4, 2001 (66 F.R. 806). The hearing was held in Washington, DC, on May 1, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioner Dennis M. Devaney dissenting.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe ("seamless pipe") from Argentina, Brazil, and Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We also determine that revocation of the antidumping and countervailing duty orders on certain seamless pipe from Italy would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[1]

I. BACKGROUND

On July 26, 1995, the Commission unanimously determined that an industry in the United States was materially injured by reason of imports of certain seamless carbon and alloy steel standard, line, and pressure pipe and redraw hollows from Argentina, Brazil, Germany, and Italy that were sold in the United States at less than fair value ("LTFV"), and by reason of such imports from Italy that were subsidized by the Government of Italy.[2] Subsequently, on August 3, 1995, the United States Department of Commerce ("Commerce") imposed antidumping duty orders on subject imports from Argentina, Brazil, Germany, and Italy,[3] and effective August 8, 1995, imposed a countervailing duty order on subject imports from Italy.[4]

On July 3, 2000, the Commission instituted reviews pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping and/or countervailing duty orders on certain seamless pipe from these four countries would likely lead to the continuation or recurrence of material injury within a reasonably foreseeable time.[5]

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.[6] If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

In these reviews, the Commission received a joint response to the Commission's notice of institution from Vision Metals, Inc. and U.S. Steel Group, a unit of USX Corporation. Both companies are domestic producers of seamless pipe that support continuation of the antidumping and countervailing duty

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[1] Commissioner Devaney dissenting with respect to Italy. Except as otherwise noted, Commissioner Devaney joins all sections of the Commission's opinion except sections III. B. 3. and IV. D.

[2] Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 and 731-TA-707 through 710 (Final), USITC Pub. 2910 (July 1995) ("Original Determinations").

[3] 60 Fed. Reg. 39704 (Aug. 3, 1995).

[4] 60 Fed. Reg. 40569 (Aug. 9, 1995).

[5] Commission's Institution of Five-Year Reviews Concerning the Countervailing Duty and Antidumping Duty Orders on Seamless Pipe from Argentina, Brazil, Germany, and Italy, 65 Fed. Reg. 41090 (July 3, 2000) (hereinafter, "Notice of Institution").

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

orders under review.[7] The Commission also received responses from Siderca S.A.I.C. ("Siderca"), a foreign producer and exporter of the subject merchandise in Argentina;[8] Siderca Corporation, ("Siderca Corp.") of Houston, Texas, a U.S. importer of the subject merchandise from Italy and Argentina;[9] Dalmine S.p.A. ("Dalmine"), a foreign producer and exporter of the subject merchandise in Italy;[10] and Mannesmannröhren-Werke ("MRW") AG, a German producer of seamless pipe, and its affiliated companies: (a) Vallourec & Mannesmann Tubes, SA, ("V&M" Tubes), a foreign producer and exporter of seamless pipe with subsidiaries in France ("V&M France"), Germany ("V&M Deutschland GmbH," also called "VMD"), and Brazil;[11] (b) Vallourec & Mannesmann do Brasil ("V&M do Brasil"); and (c) Vallourec & Mannesmann Tubes Corporation ("V&M Tubes Corp."), a U.S. importer of seamless pipe from Brazil, France, and Germany.[12]

On October 5, 2000, the Commission determined that it should proceed to full five-year reviews of the countervailing duty order on seamless pipe from Italy, and the antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy. In so doing, the Commission determined that both the domestic and respondent interested party group responses were adequate with respect to seamless pipe from Argentina, Brazil, and Italy. While the Commission also determined that the domestic interested party group response was adequate with respect to seamless pipe from Germany, the Commission determined that the German respondents' interested party group response was inadequate because the Commission received no response to the notice of institution from any respondent interested party with respect to seamless pipe from Germany. However, the Commission decided to conduct a full review of the order covering Germany to promote administrative efficiency in light of the Commission's decision to conduct full reviews with respect to seamless pipe from Argentina, Brazil, and Italy.[13]

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[7] The petition in the original investigations was filed on June 23, 1994, by the Gulf States Tube Division of Quanex Corp. ("Quanex") of Rosenberg, Texas. Gulf States is currently a *** On April 27, 1995, Koppel Steel Corp. of Beaver Falls, Pennsylvania, requested and was granted by Commerce co-petitioner status in the original investigations. Original Determinations, USITC Pub 2910, at II-3.

[8] Response of Siderca S.A.I.C. to the Commission's Notice of Institution, at 1.

[9] Response of Siderca Corporation to the Commission's Notice of Institution, at 1.

[10] Response of Dalmine S.p.A. to the Commission's Notice of Institution, at 1.

[11] Although the German subsidiary of V&M Tubes, V&M Deutschland GmbH, is a producer of subject merchandise in Germany, V&M Tubes provided no information or argument with respect to revocation of the order on seamless pipe from Germany, either in response to institution of these reviews or during their pendency. In a telephone conversation with staff shortly after the institution of these reviews, counsel for V&M Tubes stated that its response should be considered in the adequacy context with respect to Brazilian production and imports, but not with respect to German production or imports. Thus, no adequate responses were received on behalf of foreign interested parties with respect to Germany.

[12] V&M do Brasil (formerly, Mannesmann SA) became a subsidiary of V&M Tubes on May 1, 2000. See Joint Response of Mannesmannröhren-Werke AG, Vallourec & Mannesmann Tubes, SA, Vallourec & Mannesmann Tubes Corporation, and Vallourec & Mannesmann do Brasil to the Commission's Notice of Institution, at 3.

[13] See Notice of Commission Determinations to Conduct Full Five-year Reviews Concerning the Countervailing Duty Order and Antidumping Duty Orders on Seamless Pipe from Argentina, Brazil, Germany, and Italy and the Countervailing Duty Order and Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, 65 Fed. Reg. 63889, 63890 (Oct. 25, 2000).

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry."[14] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[15] In a section 751(c) review, the Commission must also take into account "its prior injury determinations."[16]

For purposes of these reviews, certain seamless carbon and alloy steel standard, line, and pressure pipe are small diameter steel products produced in a variety of grades and sizes that are generally used for the conveyance of steam, water, oil, gas, petrochemicals, chemicals, and other fluids in refineries, chemical plants, and energy generation plants.[17] The majority of seamless pipe is sold by both domestic producers and importers to distributors.[18]

In its final results of the five-year reviews of the antidumping duty and countervailing duty orders with respect to the subject merchandise from Argentina, Brazil, Germany, and Italy, Commerce defined the subject merchandise as:

> small diameter seamless carbon and alloy standard, line, and pressure pipes ("seamless pipes") produced to the ASTM [American Society for Testing and Materials] A-335, ASTM A-106, ASTM A-53, and API [American Petroleum Institute] 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these reviews also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification. . . . [The subject] pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.[19]

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[14] 19 U.S.C. § 1677(4)(A).

[15] 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (CIT, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[16] 19 U.S.C. § 1675a(a)(1)(a).

[17] Confidential Staff Report ("CR") and Public Staff Report ("PR") at II-1.

[18] Shipments to U.S. distributors by domestic producers in 2000 accounted for *** percent of certain seamless carbon steel pipe production and *** percent of certain seamless alloy steel pipe production on a quantity basis. All U.S. importers' shipments were to distributors in 2000. CR at II-1-2, PR at I-1.

[19] The seamless pipe subject to these reviews is currently covered by statistical reporting numbers 7304.10.1020, 7304.10.5020, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, and 7304.59.8025 of the Harmonized Tariff Schedule of the United States (HTS). 65 Fed. Reg. 66708, 66709 (Nov. 7, 2000). CR at I-14, PR at I-13.

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination.[20] In the original determinations, the Commission found a single like product consisting of circular seamless carbon and alloy steel standard, line, and pressure pipe and tubes not more than 4.5 inches in outside diameter, and including redraw hollows.[21] The Commission observed that all seamless pipe had the same general physical characteristics, was used to convey liquids and gases, and was primarily triple-stenciled, making the pipe interchangeable for most end uses.[22] It also found seamless alloy and carbon steel pipe interchangeable to the extent that alloy steel pipe could be substituted for carbon steel pipe, although the reverse was not true.[23] The Commission further found that all seamless pipe was manufactured on the same equipment with the same employees, and that distributors sold all types of pipe.[24]

The record in these reviews does not indicate any significant changes in the products at issue or in the factors we consider in our determinations, nor any other appropriate circumstance warranting revisiting the Commission's original like product determination.[25] While there are a number of differences between carbon and alloy steel pipe in the record of these reviews, those differences again appear less significant than their similarities.

All alloy and carbon steel seamless pipe within the scope of the orders covered by these reviews share the same basic physical characteristics and numerous end uses. They are seamless, circular, no more than 4.5 inches in outside diameter, and contain many of the same elements. They are produced for use in demanding applications, including high-pressure containment. While alloy steel seamless pipe's physical properties permit its use in certain high temperature, high pressure applications,[26] both alloy and carbon steel seamless pipe are used to convey liquids and gases,[27] and both may be heat-treated.[28] All parties agree, and the record confirms that, as the Commission has previously found, both carbon and alloy steel

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

[21] See Certain Seamless Carbon and Alloy Standard, Line and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 & 731-TA-707-710 (Preliminary), USITC Pub 2801, at I-12 (Aug. 1994), and Original Determinations, USITC Pub 2910, at I-6-7.

[22] Original Determinations, USITC Pub 2910, at I-7-13. "Triple-stenciled" pipe is stenciled to meet "standard," "line," and "pressure" pipe specifications. Original Determinations, USITC Pub. 2910, at II-19. U.S. and foreign seamless pipe producers typically "triple stencil" their product, signifying that it meets ASTM A 53 specifications for standard pipe, API 5L specifications for line pipe for the conveyance of oil, natural gas, and other fluids, and ASTM A 106 specifications for pressure pipe. This practice permits U.S. distributors to sell the same pipe for different uses. See Original Determinations, USITC Pub. 2910, at I-20 ("A key reason that manufacturers triple-stencil is due to the desire of distributors to carry a single or common inventory.")

[23] Original Determinations, USITC Pub. 2910, at I-12-13.

[24] Original Determinations, USITC Pub. 2910, at I-7. In its discussion of whether carbon and alloy pipe were the same like product, the Commission specifically found that distributors tended to sell all types of pipe, "of varying material composition." See Original Determinations USITC Pub 2910, at I-13 n.56.

[25] Siderca, the sole producer of subject merchandise in Argentina, urged the Commission to find two separate like products, carbon steel and alloy steel seamless pipe. Siderca Prehearing Br. at 2-7; Posthearing Br. at 5 n.15; Tr. at 127-129 (Mr. Marco Radnic).

[26] CR at I-14-18, I-21-23, PR at I-13-15, I-18-19.

[27] CR at I-15-16, PR at I-14.

[28] CR at I-18, PR at I-15.

pipe are produced on the same production equipment by the same employees.[29] Both U.S. producers and respondents agree there is considerable overlap in channels of distribution, with seamless pipe distributors stocking both carbon and alloy steel product.[30]

The record in these reviews indicates that carbon pipe and alloy pipe comprise a continuum of seamless pipe products. Different grades of carbon and alloy steel pipe reflect varying proportions of certain elements and iron.[31] However, certain grades of pipe may be characterized as alloy steel seamless pipe even though the pipe is not produced to meet the technical ASTM A 333 and A 335 specifications for alloy steel seamless pipe.[32] Thus, product that is not produced to comply with an ASTM specification for alloy steel may nonetheless be considered to be an alloy steel product, though it may actually be more similar to the carbon steel product and be in compliance with an ASTM specification for carbon steel pipe. On balance, we find no clear dividing line between carbon and alloy steel seamless pipe. We therefore again define the domestic like product as consisting of all seamless carbon and alloy steel standard, line, and pressure pipe and tubes not more than 4.5 inches in outside diameter, including redraw hollows.[33] [34]

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[29] CR at I-22, PR at I-18.

[30] CR at I-22, PR at I-18. Original Determinations, USITC Pub. 2910, at I-12, Certain Seamless Carbon and Alloy Standard, Line, and Pressure Pipe from Japan and South Africa, Inv. Nos. 731-TA-847 and 850 (Final), USITC Pub. 3311 (June 2000), and Certain Seamless Carbon and Alloy Standard, Line, and Pressure Pipe from the Czech Republic, Mexico, and Romania, Inv. Nos. 731-TA-846, 848 and 849 (Final), USITC Pub. 3325 (Aug. 2000) ("2000 Determinations"), USITC Pub. 3311, at 10.

[31] In both the original investigations and in these reviews, the Commission's questionnaires defined carbon steel according to the HTS definition, and alloy steel as steel where one or more elements exceed the maximum allowable for carbon steel. By contrast, ASTM standards A 333 and A 335 for alloy steel pipe specify minimum limits of certain elements that are considerably higher than the HTS's maximum limits for such elements. Tr. at 213-217 (Mr. Stephen J. Narkin), CR at I-14-16, PR at I-12-14, and Original Determinations, USITC Pub. 2910, II-5-8, and
app. C at C-5.

[32] Pursuant to questions raised at the hearing with respect to this issue, Siderca indicated it followed the instructions in the Commission's questionnaires in reporting data on alloy seamless pipe. Tr. at 181 (Mr. Vander Schaaf). Siderca stated in its posthearing brief that *** percent of its total alloy shipments in 2000 met U.S. and international specifications for alloy products, meaning they were produced to ASTM specifications A 333 and A 335 and comparable British and German alloy specifications. It stated that the remainder of its alloy shipments still meet the definition of "alloy," as defined in the questionnaire instructions (which were based on the HTS definition), because ***. Siderca reported that the end uses of these two sets of products differ, with the "true" alloy grades used for high temperature and pressure applications, and the remainder used in on-shore and oil and gas transportation. CR at IV-4 n.5, PR at IV-3 n.5.

[33] Commissioner Hillman concurs in finding a single like product in these reviews. In last year's investigations of Certain Seamless Carbon and Alloy Standard, Line, and Pressure Pipe from Japan and South Africa, Inv. Nos. 731-TA-847 and 850 (Final), USITC Pub. 3311 (June 2000), and Certain Seamless Carbon and Alloy Standard, Line, and Pressure Pipe from the Czech Republic, Mexico, and Romania, Inv. Nos. 731-TA-846, 848 and 849 (Final), USITC Pub. 3325 (Aug. 2000) ("2000 Determinations"), she found, based on the record in those investigations, that alloy and carbon seamless pipe were separate like products. Differences between the record in the present reviews and that in last year's investigations led her to conclude that a single like product is appropriate in these reviews. The present record indicates more of a continuum between carbon and alloy product than the record in the 2000 Determinations. In particular, the record in these reviews indicates some interchangeability between carbon steel pipe and alloy steel pipe that meets the HTS definition for alloy steel but is not produced to the "alloy" ASTM standards. The present record also indicates that the majority of U.S. producers produce both carbon and alloy pipe. Moreover the present record shows some price overlap between carbon and alloy steel pipe, as ***. Finally, as this is a sunset review, rather than an original investigation, the starting point for like product analysis is the like product definition in the Commission's original determination; in the original determination, the Commission found carbon and alloy steel seamless pipe to be one like product. Based on all

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B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[35] In the original determinations, the Commission found the domestic industry to consist of the domestic producers of seamless carbon and alloy steel standard, line, and pressure pipes and tubes not more than 4.5 inches in outside diameter, as well as all redraw hollows.[36] There is no new information obtained during these five-year reviews that would suggest a reason for revisiting the Commission's original determination of the domestic industry. Thus, in accordance with our like product determination, we determine that the domestic industry consists of all U.S. producers of seamless carbon and alloy steel standard, line, and pressure pipes and tubes not more than 4.5 inches in outside diameter, including redraw hollows.[37]

C. Related Parties

We 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 producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.[38] *** purchased *** merchandise in 1999 and 2000.[39]

The Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist when the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial.[40] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[41]

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[33] (...continued)
these factors, she finds that a single like product is appropriate.

[34] Consistent with the Commission's original like product determination, redraw hollows are included in the domestic like product although certain redraw hollows for cold-drawing, when used in the production of cold-drawn pipe or tube, are excluded from the scope of the orders. Original Determinations, USITC Pub 2910, at I-12 n.50. No party has argued that redraw hollows should not be part of the domestic like product, and no information has been elicited during these five-year reviews indicating that they should not be part of the domestic like product. Accordingly, we find they are included in the domestic like product.

[35] 19 U.S.C. § 1677(4)(A).

[36] Original Determinations, USITC Pub 2910, at I-13.

[37] Eight U.S. producers are believed to represent the total production of the subject product in the United States: Koppel Steel of Beaver Falls, PA; Plymouth Tube of Warrenville, IL; Sharon Tube of Sharon, PA; Timken of Canton, OH; USX of Fairfield, AL; USX of Lorain, OH; Vision Metals' subsidiary Gulf States of Rosenberg, TX; and its other subsidiary, Michigan Specialty, of South Lyon, MI. CR at I-23-24, PR at I-19-20.

[38] 19 U.S.C. § 1677(4)(B).

[39] CR and PR at Table III-7.

[40] 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 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (Apr. 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (Apr. 1997).

[41] 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
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*** purchased imports during the original investigations, and the Commission at that time did not exclude *** from the domestic industry.[42] In 2000, *** accounted for *** of domestic seamless pipe production.[43] *** purchases of *** were equivalent to *** and *** of its production in 1999 and 2000, respectively.[44] *** purchases of imports were relatively small and sporadic, and the record does not otherwise indicate direct or indirect control by *** of an importer or exporter of the subject merchandise. Moreover, *** financial performance is similar to that of a substantial portion of the domestic producers,[45] and inclusion of the company in the domestic industry would not skew the data for the rest of the industry. Finally, *** supports continuation of the orders on the four subject countries.[46] Based on the foregoing, even if *** were a related party, appropriate circumstances would not exist to exclude *** from the domestic industry.

III. CUMULATION[47] [48]

A. Framework

Section 752(a) of the Act provides that:

> the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.[49]

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[41] (...continued)
related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

[42] Original Determinations, USITC Pub. 2910, at I-14-15, Original Views (confidential) at 19-21.

[43] CR and PR at Table I-2.

[44] CR and PR at Table III-7

[45] CR and PR at Table III-10.

[46] CR and PR at Table I-2.

[47] Commissioner Bragg does not join this section of the opinion. See Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation.

[48] Commissioner Devaney does not join this section with respect to the Commission's declining to cumulate imports from Italy with the other subject imports. While he concurs with the majority's findings of likely discernible adverse impact in the event the orders are revoked with respect to all of the four subject countries, he dissents with respect to the majority's finding that other considerations warrant not cumulating Italy with the other subject countries.

[49] 19 U.S.C. § 1675a(a)(7).

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.[50] We note that neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides specific guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact" on the domestic industry.[51] With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.[52]

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.[53] Only a "reasonable overlap" of competition is required.[54] In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission's traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.[55]

In these reviews, the statutory requirement for cumulation that all of the seamless pipe reviews be initiated on the same day is satisfied.[56] Based on the record, we find that subject imports from each of the four subject countries likely would have a discernible adverse impact on the domestic industry if the orders were revoked. We also find that subject imports from Argentina, Brazil, Germany, and to a certain extent,

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[50] 19 U.S.C. § 1675a(a)(7).

[51] SAA, H.R. Rep. No. 103-316, vol. I (1994).

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

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

[54] See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996)).

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

[56] See Notice of Institution (Int'l Trade Commission); see also Notice of Initiation of Five-Year ("Sunset") Reviews, 65 Fed. Reg. 41053 (July 3, 2000)(Dep't of Commerce).

Italy, likely would compete with each other and the domestic like product if the orders were revoked.[57] We do not find any significant differences in the conditions of competition among subject imports from Argentina, Brazil, and Germany, but do find significant differences with respect to subject imports from Italy. We therefore exercise our discretion to cumulate the likely volume and effects of subject imports from Argentina, Brazil, and Germany, but do not cumulate the likely volume and effects of subject imports from Italy.[58]

B. Analysis

1. Likelihood of No Discernible Adverse Impact

During the period 1992-94, subject imports from Italy accounted for *** to *** percent of apparent U.S. consumption, while subject imports from Argentina accounted for *** to *** percent, those from Brazil accounted for *** to *** percent, and those from Germany accounted for *** to *** percent.[59] Although the volume of subject imports since 1995 has not been substantial, each subject country has access to an active channel of distribution in the United States.[60]

Producers in each of the subject countries continue to produce and export *** volumes of the subject seamless pipe.[61] In addition, producers in each of the subject countries produce other seamless pipe products on the same machinery used to produce the subject merchandise and can shift production between the subject merchandise and other products.[62] Total capacities of producers of all seamless pipe in the subject countries range from *** short tons in *** to *** short tons in ***.[63] In light of the prevailing conditions of competition in the U.S. market (including the importance of price considerations to purchasers and significant purchaser acceptance of seamless pipe from each of the subject countries),[64] we do not find that subject imports from any of the subject countries are likely to have no discernible adverse impact on the domestic industry.

2. Reasonable Overlap of Competition

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[57] Commissioner Devaney concurs in finding that subject imports from Italy would be likely to have a discernible adverse impact on the domestic industry if the orders are revoked. Commissioner Devaney also finds that subject imports from Italy are likely to compete with the subject imports from Argentina, Brazil and Germany and the domestic like product if the orders are revoked. He finds no significant difference in the overlap of competition among imports from all subject countries and the domestic like product. Commissioner Devaney places strong emphasis on the fact that Dalmine is a member of the DST Group and thus could easily redirect exports to the United States via Italy if the antidumping duty order on Italy is revoked. Commissioner Devaney does not find compelling the fact that Dalmine ceased production of certain line and triple-stenciled pipe.

[58] As stated previously, Commissioner Devaney dissents from the decision not to cumulate subject imports from Italy.

[59] CR and PR at Table I-1.

[60] CR at I-25-26, PR at I-21. Siderca Corp., a U.S. importer of seamless pipe, is affiliated with subject producers in Argentina and Italy; V&M Tubes, a U.S. importer of seamless pipe, is affiliated with subject producers in Brazil and Germany.

[61] In 2000, production of the subject product totaled *** short tons in Argentina (*** percent of which was exported), *** short tons in Brazil (*** percent of which was exported), *** short tons in Germany (*** percent of which was exported), and *** short tons in Italy (*** percent of which was exported). CR and PR at Tables IV-3, IV-5, IV-7, and IV-9.

[62] However, the Italian producer Dalmine, which accounted for *** percent of subject exports to the United States from Italy in 1994, has eliminated a substantial portion of its capacity to produce subject merchandise. See Original Report (confidential) at Table 16 n.1, and Tr. at 201-202 (Mr. Marco Radnic).

[63] CR and PR at Tables IV-4, IV-6, IV-8, IV-10.

[64] CR and PR at Tables II-1 and II-3.

In the original investigations concerning seamless pipe from Argentina, Brazil, Germany, and Italy, the Commission found that subject imports from each of the subject countries competed with each other and with the domestic like product and cumulated the volume and effects of those subject imports. The Commission found that subject imports and the domestic like product were reasonably good substitutes, and that there were no significant quality differences between the domestic and imported product.[65] The Commission also determined that both the domestic and imported product competed directly for sales in the same geographic markets. It found that both the domestic and imported product were sold through similar channels of distribution, since both domestic producers and importers sold subject pipe predominantly to distributors who, in turn, resold it to end users and other distributors.[66] Finally, the Commission concluded that subject imports from all countries and the domestic product were simultaneously present in the U.S. market throughout the period of investigation.[67]

In these reviews, the record indicates a moderate to high degree of substitutability among the domestic like product and imports from the subject countries.[68] All producers and most importers found the domestic product and the product from all four of the subject countries to be interchangeable.[69] Virtually all purchasers of seamless pipe require some form of pre-qualification of suppliers, based on the product's compliance with the standards of the American Society for Testing and Materials (ASTM) and/or the American Petroleum Institute (API),[70] and its quality, chemistry, strength, and other performance characteristics.[71] No purchasers indicated that either U.S. or subject product failed to qualify,[72] although Italian producer Dalmine reported that it is no longer able to produce line pipe meeting the API 5L specification.[73] Moreover, both domestic and foreign producers from each of the subject countries are on multiple purchasers' approved manufacturers lists (AMLs).[74] When asked to list the three most important factors considered when choosing a supplier, purchasers ranked price as being second only to quality.[75] Finally, most importers and the majority of domestic producers agreed that differences other than price are never a significant factor in their sales.[76]

Evidence in the record of these reviews indicates that the product mix of subject imports would likely consist of carbon and alloy seamless pipe.[77] Although the Argentine producer asserts that the bulk of its operations is dedicated to the production of alloy products,[78] producers in each subject country can produce and export both carbon and alloy steel seamless pipe.[79]

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[65] Original Determinations, USITC Pub. 2910, at I-22.

[66] Original Determinations, USITC Pub. 2910, at I-22-23.

[67] Original Determinations, USITC Pub. 2910, at I-23.

[68] CR and PR at Tables II-4-5-6.

[69] CR at II-17, PR at II-8.

[70] CR at I-15, PR at I-13.

[71] CR at II-15-16, PR at II-8.

[72] CR at II-16, PR at II-8.

[73] CR at IV-15, PR at IV-6. The company dismantled its hydraulic test machine (required to produce API 5L line pipe) as part of its privatization plan to shift its production to higher valued products. Id.

[74] CR and PR at Table II-3. We note, however, that the *** producer in Italy, Pietra, is *** purchasers' AML.

[75] CR and PR at Table II-1.

[76] CR at II-17, PR at II-18.

[77] U.S. shipments of subject imports of carbon seamless pipe were *** short tons in 1995, *** short tons in 1996, *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, and *** short tons in 2000, while U.S. shipments of subject imports of alloy seamless pipe totaled *** short tons in 1995, *** short tons in 1996, *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, and *** short tons in 2000. CR and PR at Tables C-4-5.

[78] Tr. at 133 (Mr. Vander Schaaf).

[79] CR at IV-4, IV-8, IV-15, PR at IV-3-5. With respect to the Argentine respondent Siderca S.A.I.C.'s argument that it has shifted its focus to the production of alloy rather than carbon seamless pipe, we note that the

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The Commission found in the original investigations that the domestic like product and subject imports were sold in the same channels of distribution.[80] There is nothing in the record of these reviews indicating that a significant overlap in the channels of distribution among subject imports and the domestic like product would not be likely upon revocation of the antidumping duty orders.[81] [82] The Commission also found in the original investigations that subject product from Argentina, Brazil, Germany, and Italy was simultaneously present and competed directly with the domestic product nationwide.[83] Nothing in the record of these reviews suggests that subject imports and the domestic like product would not compete on a nationwide basis if the orders were revoked.[84]

We therefore find that there likely would be a reasonable overlap of competition between the subject imports from Argentina, Brazil, Germany, and Italy and the domestic product, and among the subject imports.

3. Other Considerations[85]

We do not find that the record in these reviews indicates significant differences in the likely conditions of competition between imports of the subject merchandise from Argentina, Brazil, and Germany. We therefore exercise our discretion to cumulate the likely volume and effects of subject imports from these countries. However, the record in these reviews indicates that likely conditions of competition would be significantly different for imports of seamless pipe from Italy relative to subject imports from Argentina, Brazil, and Germany. Accordingly, we do not exercise our discretion to cumulate the likely volume and effects of subject imports from Italy.

During the period examined in the original investigations, the volume of subject imports from Argentina, Brazil, and Germany, and their shares of the U.S. market, were prone to rapid and significant changes.[86] In contrast, subject imports from Italy never entered the U.S. market in substantial quantities.

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[79] (...continued)
company continues to produce carbon seamless pipe in sufficient quantities that there would likely be a reasonable overlap of competition with the domestic like product. See CR and PR at Table C-10. Moreover, the company stated in its posthearing brief that, while it followed the definitions for reporting alloy seamless pipe contained in the Commission's questionnaire instructions, the bulk of these "alloy" products "are not the type that meet the requirements of alloy products A 333 and A 335." Siderca Posthearing Br. at 5. Thus, in some instances, Siderca reported as "alloy" seamless pipe product that it manufactures according to what are considered by the industry to be carbon, rather than alloy, specifications. In addition, certain of its alloy product is used in applications that frequently employ carbon seamless pipe. CR at IV-4 n.5, PR at IV-3 n.5; Siderca's Posthearing Br. at 5 and Q-15.

[80] Original Determinations, USITC Pub. 2910, at I-12-13; 2000 Determinations, USITC Pub. 3311, at 10.

[81] Over *** percent of domestic producers' and *** percent of importers' sales are currently to distributors who stock both carbon and alloy product. CR at I-22 n.22, and II-2, PR at I-18 n.22 and II-1. Although Siderca argued that its focus would be on long-term contracts with end-users rather than sales to distributors, long-term contracts accounted for *** percent of its sales in 2000, leaving a *** proportion of sales – *** percent – that potentially could be made to distributors. CR at II-5, PR at II-2.

[82] We note, however, that Italian producer Dalmine no longer produces triple-stenciled subject pipe, which is generally demanded by U.S. distributors.

[83] Original Determinations USITC Pub. 2910 at I-22-23.

[84] In these reviews, both domestic producers and importers reported that they serve the entire continental United States. CR at II-2, PR at II-1, CR and PR at Tables C-4-5-6-7.

[85] Commissioner Devaney does not join this section of the Commission's Views.

[86] See Original Report (confidential), Table 17 at I-72 (subject imports from Argentina ranged from *** short tons to *** short tons between 1992 and 1994; subject imports from Brazil ranged from *** short tons and *** short tons; and subject imports from Germany ranged from *** short tons and *** short tons). See also Original Report (confidential), Table 18 at I-74 (the market share of subject imports from Argentina, Brazil, and Germany
(continued...)

During the original investigations, subject imports from Italy ranged from a low of *** short tons in 1992, to a high of *** short tons in 1993, accounting for *** percent and *** percent, respectively, of the U.S. market.[87] [88]

We find the distinct trend of relatively low and stable import volume and market share likely to persist upon revocation of the current orders on subject imports from Italy. The industry in Italy has substantially reduced its capacity to produce seamless pipe since the original investigations.[89] In particular, Dalmine (which accounted for *** percent of subject exports from Italy to the United States in 1994)[90] reduced its capacity to produce carbon seamless pipe from *** short tons in 1995 to *** short tons in 2000, and its capacity for alloy seamless pipe from *** short tons in 1995 to *** short tons in 2000.[91] This reduction by Dalmine is not of a temporary nature; thus the company is not likely to shift production back to subject merchandise if the orders are revoked. Upon its privatization in 1996, Dalmine adopted a plan to shift its production from seamless pipe to products of higher quality and value, such as boiler and mechanical tubing.[92] Subsequently, Dalmine dismantled its hydraulic test machine, which is required to produce API 5L line pipe.[93] Thus, Dalmine can no longer triple stencil its pipe as meeting the API 5L specification and, as discussed below, is therefore limited in its ability to compete across the broad spectrum of product offerings in the U.S. market.

In the original investigations, Dalmine accounted for most (*** percent in 1994) of the subject exports from Italy, while Pietra accounted for only *** percent.[94] Nothing in the record of these reviews suggests that Pietra, the *** Italian producer of subject seamless pipe, would become a significant exporter of subject merchandise to the United States if the orders were revoked. Pietra last exported subject seamless pipe to the United States in *** quantities in ***.[95] Moreover, Pietra, unlike other larger subject manufacturers, has no related affiliate to distribute its product offerings in the United States.

During the period 1992-94, the average unit values ("AUVs") of U.S. shipments of subject imports from Argentina, Brazil, and Germany were *** than the AUVs of U.S. shipments of subject imports from Italy.[96] The record indicates that these *** in AUVs reflected the distinctive mix of seamless pipe products available from Italy. While *** percent of subject seamless pipe from Italy during the original investigations was triple-stenciled, substantial portions of the Italian product mix included pipe that was less than two inches in outside diameter, cold-finished pipe, meter-run pipe, and/or P-grade alloy seamless pipe.[97]

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[86] (...continued)
was between ***, ***, and ***, respectively, between 1992 and 1994).

[87] Original Report (confidential), Tables 17 and 18 at I-72 and I-74.

[88] Commissioner Miller bases her decision not to cumulate Italy primarily on the changes in Italy's production operations, described hereafter, and does not join this paragraph.

[89] In 1994, Italian seamless pipe capacity was *** short tons. In 2000, it was only *** short tons. CR and PR at Table IV-9.

[90] Original Report (confidential), Table 16 n.1 at I-69.

[91] Dalmine foreign producer questionnaire response at 12 and 14.

[92] CR at IV-15, PR at IV-5.

[93] CR at IV-15, PR at IV-5, Dalmine Posthearing Brief at 5-6. The record indicates that the hydraulic testing machine was removed and scrapped in order to reconfigure Dalmine's rolling mills. Tr. at 201-202 (Mr. Marco Radnic). See also Commission Verification Report on Dalmine S.p.A., April 25, 2001.

[94] Original Report (confidential), Table 16 n.1 at I-69. See also Dalmine Posthearing Br. at 2.

[95] CR at IV-15-16, PR at IV-5-6.

[96] CR and PR at Table I-1. (The AUVs of U.S. shipments of imports from Argentina (*** per short ton), Brazil (*** per short ton), and Germany (*** per short ton) were all significantly *** than the AUVs of U.S. shipments of imports from Italy (*** per short ton).

[97] Original Report (confidential), at I-22 (stenciling), Table 1 at I-23 (diameter and finish), and I-75-77 (specialty products). Reported prices and AUVs of small diameter, cold-drawn, meter run, and alloy steel seamless pipe were generally higher than the more prevalent hot-finished, larger diameter, carbon steel seamless pipe.
(continued...)

As discussed above, Dalmine has taken concrete actions to focus its product line on non-API 5L pipe and, therefore, on non-triple-stenciled pipe. Thus, to the extent that Dalmine and Pietra (historically a minor supplier to the U.S. market)[98] export seamless pipe to the United States, the product mix likely would consist of relatively ***-priced offerings.

Dalmine can no longer triple stencil its pipe as meeting the API 5L specification, a factor which, in turn, limits Dalmine's ability to compete for sales to U.S. distributors, which normally demand triple-stenciled pipe.[99] Shipments to distributors during the review period accounted for approximately *** percent of domestic producers' shipments of seamless steel pipe and 100 percent of imports.[100] Thus, any future imports from Dalmine would face a significant challenge competing in the U.S. market. Dalmine's permanent substantial reduction in capacity to produce subject seamless pipe, in particular the company's decision to halt production of API 5L line and triple-stenciled pipe, indicates that seamless pipe potentially available from Italy for the U.S. market would likely be limited in quantity and face different demand conditions. As discussed below in "Conditions of Competition," gathering lines represent an important component of demand for seamless pipe, one that is more directly influenced by oil and gas production than other applications, such as refinery repair and maintenance. Thus, the absence of API 5L line pipe from Dalmine's product line, combined with Pietra's historic focus on non-U.S. markets, suggest that subject imports from Italy are unlikely to respond to shifts in U.S. demand in the same manner as subject imports from the other countries.

In conclusion, based on the likely low and stable volume and market share of subject imports from Italy; the relatively *** of the Italian seamless pipe; the absence of an established, related U.S. distributor for the *** Italian producer; and the permanent shift by the formerly-dominant Italian exporter away from subject seamless pipe generally, and line pipe and triple-stenciled pipe specifically, we find that subject imports from Italy likely would face different conditions of competition. We therefore do not exercise our discretion to cumulate subject seamless pipe from Italy with subject merchandise from Argentina, Brazil, and Germany.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF ORDERS ARE REVOKED[101]

A. Legal Standard in a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[102] The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports."[103] Thus, the likelihood standard is prospective in nature.[104] The statute states that "the

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[97] (...continued)
Original Report (confidential), at I-95 and app. D.

[98] See Dalmine's Posthearing Br. at 2.

[99] CR at IV-15, PR at IV-4-5.

[100] CR at I-22 n.22, and II-2; PR at I-18 n.22, and II-1.

[101] Commissioner Bragg joins the remainder of this opinion.

[102] 19 U.S.C. § 1675a(a).

[103] SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury (continued...)

Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[105] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[106] [107]

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked."[108] It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, whether the industry is vulnerable to material injury if the order is revoked, and any findings by Commerce regarding duty absorption[109] under section 1675(a)(4) of the Act.[110]

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

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[103] (...continued)
standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry)." SAA at 883.

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

[105] 19 U.S.C. § 1675a(a)(5).

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

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

[108] 19 U.S.C. § 1675a(a)(1).

[109] The Commerce Department made no duty absorption findings with respect to the subject imports from Argentina, Brazil, Germany, or Italy. CR and PR at I-11.

[110] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

drawing reasonable inferences from the evidence it finds most persuasive."[111] In these reviews, a number of respondent interested parties did not provide questionnaire responses and/or participate.[112] Accordingly, we have relied on the facts available in these reviews, which consist primarily of the evidence in the record from the Commission's original investigations, the information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers and other parties in these reviews.

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.[113] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[114]

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.[115]

In evaluating the likely impact of subject imports if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[116] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.[117] [118] As instructed by the statute, we have considered the

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[111] SAA at 869.

[112] CR at IV-12 n.12, PR at IV-5 n.12.

[113] 19 U.S.C. §1675a(a)(2).

[114] 19 U.S.C. § 1675(a)(2)(A)-(D).

[115] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[116] 19 U.S.C. § 1675a(a)(4).

[117] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce assigned likely antidumping duty margins for all manufacturers in Argentina of 108.13 percent. 65 Fed. Reg. 66708, 66711 (Nov. 7, 2000). The likely margin of dumping for all producers in Brazil is 124.94 percent. 65 Fed. Reg. 66708, 66711 (Nov. 7, 2000). All producers in Germany were assigned a likely margin of dumping of 57.72 percent. 65 Fed. Reg. 66708, 66711 (Nov. 7, 2000). Italian producers received a likely dumping margin of 1.27 percent, and a likely subsidization rate of 1.47 percent. 65 Fed. Reg. 66708, 66711 (Nov. 7, 2000), and 66 Fed. Reg. 13909, 13910 (Mar. 8, 2001), respectively.

[118] Section 752(a)(6) also requires the Commission to consider information about the nature of any countervailable subsidies and whether they are of the type described in Article 3 (subsidies contingent upon export

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extent to which any improvement in the state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.[119]

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinct to the industry."[120] In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for seamless pipe.

Seamless pipe is produced in a variety of grades and sizes, depending on its use in transmitting water, steam, petrochemicals, chemicals, oil, natural gas, and other gases and fluids in refineries, petrochemical facilities, and energy plants.[121] Evidence in the record indicates that there are few substitute products for certain seamless pipe.[122]

Because of the use of seamless pipe in the oil and gas, chemical/petrochemical, and other energy-generating industries, market demand for the pipe is derived from general demand for new plants and equipment in these and other industries.[123] While the petrochemical industry uses the smallest diameter seamless pipe (two inches and below), larger seamless pipe is used in oil and gas gathering lines.[124] Thus, demand for seamless pipe is often subject to the business cycles for other products such as oil and gas.[125] The nature of such demand may, at times, be volatile.

During the period of these reviews, apparent U.S. consumption fell from 199,555 short tons in 1995 to 192,927 short tons in 1996, then rose to 257,360 short tons in 1997, then fell to 234,890 short tons in 1998 and to 147,254 short tons in 1999.[126] Apparent U.S. consumption then rose substantially in 2000, to 204,268 short tons.[127] The record also indicates that, while there may be increased demand for seamless pipe used in applications influenced by oil and gas production (*e.g.*, gathering lines), demand for pipe used in refineries is likely to be more moderate in the reasonably foreseeable future.[128]

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[118] (...continued)
or the use of domestic content) or Article 6.1 (subsidies deemed to cause "serious prejudice" to other WTO Members) of the WTO Subsidies Agreement. 19 U.S.C. § 1675a(a)(6). In these reviews, Commerce determined that none of the Italian government programs conferred countervailable subsidies of the type described in Article 3 or Article 6.1 and assessed a likely countervailing duty rate of 1.47 percent on subject product from Italy. 66 Fed. Reg. 13909 (Mar. 8, 2001) and "Issues and Decision Memorandum" discussed therein. CR at I-12, PR at I-11.

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

[120] 19 U.S.C. § 1675a(a)(4).

[121] CR at II-1 and II-10, PR at II-1 and II-5.

[122] CR at II-12, PR at II-6.

[123] CR at II-10-11, PR at II-5.

[124] Tr. at 49, 61 (Mr. James C. Hill). We note that about *** of U.S. production of the domestic like product was in sizes greater than two inches in diameter. CR at III-4 n.4, PR at I-2 n.4.

[125] Because seamless pipe greater than two inches in diameter is used more in oil and gas gathering lines, demand for such pipe is more directly influenced by oil and gas production trends. Tr. at 76-77 (Mr. James Durham); Tr. at 176-178 (Mr. Marco Radnic).

[126] CR and PR at Table I-1.

[127] Id.

[128] Tr. at 56-57 (Mr. James C. Hill). We note that the last refinery built in the United States was built 25 years ago (Tr. at 71 (Mr. James C. Hill)), and that it takes less pipe to repair and maintain a refinery than it does to
(continued...)

Since 1992, the domestic industry has consistently supplied the majority of U.S. demand (typically 60-70 percent), and has operated at a capacity utilization of about 50 percent or less.[129] [130] Most subject seamless pipe manufacturers can produce products other than subject seamless pipe using the same equipment and thus are able to shift production among steel products.[131] U.S. producers now tend to hold smaller inventories (*** percent of shipments) than during the original period examined (10-13 percent of total shipments).[132]

During the 1992-94 period, subject imports collectively supplied as much as one-quarter of the U.S. market, with each individual subject country other than Italy accounting for *** percent of the U.S. market in at least one year.[133] In recent years, however, subject imports have had only a minimal presence in the U.S. market, while nonsubject imports have increased their presence in the U.S. market noticeably. Nonsubject imports' U.S. market share rose from *** percent in 1995 to *** percent in 2000.[134] The primary sources of nonsubject imports have been the Czech Republic, Japan, Romania, South Africa, France, China, Ukraine, and Austria.[135] Antidumping duty orders were imposed in 2000 on U.S. imports of certain small diameter seamless carbon and alloy steel standard, line, and pressure pipe from the Czech Republic, Japan, Romania, and South Africa.[136] [137]

While *** of the responding U.S. producers reported sales as spot sales, the majority of importers responded that their sales are made by contract.[138] The majority of seamless pipe is sold by domestic producers and importers to distributors.[139] Five of seven purchasers and one importer that maintained approved manufacturers lists ("AMLs") indicated that they used the lists for all of their purchases, and both domestic and foreign producers from each of the subject countries were included on these AMLs.[140] The

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[128] (...continued)
build a new facility. Tr. at 64 (Mr. James Durham).

[129] CR and PR at Table I-1. For alloy seamless pipe, U.S. producers have supplied about *** of apparent U.S. consumption, despite reporting some available capacity. CR and PR at Table C-5.

[130] As a domestic witness stated at the hearing, "Any time we get over 50 percent, we're starting to look pretty high, the way this business has been." See Tr. at 104 (Mr. Gary F. Gajdzik). The U.S. industry's overall capacity utilization for equipment used to produce the domestic like product as well as other products was 66 percent in 2000, up from 46 percent in 1999 and 57 percent in 1998, but lower than its peak rate of 75 percent in 1997. Small-diameter oil country tubular goods ("OCTG") and various large-diameter pipe (including OCTG) account for substantial portions of the fluctuations. CR and PR at Table III-2.

[131] CR at III-2, IV-4, IV-8, IV-12, and IV-15-16, PR at III-1 and IV-4-6.

[132] CR and PR at Table I-1.

[133] Italy never supplied more than *** percent of the U.S. market. Moreover, Italian seamless pipe was concentrated in the *** diameters. Italian seamless pipe accounted for less than *** percent of sales of pipe larger than 2 inches during 1992-94, and included higher value alloy product. See Original Report (confidential) at Table D-1 (overall market shares); Tables D-5 and D-3 (larger diameter pipe and alloy pipe); and pages I-75-77 (sales of P-grades of alloy pipe).

[134] CR and PR at Table I-1 and Table C-3.

[135] CR and PR at IV-1 n.1. *** accounted for more than *** of U.S. imports of seamless pipe in 2000. Id.

[136] Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa, 65 Fed. Reg. 39360 (June 26, 2000).

[137] Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania, 65 Fed. Reg. 48963 (Aug. 10, 2000); and Notice of Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from the Czech Republic, 65 Fed. Reg. 49539 (Aug. 14, 2000).

[138] CR at V-6-7, PR at V-5.

[139] CR and PR at II-1-2.

[140] CR at II-13, PR at II-7.

domestic and imported product are generally considered interchangeable, and most producers and importers agreed that differences other than price are never a significant factor in sales of seamless pipe.[141]

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

C. Revocation of the Antidumping Duty Orders on Subject Imports From Argentina, Brazil, and Germany Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time.[142]

1. Likely Volume of Subject Imports

In the original determinations, the Commission found that the volume and market share of subject imports were significant.[143] While apparent U.S. consumption increased by almost one-third from 1992 to 1993, the volume of subject imports increased even more substantially, and subject imports' market share increased from 21.0 to 25.4 percent.[144] Between 1993 and 1994, both subject import volume and overall consumption declined somewhat, with subject imports' market share decreasing to 23.2 percent.[145] Upon issuance of the orders, the volume and market share of subject seamless pipe fell dramatically and have remained substantially below the levels they attained during the original investigations, never accounting for more than *** percent of apparent U.S. consumption since 1996.[146]

We find that the volume of cumulated subject imports from Argentina, Brazil, and Germany will likely be significant if the orders are revoked. First, producers in the subject countries have significant production capacity. Overall capacity to produce the subject product in Argentina, Brazil, and Germany totaled *** short tons in 2000,[147] which was *** apparent U.S. consumption of the subject product in the same year.[148]

In addition, the subject foreign producers can manufacture *** on the same equipment they use to produce seamless pipe.[149] The producers indicated they can shift production between subject merchandise and other products and reported significant overall capacity.[150] [151] Indeed, the record in these reviews

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[141] CR at II-17, PR at II-9.

[142] Commissioner Devaney finds that revocation of the orders on subject imports from all subject countries is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

[143] Original Determinations, USITC Pub. 2910 at I-28.

[144] Original Determinations, USITC Pub. 2910 at I-27. These figures include subject imports from Italy. Subtracting subject imports from Italy, subject imports' market share increased from *** to *** percent between 1992 and 1993.

[145] This figure also includes subject imports from Italy. Subtracting subject imports from Italy, subject imports' market share decreased to *** percent in between 1993 and 1994.

[146] CR and PR at Table I-1.

[147] CR and PR at Tables IV-3, IV-5 and IV-7. Estimated subject seamless pipe production capacity in Argentina, Brazil, and Germany was ***, ***, and *** short tons in 2000, respectively. Excess capacity to produce the subject product in Argentina, Brazil, and Germany in that same year amounted to ***, ***, and *** short tons, respectively. Id. The German producer VMD estimates it accounts for *** percent of all current subject production in Germany. CR at II-6, IV-12, PR at II-3, and IV-5.

[148] U.S. apparent consumption in 2000 totaled *** short tons. CR and PR at Tables I-3-4, Table C-3.

[149] CR at II-4-6, II-8, IV-4, IV-8, IV-12, IV-15-16, PR at II-2-4, IV-3-6.

[150] Estimated overall seamless pipe capacity for Argentina, Brazil, and Germany in 2000 was ***, ***, and *** short tons, respectively. CR & PR at Tables IV-4, IV-6, and IV-8. The German producer VMD estimates that nonresponding companies in Germany could account for over *** percent of overall production capacity in Germany that could be used to produce subject product. V&M Posthearing Br. at 13-14.

[151] Furthermore, if the order on seamless pipe from Argentina in particular is revoked, the sole seamless pipe

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indicates that seamless pipe prices are generally higher in the United States than elsewhere, making the United States an attractive market.[152] Thus, subject country exporters have a strong incentive to resume exports of subject pipe to the United States if the existing antidumping duty orders on seamless pipe are revoked.[153] [154] Finally, as at the time of the original investigations, subject producers in Argentina, Brazil, and Germany continue to rely heavily on their export markets.[155] [156] In sum, the large capacity of these export-oriented subject producers indicates that the volume of U.S. imports from Argentina, Brazil, and Germany would likely be significant if the antidumping duty orders were revoked.[157]

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[151] (...continued)
producer in Argentina, Siderca, would have a strong incentive to shift production from OCTG to seamless pipe, since seamless pipe is one of the company's *** product lines. The United States maintains an antidumping duty order on OCTG from Argentina. Antidumping Duty Order: Oil Country Tubular Goods from Argentina, 60 Fed. Reg. 41055 (Aug. 11, 1995). See also, CR and PR at Table IV-4. During these reviews, the antidumping duty order on OCTG from Argentina was also the subject of a full five-year review by the Commission. See Tr. at 219 (Mr. Stephen J. Vaughn) and 65 Fed. Reg. 63889 (Oct. 25, 2000).

[152] CR at V-17-18, PR at V-8-9, Tr. at 16 (Mr. James C. Hecht), Tr. at 28-29 (Mr. Gary Gajdzik). V&M Posthearing Br., App. A at 11.

[153] We have examined whether there are barriers to the importation of seamless pipe from each of the subject countries into third country markets. While producers in Argentina, Brazil, and Germany indicated that their exports of seamless pipe were not the subject of antidumping or countervailing duty orders in other markets, Brazil and Germany reported that they do face ***. CR at II-5-6, PR at II-2-5. We note but do not rely on the domestic producers' arguments related to the European Commission's finding in December 1999 that, between 1990 and 1995, producers of seamless steel tubes including British Steel Limited (United Kingdom), Dalmine S.p.A (Italy), MWR (Germany), Vallourec S.A. (France), Kawasaki Steel Corporation, NKK Corporation, Nippon Steel Corporation, and Sumitomo Metal Industries Limited (Japan) had engaged in collusion and established a cartel restricting competition in the EU for seamless tubes used in oil and gas prospecting and transportation. See Domestic Producers' Prehearing Br. at 56-58, and Exh. 19.

[154] Vice Chairman Okun considered the record evidence of cartel-like behavior in her analysis of the existence of barriers to importation into countries other than the United States. See "Commission fines cartel of seamless tube producers for market sharing," IP/57/957, released from Brussels on Dec. 6, 1999. With respect to the "Europe - Japan club," she considered the products in which the European Commission found there was a cartel (OCTG and seamless line pipe); the producers concerned (producers in the United Kingdom, Italy, Germany, France, and Japan); the infringing activity (refraining from delivery of the subject product to markets in which the other national producers were established); the duration of the restricted competition (1990-95); and the extent of the restrictions (19 percent of European Community consumption of seamless OCTG and line pipe). In analyzing such issues as the availability of export markets other than the United States, she based her conclusions on the record as a whole, assessing carefully the information and arguments provided by all parties.

[155] The share of Argentina's shipments that were exported ranged between *** and *** percent during the original investigations and between *** and *** percent during these reviews. For Brazil, the shares were between *** and *** percent during the original investigations and between *** and *** percent during these reviews, and, for Germany, the shares were between *** and *** percent during the original investigations and between *** and *** percent during these reviews. CR and PR at Tables IV-3, IV-5, and IV-7.

[156] While there were *** inventories of subject merchandise in Brazil and Germany over the period of review, Argentina's end-of-period inventories totaled *** short tons in 2000. CR and PR at Tables IV-3, IV-5, and IV-7. In addition, while there were no reported U.S. inventories of Brazilian or German product during the review period, U.S. inventories of subject merchandise from Argentina totaled *** short tons in 1997, and *** short tons from 1998 to 2000. CR and PR at Table IV-2.

[157] Siderca argues that it cannot easily redirect exports to the United States if the antidumping duty order on Argentina is revoked because a significant portion of its sales were made under long term agreements with customers in its other export markets and in its home market. (Siderca reported that a significant portion (i.e., *** percent in 2000) of its sales were made pursuant to these long term agreements.) Tr. at 125 (Mr. Marco Radnic), CR at II-5, PR at II-2. We do not find that the record supports the conclusion that Siderca cannot ship
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Finally, the transnational corporate affiliations among many of the subject country producers also enhance their ability to resume exporting to the United States by providing a ready network for marketing, sales, and distribution.[158] [159] Cross-ownership among foreign subject producers appears to be enhancing their ability to supply seamless pipe customers with operations in the United States and abroad through flexible supply arrangements, including global contracts.[160]

We therefore conclude, based on the record in these reviews, that the likely volume of subject seamless pipe imports from Argentina, Brazil, and Germany would be significant in the reasonably foreseeable future if the orders were revoked.

2. Likely Price Effects of Subject Imports[161]

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.[162]

In the original determinations, the Commission found that price was an important factor in purchasing decisions, and that subject imports significantly undersold the domestic product during the period of investigation. The margins of underselling were found by the Commission to be large, in most

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[157] (...continued)
significant volumes of seamless pipe to the United States absent the antidumping duty order. In particular, *** percent of Siderca's sales are not subject to longterm agreements. CR at II-5, PR at II-2. Moreover, the record does not demonstrate the extent to which Siderca's agreements are fully binding.

[158] As a result of these corporate relationships, one parent corporation, V&M Tubes, now operates seamless pipe facilities in France (V&M France), Germany (VMD), and Brazil (V&M do Brasil). In 1997, the German respondent in the original investigation, Mannesmannrohen-Werke AG (MRW), entered into a joint venture (V&M Tubes SA) with the French holding company, Vallourec, forming two affiliated production subsidiaries: V&M Germany (VMD) and V&M France. In June 2000, the joint venture V&M Tubes SA acquired MRW's Brazilian pipe operation, which became known as V&M do Brasil. Currently, V&M Tubes ships subject merchandise to the United States almost exclusively from France, which is not subject to an antidumping duty order. V&M Prehearing Br. at 2-3, CR at IV-8, IV-12, PR at IV-4-5. Siderca is a member of the Techint Group of companies (also known as the "DST Group,") which also includes Dalmine S.p.A. of Bergamo, Italy, Tubos de Acero Mexico, S.A. of Veracruz, Mexico, NKK Keihin Works of Japan, and Algoma of Canada. Siderca acquired a *** interest in Dalmine S.p.A. in 1996. CR at IV-4, PR at IV-1.

[159] While Dalmine is a member of the DST Group along with Siderca, the ability of the Italian producer to take advantage of centralized decisionmaking provided by its affiliation with the DST Group to direct exports to the United States is limited by the fact that it has ceased production of certain line and triple-stenciled pipe in specifications normally demanded by distributors in the U.S. market. CR at II-8, IV-15, PR at II-4, IV-6.

[160] CR at V-7, PR at V-5.

[161] Commissioner Devaney finds that revocation of the orders on subject imports from all subject countries is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, particularly since evidence that prices tend to be higher in the United States has not been disputed, and the United States thus remains an attractive market for exports.

[162] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

instances exceeding 20 percent.[163] The Commission further found that the subject imports had significant price depressing and suppressing effects.[164]

U.S. producer prices for all subject seamless pipe for which the Commission collected pricing data increased from 1995 to 1998, but declined noticeably in late 1998 and early 1999.[165] Prices began to recover in the third quarter of 1999, and by the end of 2000 were higher than in the first quarter of 1995.[166]

The record indicates that the subject imports from Argentina, Brazil, and Germany are highly substitutable for domestic seamless pipe for most end uses.[167] A majority of producers and importers reported that differences other than price between the domestic and subject product are generally not a significant factor in their sales, indicating a moderate to high level of price competition in the industry.[168] Price and quality were the two factors ranked highest by purchasers in making purchasing decisions,[169] and a majority of purchasers in these reviews indicated that domestically-produced seamless pipe prices were higher than the prices of subject imports from Argentina, Brazil, and Germany.[170] Thus, there is a strong incentive for subject imports, upon their return to the U.S. market, to compete on the basis of price to capture sales.

Given the likely significant volume of subject imports if the orders are revoked, the substitutability of the subject imports from Argentina, Brazil, and Germany, the lower prices for subject imports reported by purchasers, and the record of consistent underselling by the imports in the original investigations, we find that, in the absence of the orders, certain seamless pipe from Argentina, Brazil, and Germany would likely have significant price depressing and suppressing effects on the domestic like product.[171]

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[163] Original Determinations, USITC Pub. 2910, at I-28.

[164] Original Determinations, USITC Pub. 2910, at I-30.

[165] CR at V-9, PR at V-7.

[166] CR at V-9, PR at V-7.

[167] CR at II-17, II-29, PR at II-8-9, II-16.

[168] CR at II-17, PR at II-9.

[169] CR and PR at Table II-1.

[170] The questionnaire responses in these reviews indicate that four out of five responding purchasers stated that the prices of imports from Argentina are lower than U.S. prices. All responding purchasers stated that prices of subject product from Brazil were lower than U.S. prices; five of eight responding purchasers stated that German products were cheaper than U.S. merchandise; two said prices were the same; and one stated that German prices were higher. CR at V-17, PR at V-8.

[171] Commissioner Bragg infers that, in the event of revocation, subject producers from Argentina, Brazil, and Germany will likely revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determinations.

3. Likely Impact of Subject Imports[172]

In its original determinations, the Commission found that, despite the domestic industry's increases in market share, shipments, production, and capacity utilization over the period of investigation, it experienced poor financial performance as a result of the adverse price effects resulting from the subject imports. The Commission determined that, although subject imports declined in 1994 and in interim 1995, their continued large and significant share of the market in 1994 caused poor operating results within the industry. The Commission found that underselling by the subject imports suppressed and depressed prices and also determined that improvements in many indicators during the first quarter of 1995 could not compensate for the adverse impact of the subject imports throughout the period of investigation.[173]

Following imposition of the orders, the domestic industry's financial condition improved somewhat from 1995 to 1997, but then deteriorated sharply as import levels increased and demand fell, resulting in a substantial operating loss in 1999 of $11.005 million.[174] [175] Domestic shipments, production, capacity utilization, profits, employment and worker productivity likewise declined precipitously,[176] and one U.S. producer, Vision Metals, Inc., representing *** percent of U.S. production, declared bankruptcy.[177] The industry recovered somewhat in 2000. Its production and capacity utilization rates increased markedly, as did its net sales, operating income, capital expenditures and hourly wages.[178]

We have considered whether the domestic industry is vulnerable to material injury if the orders were revoked.[179] [180] From 1995 to 2000, the domestic industry's U.S. shipments of certain seamless pipe declined

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[172] Commissioner Devaney concurs with the majority's findings but adds Italy to their analysis.

[173] Original Determinations, USITC Pub. 2910, at I-31-32.

[174] CR and PR at Table III-9. We note that ***. CR at III-18, PR at III-9. However, ***. See CR and PR at Table III-10.

[175] We find that the initial improvement in the state of the industry, which occurred during a period of relatively stable demand as measured by apparent U.S. consumption, was related to the orders.

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

[177] CR and PR at Table I-2 and n.5.

[178] CR and PR at Table C-3. However, the industry employed *** workers in 2000, compared to *** in 1999. Id.

[179] Commissioners Bragg, Miller, and Hillman find the domestic industry is vulnerable to material injury if the orders are revoked. Although several indicia of the health of the domestic industry improved from 1999 to 2000, the domestic industry suffered large operating losses in 1999, Vision Metals, Inc. filed for bankruptcy protection, and capacity utilization remains low. Moreover, as demonstrated by our 2000 Determinations on seamless pipe from the Czech Republic, Japan, Romania, and South Africa, the industry was, during the period of these reviews, again materially injured by an increase in low-priced imports. Based on the present record, we find that the industry remains susceptible to injury by imports.

[180] Chairman Koplan, Vice Chairman Okun, and Commissioner Devaney find the domestic industry is not vulnerable to material injury if the orders are revoked. Two of the primary causes of the downturn in the domestic industry's performance discussed above are no longer of significant concern. In mid-2000, antidumping duty orders were imposed to offset the materially injurious dumping of small diameter seamless pipe from the Czech Republic, Japan, Romania, and South Africa. In addition, in 2000, apparent U.S. consumption of small diameter seamless pipe increased dramatically, and there is some consensus that demand is likely to remain strong in the reasonably foreseeable future. Thus, in 2000, the domestic industry reported an operating margin of 6.1 percent, in line with reported margins for other years during the review period (2.3-8.3 percent, excluding the exceptional year of 1999). CR and PR at Table III-9. In 2000, only *** reported operating losses, and these mills were ***. CR and PR at Table III-10. Additionally, *** posted its best operating margins of the review period, despite the increased *** costs associated with ***.

by 24.6 percent, its production decreased by 25.2 percent, its capacity to produce subject seamless pipe decreased by 18.7 percent, and its capacity utilization decreased from 44.6 percent to 41.0 percent.[181]

We find that revocation of the antidumping duty orders would likely lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic product and significantly depress or suppress U.S. prices. We find further that the volume and price effects of the cumulated subject imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share.

The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales and revenue levels would have a direct adverse impact on the industry's profitability, as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in employment declines for domestic firms.

For all of the above reasons, we conclude that revocation of the antidumping duty orders on seamless pipe from Argentina, Brazil, and Germany likely would have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

D. Revocation of the Orders on Subject Imports From Italy Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time [182] [183]

1. Likely Volume of Subject Imports from Italy

In the Commission's original determination, subject imports from Italy were cumulated with those from Argentina, Brazil, and Germany. U.S. shipments of subject imports from Italy fluctuated at low levels, increasing from *** short tons in 1992 to *** short tons in 1993, then falling to *** short tons in 1994.[184] U.S. shipments of subject imports from Italy declined to *** short tons in 1995, then virtually disappeared from the U.S. market.[185]

The record in these reviews indicates that imports from Italy will not likely increase to significant levels if the orders are revoked. Subject imports from Italy entered the United States in relatively low volumes during 1992-94, and have remained low since imposition of the orders, despite the relatively low antidumping and countervailing duty margins assessed by Commerce.[186] Subject imports from Italy never

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

[182] Commissioner Devaney does not join this section.

[183] Commissioner Bragg notes that her negative determinations with regard to the antidumping and countervailing duty orders on Italy stem naturally from her determination that there is likely to be no discernible adverse impact on the domestic seamless pipe industry if the orders on Italy are revoked. See Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation. In particular, Commissioner Bragg is satisfied that revocation of the antidumping and countervailing duty orders on Italy would have no effect on the volume or pricing of these seamless pipe imports within a reasonably foreseeable time for the same reasons discussed in this section.

[184] CR and PR at Table I-1.

[185] CR and PR at Table I-1.

[186] CR and PR at Table I-1. U.S. shipments of subject imports from Italy totaled only *** short tons in 1996, *** short tons in 1997, *** short tons in 1998, and *** short tons in 1999. In 2000, U.S. shipments of subject imports from Italy were only *** short tons. These import shipment levels remained low despite antidumping and countervailing duty margins of 1.27 and 1.47 percent, respectively, which were assessed as a result of the orders imposed in 1995, and which were found to be the likely margins of dumping and subsidization as a result of the sunset reviews conducted by the Commerce Department. 65 Fed. Reg. 66708, 66711 (Nov. 7, 2000), and 66 Fed.

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accounted for more than *** percent of apparent U.S. consumption. ***.[187] Both Italian producers report little excess capacity, with capacity utilization rates over *** percent throughout most of the review period.[188]

Significantly, Dalmine, which accounted for *** percent of exports of subject merchandise from Italy to the United States in 1994, has restructured its seamless pipe operations to permanently reduce its capacity to produce and ship subject merchandise. Dalmine reduced its capacity to produce certain seamless pipe from *** short tons in 1995 to *** short tons in 2000.[189] Moreover, it has dismantled its hydrostatic testing machine, which is required to produce API 5L line pipe.[190] Thus, Dalmine can no longer triple-stencil its pipe as meeting the API 5L specification and is therefore limited in its ability to compete for sales to U.S. distributors, who normally demand triple-stenciled pipe.[191] Shipments to distributors accounted for approximately *** percent of domestic producers' shipments of seamless pipe and 100 percent of imports. Consequently, the limited quantity of subject product likely to be produced by Dalmine in the foreseeable future likely would not compete significantly with U.S. producers' sales to distributors.[192]

Moreover, the record does not indicate that Pietra, which accounted for only *** percent of subject exports from Italy in 1994, would begin exporting significant volumes of subject merchandise to the United States if the orders were revoked. *** of all Italian production is currently shipped to the home market, and Pietra has historically focused on Europe for at least *** percent of its exports.[193]

We do not find it likely that subject imports from Italy would increase substantially if the orders are revoked. We therefore conclude, based on the record in these reviews, that the likely volume of subject imports from Italy would not be significant in the reasonably foreseeable future if the orders were revoked.

2. Likely Price Effects of Subject Imports from Italy

Price comparisons of subject imports from Italy and the domestic product in the original investigations revealed 20 instances of underselling and seven of overselling.[194] There is little current pricing data due to the near absence of subject product from Italy in the U.S. market. The data that is on the record is mixed, showing both underselling and overselling.[195] While U.S. purchasers responding to the Commission's questionnaire stated that domestically-produced seamless pipe was higher-priced than subject pipe from Argentina, Brazil, or Germany, the U.S. purchasers were divided on whether prices for U.S.-

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[186] (...continued)
Reg. 13909, 13910 (Mar. 8, 2001).

[187] CR at II-9, PR at II-4.

[188] These Italian producers maintained capacity utilization rates throughout the period of review measuring *** percent in 1995, *** percent in 1996, *** percent in 1997, *** percent in 1998, *** percent in 1999, and *** percent in 2000. CR and PR at Table IV-9.

[189] Dalmine foreign producer questionnaire at 12 and 14. See also Tr. at 123-125 (Mr. Marco Radnic).

[190] CR at IV-15, PR at IV-5, Dalmine Posthearing Brief at 5-6. The record indicates that the hydraulic testing machine was removed and scrapped in order to reconfigure Dalmine's rolling mills. Tr. at 201-202 (Mr. Marco Radnic). See also Commission Verification Report on Dalmine S.p.A., April 25, 2001.

[191] CR at II-8, IV-15, PR at II-4, IV-6.

[192] CR at II-8, IV-15, PR at II-4, IV-6.

[193] CR at II-9, IV-16, D-15, PR at II-4, IV-6, D-8. Pietra's questionnaire response states that, "***." See also Dalmine Posthearing Br. at 3.

[194] Original Determinations at II-74.

[195] In two quarters, product 1 from Italy undersold the domestic product with margins of *** percent and *** percent. In another quarter, product 5 from Italy oversold the U.S. product by a margin of *** percent. CR at V-18, PR at V-8. The two instances of underselling took place in ***. We note that product 1 is the triple-stenciled (or more) pipe and that, as previously discussed, imports of such pipe are likely to be insignificant due to Dalmine's inability to produce the product.

produced seamless pipe were higher than prices of the product from Italy. Moreover, given that the likely volume from Italy would not be significant upon revocation, any such imports are not likely to have significant negative price effects. Consequently, we do not find that removal of the orders on subject merchandise from Italy would likely have a significant depressing or suppressing effect on prices for the domestic like product.

3. Likely Impact of Subject Imports from Italy

We have discussed the condition of the domestic industry, and whether it is vulnerable, in our analysis of the subject imports from Argentina, Brazil, and Germany. With respect to Italy, we conclude that revocation of the subject antidumping and countervailing duty orders would not likely lead to a significant volume of subject imports from Italy that would undersell the domestic like product and suppress or depress U.S. prices to any significant degree. Given our findings regarding likely volume and price effects, and considering all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, we do not find it likely that revocation of the antidumping and countervailing duty orders on seamless pipe from Italy would have a significant adverse impact on the domestic industry in the reasonably foreseeable future.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders covering imports of certain seamless pipe from Argentina, Brazil, and Germany would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. We also determine that revocation of the antidumping and countervailing duty orders on certain seamless pipe from Italy would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.[196]

[196] Commissioner Devaney dissenting with respect to Italy.

SEPARATE VIEWS OF COMMISSIONER LYNN M. BRAGG REGARDING CUMULATION

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Argentina, Brazil, Germany, and Italy
Inv. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review)

Based upon the record in these reviews, I join the Commission majority in finding that, under section 751(c) of the Tariff Act of 1930, as amended, revocation of the antidumping duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe ("seamless pipe") from Argentina, Brazil, and Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I also join the Commission majority in finding that revocation of the antidumping and countervailing duty orders on seamless pipe from Italy is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I provide the following separate views to detail my cumulation analysis for these grouped sunset reviews.

I. Cumulation

A. Analytical Framework

I have previously described the analytical framework that I employ to assess cumulation in the context of grouped sunset reviews.[1] The sequence of my analysis differs from that of my colleagues in that I first assess whether there is likely to be a reasonable overlap of competition in the event of revocation, before addressing whether revocation of any of the orders would be likely to have no discernible adverse impact on the domestic industry.

B. Reasonable Overlap of Competition

In the original investigations, the Commission determined that there was a reasonable overlap of competition between subject imports from Argentina, Brazil, Germany, and Italy and the domestic like product, as well as among subject imports from each of the subject countries.[2] The record in these reviews continues to support this finding of a reasonable overlap of competition. Subject imports from Argentina, Brazil, Germany, and Italy and the domestic like product are likely to: (1) be fungible;[3] (2) sold or offered for sale in the same geographical markets;[4] (3) share similar channels of distribution;[5] and (4) be

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[1] See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999) at 27-30. See also, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269-270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (March 2000) at 27-32.

[2] Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Final), USITC Pub. 2910 (July 1995)("Original Determinations") at I-20-23.

[3] CR and PR at Tables II-2, II-4-10.

[4] CR at II-2, PR at II-1.

[5] CR at II-2, PR at II-1.

simultaneously present in the U.S. market.[6] Having found a likely reasonable overlap of competition in the event of revocation, I next address the issue of no likely discernible adverse impact.

C. No Likely Discernible Adverse Impact

1. Brazil, Germany, and Argentina

The record indicates that Brazilian and German producers possess excess capacity which could be made available for export to the United States.[7] The record also indicates that German producers are *** export-oriented, while Brazilian producers also export a *** portion of their production.[8] With respect to the subject producer in Argentina, *** of Siderca's alloy shipments (which represent *** of Siderca's subject production) are produced according to specifications traditionally considered to be carbon.[9] The record further indicates that Siderca is *** export-oriented and possesses excess inventories.[10] In addition, I did not find Siderca's argument that it is limited in its ability to increase exports to the United States by existing relationships with purchasers in third country markets persuasive.[11] I therefore find that subject producers in Argentina, Brazil, and Germany have the ability to increase subject imports into the United States in the event of revocation.

I also find that seamless pipe prices are generally higher in the United States than elsewhere,[12] thus providing an incentive for subject producers to increase production for sale in the U.S. market, ship from existing inventories to the United States, and/or redirect shipments from third-country markets to the United States. Accordingly, I find that revocation of the antidumping duty orders covering seamless pipe from Argentina, Brazil, and Germany, individually, is likely to have a discernible adverse impact on the domestic industry; such imports are therefore amenable to cumulation.

2. Italy

Regarding Italy, the record indicates that Italian respondent Dalmine has only a limited ability to compete in the U.S. market given that it is not able to triple stencil its products.[13] The record further indicates that Dalmine, which represented *** of subject Italian exports to the United States during the original investigations (1994), currently represents *** of total Italian subject merchandise production.[14] The only other Italian subject producer, Pietra, therefore represents *** Italian subject merchandise production.[15] Thus, to the extent that Italian production may impact the domestic industry, the potential would appear to be limited to production by Pietra. Significantly, at the time of the original investigations, Pietra represented only *** percent of Italian subject exports to the United States (1994). In addition, there is no indication that Pietra has ever focused its exports on the U.S. market, despite a relatively low antidumping margin of 1.27 and countervailing duty margin of 1.47, margins which have not changed since the original investigations.[16]

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[6] CR at I-26, PR at I-21; CR at II-2, PR at II-1.
[7] CR and PR at Tables IV-5, IV-7.
[8] CR and PR at Tables IV-5, IV-7.
[9] CR at IV-4 n.5, PR at IV-3 n.5; Siderca's Posthearing Brief at 5.
[10] CR and PR at Table IV-3.
[11] See Commission majority discussion at n.157, which I join.
[12] CR at V-17-18, PR at V-8; Tr. at 18, 28, 31.
[13] Commission Verification Report of Dalmine S.P.A. (April 25, 2001) at 3.
[14] CR at IV-15-16, PR at IV-5-6; CR and PR at Tables C-16-17.
[15] CR at IV-15-16, PR at IV-5-6; CR and PR at Tables C-16-17.
[16] CR at IV-16, PR at IV-6.

Upon review of the record in these reviews, there is no indication that, in the event of revocation, Pietra is likely to change its past behavior and begin to increase its exports of subject merchandise to the United States. The record therefore indicates that an increase in the volume of subject imports from Italy as a result of revocation is unlikely. Accordingly, I determine that subject imports from Italy are likely to have no discernible adverse impact on the domestic industry in the event of revocation; such imports are therefore not amenable to cumulation.

II. Conclusion

Based upon the foregoing analysis, I find that revocation of the antidumping duty orders covering seamless pipe from Argentina, Brazil, and Germany, individually, is likely to have a discernible adverse impact on the domestic industry, and that revocation of the orders on subject imports from Italy is likely to have no discernible adverse impact on the domestic industry. I therefore cumulate the likely volume and price effects of subject imports from Argentina, Brazil, and Germany,[17] but do not cumulate subject imports from Italy.[18]

[17] See Commission majority discussion at Section IV.C., which I join.
[18] See Commission majority discussion at Section IV.D., which I join.