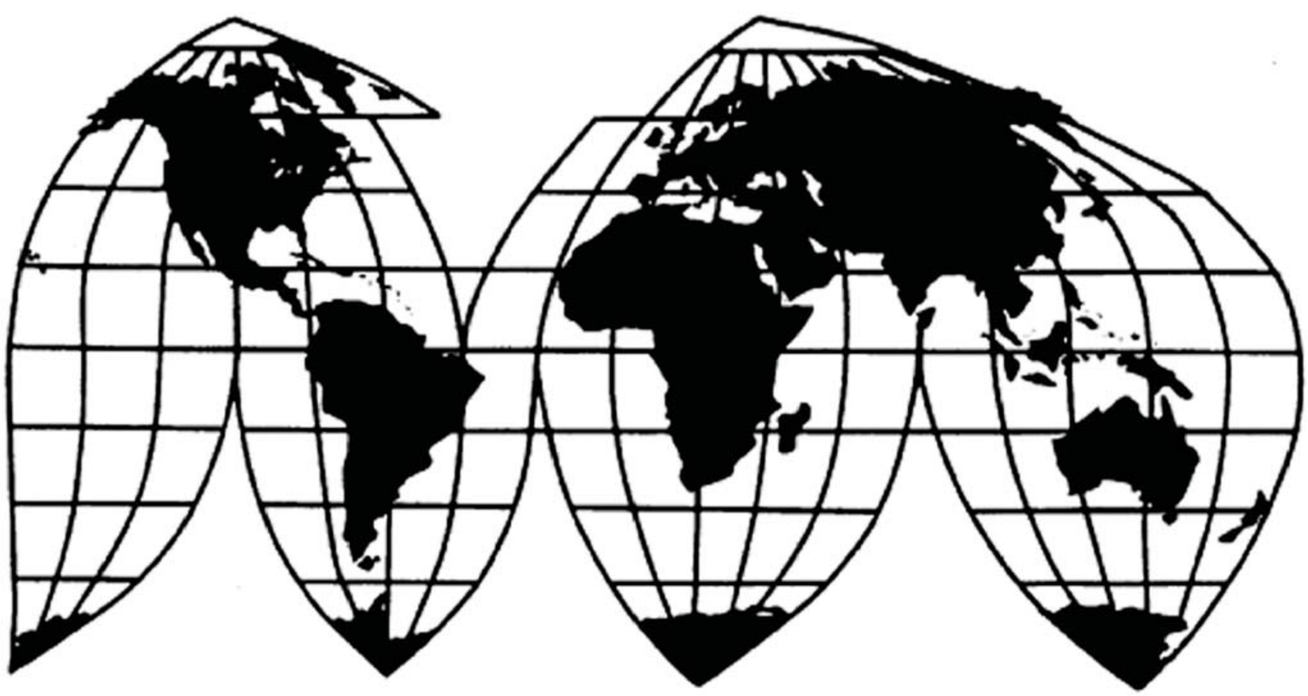
Circular Welded Carbon-Quality Steel Pipe from India, Oman, the United Arab Emirates, and Vietnam

Investigation Nos. 701-TA-482-484 and 731-TA-1191-1194 (Final) (Remand)

Publication 4521 **February 2015**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

Staff assigned

Keysha Martinez, Investigator
Karl von Schriltz, Attorney
Douglas Corkran, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

Circular Welded Carbon-Quality Steel Pipe from India, Oman, the United Arab Emirates, and Vietnam

Investigation Nos. 701-TA-482-484 and 731-TA-1191-1194 (Final) (Remand)

Publication 4521 **February 2015**

VIEWS OF THE COMMISSION

By opinion and order dated October 15, 2014, the U.S. Court of International Trade affirmed in part and remanded in part the Commission's negative determinations in the antidumping duty investigations of *Circular Welded Carbon-Quality Steel Pipe ("CWP") from India, Oman, the United Arab Emirates ("UAE"), and Vietnam* and the countervailing duty investigations of CWP from India, Oman, and the UAE.[1] Upon consideration of the remand order and evidence in the record of these investigations, we determine again that an industry in the United States is not materially injured or threatened with material injury by reason of imports of CWP from India, Oman, the UAE, and Vietnam that are sold in the United States at less than fair value ("LTFV"), and that are subsidized by the governments of India, Oman, and the UAE.[2]

I. BACKGROUND

On November 14, 2012, the Commission determined that an industry in the United States was not materially injured or threatened with material injury by reason of CWP imported from India, Oman, the UAE, and Vietnam.[3]

[1] *See JMC Steel Group v. United States*, Court No. 13-00022, Slip. Op. at 16-19 (Ct. Int'l Trade Oct. 15, 2014) ("Oct. 15, 2014 Opinion").

[2] Vice Chairman Pinkert and Commissioner Williamson again determine that an industry in the United States is materially injured by reason of imports of CWP from India, Oman, the UAE, and Vietnam that are sold in the United States at LTFV, and that are subsidized by the governments of India, Oman, and the UAE. They adopt their dissenting views in their entirety. *See CWP from Oman, India, the UAE, and Vietnam*, Inv. Nos. 701-TA-482-484 and 731-TA-1191-1194 (Final), USITC Pub. 4362 (Dec. 2012) ("Public Views") at 1 n.2, 37-40.

[3] *See* Public Views, USITC Pub. 4362 at 1. Chairman Williamson and Commissioner Pinkert made affirmative injury determinations for all four countries. *Id.* at 1 n.2.

On January 1, 2013, petitioner and domestic producer JMC Steel Group ("JMC") filed a summons at the U.S. Court of International Trade followed, on February 8, 2013, by a complaint. Petitioners and domestic producers Allied Tube and Conduit ("Allied"), Wheatland Tube ("Wheatland"), and United States Steel Corporation ("U.S. Steel") were subsequently granted leave to appear as Plaintiff-Intervenors. The Plaintiffs challenged various aspects of the Commission's determinations.

On October 15, 2014, the Court issued an opinion and order, affirming in part and remanding in part the Commission's determinations. The Court affirmed many aspects of the Commission's determinations that were challenged by the Plaintiffs. In particular, the Court affirmed the Commission's findings that, notwithstanding the significant increase in subject import volume and market share during the period of investigation ("POI"), the increase in subject import volume and market share was not accompanied by significant adverse price effects and did not correlate with the industry's financial performance.[4] The Court also sustained the Commission's reliance on pre-POI data to provide historical context for its analysis, including the Commission's finding that subject imports did not negatively affect the domestic industry's market share levels, which remained higher in 2010 and 2011 than during the 2000-2008 period, although down from 2009, and higher in the first half of 2012 than during the 2000-2007 period, although down from the first half of 2011.[5]

[4] *See* Oct. 15, 2014 Opinion at 16-19, 31-32. As further support for its finding, the Commission explained that subject imports did not prevent the domestic industry from increasing its shipments by 10.2 percent, and Plaintiffs did not challenge this aspect of the Commission's analysis. Public Views, USITC Pub. 4362 at 22.

[5] *See* Oct. 15, 2014 Opinion at 43-45.

After sustaining the Commission's use of a correlation analysis to assess the price effects of subject imports,[6] the Court held that substantial evidence supported the Commission's finding that there was no correlation between the increase in subject import volume and any adverse price effects on the domestic like product.[7] The Commission reasonably found no significant price depression, the Court reasoned, based on evidence that prices for three of four domestic pricing products increased during the POI, among other evidence.[8] The Court held that the Commission reasonably found that increased subject import volume did not significantly suppress domestic prices because the increase was accompanied by a decline in the industry's ratio of cost of goods sold ("COGS") to net sales from 105.1 percent in 2009 to 89.1 percent in 2011,[9] while the slight increase in the industry's COGS to net sales ratio in interim 2012 relative to interim 2011 was accompanied by a significant decline in subject import volume and market share.[10] As further explained by the Court, the Commission reasonably found additional support for its finding of no significant price suppression in evidence that the industry's metal margin (the difference between the industry's unit raw material cost and unit net sales value) increased from $205 in 2009 to $301 in 2010, $306 in 2011, and $308 in interim 2012, while the industry's ratio of raw material costs to net sales declined from 78.5 percent in 2009 to 71.2 percent in 2011.[11]

[6] Oct. 15, 2014 Opinion at 14.
[7] Oct. 15, 2014 Opinion at 16.
[8] Oct. 15, 2014 Opinion at 17-18.
[9] Oct. 15, 2014 Opinion at 18.
[10] Oct. 15, 2014 Opinion at 18.
[11] Oct. 15, 2014 Opinion at 18-19.

With respect to the Commission's impact analysis, the Court held that substantial evidence supported the Commission's finding of no correlation between subject import volume and the domestic industry's performance.[12] In this regard, the Court stated that the Commission reasonably supported its finding with evidence that the industry's performance improved by most measures when subject imports captured market share from the domestic industry between 2009 and 2010.[13] By contrast, the industry's operating income margin declined between 2010 and 2011, although the industry's market share was stable, and reached a period high in the first half of 2011, although subject import market share also increased to a period high.[14] In sustaining the Commission's analysis, the Court rejected the Plaintiffs' assertion that subject imports injure the domestic industry *per se* if they capture most of the market share lost by the domestic industry or secure a greater portion of the domestic market's demand growth.[15] The Court also affirmed the Commission's analysis of domestic plant closures, holding that the Commission reasonably concluded that it could not ascribe Welded Tube's plant closure to subject imports and that Allied's closure of its mill, though due in part to subject imports, had little impact on the domestic industry.[16] Finally, the Court affirmed the Commission's reliance on data from the interim periods,[17] and its negative threat finding.[18]

[12] Oct. 15, 2014 Opinion at 31.
[13] Oct. 15, 2014 Opinion at 31.
[14] Oct. 15, 2014 Opinion at 31-32.
[15] Oct. 15, 2014 Opinion at 33-34.
[16] Oct. 15, 2014 Opinion at 36-37.
[17] Oct. 15, 2014 Opinion at 39-40.
[18] *See* Oct. 15, 2014 Opinion at 48-56.

The Court remanded two aspects of the Commission's determinations. First, the Court remanded the Commission's reliance on the absence of confirmed lost sales and revenue allegations as further support for its finding of no significant price depression and suppression. The Court held that the Commission made an inference adverse to the domestic industry by finding that the domestic producers' failure to provide "the requested information" on lost sales and revenue supported its finding of no significant price depression or suppression, without first finding that the producers failed to cooperate to the best of their ability with a request for information, as required under 19 U.S.C. § 1677e(b).[19] The Court indicated that the Commission "may collect additional evidence relevant to this issue" and reconsider any aspect of the determinations that relied upon the prior findings concerning lost sales and revenue.[20]

Second, the Court held that the Commission's consideration of the business cycle was legally insufficient because the Commission "did not clearly address whether the improvements in 'nearly every measure of industry performance' may appear significant because of the broader economic recovery, thereby masking the injurious impact of subject imports on the domestic industry."[21] The Court remanded "so that the Commission may explain how it has evaluated the relevant economic factors bearing on the state of the domestic industry within the context of the business cycle . . . mak{ing} additional determinations, including reconsidering issues otherwise addressed and affirmed in this opinion, as are necessary to account for such explanations."[22]

---

[19] Oct. 15, 2014 Opinion at 23.
[20] Oct. 15, 2014 Opinion at 23.
[21] Oct. 15, 2014 Opinion at 29.
[22] Oct. 15, 2014 Opinion at 30.

On December 8, 2014, the Commission published notice of its remand proceeding in the Federal Register.[23] In the notice, the Commission stated that it was not reopening the record, but invited parties to file comments concerning how the Commission could best comply with the Court's remand instructions.[24]

On December 24, 2014, comments were jointly filed by the domestic interested parties JMC, Allied, Wheatland Tube, and U.S. Steel.[25] Comments were also filed, respectively, by the respondent interested parties Universal Tube and Plastic Industries, Ltd., KHK Scaffolding & Formwork, LLC, and Universal Tube and Pipe Industries (collectively, "Universal"), which are foreign producers and exporters of subject merchandise; Zenith Birla (India) Limited, Zenith (USA) Inc., and Conares Metal Supply Limited (collectively, "Zenith"), which are foreign producers, exporters, and importers of subject merchandise; and Al Jazeera Steel Products Co. SAOG ("Al Jazeera"), which is a foreign producer and exporter of subject merchandise.

II. Domestic Like Product, Domestic Industry, Negligibility, Cumulation, Conditions of Competition, Threat, and Other Issues either Affirmed by the Court or Not Appealed

We have considered the record as a whole in light of the Court's remand instructions. The Commission observes, however, that it is not reconsidering those issues either affirmed by the Court or not subject to appeal, and therefore adopts its findings, analysis, and conclusions with respect to those issues in their entirety, including domestic like product, domestic

[23] 79 Fed. Reg. 72699.

[24] 79 Fed. Reg. 72699.

[25] On December 16, 2014, the domestic interested parties JMC, Allied, Wheatland Tube, and U.S. Steel filed a letter requesting permission to file joint comments of no more than 35 pages in length, in excess of the 20 page limit for such comments provided in the Commission's scheduling notice. Letter from John R. Magnus to Lisa Barton, dated December 16, 2014 (EDIS Doc. No. 547949). The Commission granted the request on December 17, 2014. Letter from Lisa Barton to John R. Magnus, dated December 17, 2014 (EDIS Doc. No. 548123).

industry, negligibility, cumulation, legal standards, and conditions of competition. We also adopt those portions of the Original Views pertaining to the analysis of volume, price, impact, and threat that were affirmed by the Court, including the portions summarized in section I above, or not subject to appeal. Although the Court indicated that the Commission may reconsider issues otherwise addressed and affirmed by the Court in complying with its remand instructions, we find it unnecessary to do so. In accordance with the Court's instructions, we reconsider below the analysis of lost sales and revenue and the evaluation of the relevant economic factors bearing on the state of the domestic industry within the context of the business cycle.

III. Lost Sales and Revenue

A. The Court's Instructions

In addressing the Plaintiffs' challenge to the Commission's reliance on the absence of confirmed lost sales and revenue allegations, the Court held that "{o}nce the Commission decided to rely on anecdotal evidence . . . it was . . . required to address significant arguments of the parties which impacted the reliability of its reasoning and conclusions," including Plaintiffs' argument that domestic producers were incapable of reporting such allegations.[26] The Court found the Commission's explanation for rejecting that argument, that Plaintiffs simply failed to provide the requested information, inadequate in light of the statutory provisions governing "the Commission's handling of situations such as this."[27] Specifically, the Court reasoned that the Commission made an inference adverse to the domestic industry, that

[26] Oct. 15, 2014 Opinion at 22 (*citing U.S. Steel Corp. v. United States*, 856 F.Supp.2d 1318, 1321 (Ct. Int'l Trade 2012)).

[27] Oct. 15, 2014 Opinion at 22.

the domestic producers' failure to provide "the requested information" on lost sales and revenue supported its finding of no significant price depression or suppression, without first finding that the producers failed to cooperate to the best of their ability with a request for information, as required under 19 U.S.C. § 1677e(b).[28] Accordingly, the Court remanded the determinations for "the ITC to reconsider its findings with regard to lost sales and revenue," indicating that the Commission "may collect additional evidence relevant to this issue" and reconsider any aspect of the determinations that relied upon the prior findings concerning lost sales and revenue.[29]

B. Party Arguments

In their joint comments, the domestic interested parties argue that when the adverse inference taken against the domestic producers is removed, the record supports a finding of significant lost sales and revenue.[30] According to them, the U.S. Court of International Trade has recognized that with fungible goods such as CWP, volume data rather than anecdotal evidence may be the best indicator of lost sales, making evidence of actual lost sales unnecessary.[31] Applying that principal to this case, the domestic interested parties assert that pervasive subject import underselling, coupled with the significant increase in subject import

[28] Oct. 15, 2014 Opinion at 23.

[29] Oct. 15, 2014 Opinion at 23. The Court also reasoned that the Commission's handling of domestic producers unable to report lost sales and revenue allegations was governed by 19 U.S.C. § 1677m(c), under which the producers could have notified the Commission of their inability to provide the requested information and the Commission could have modified its request to avoid imposing an unreasonable burden. *Id.* at 22-23. The Court found the applicability of this provision to this case unclear, however, because the record was ambiguous as to whether the domestic producers took the proper steps to invoke the provision. *Id.* Having reexamined the record, we observe that there is no evidence that the domestic interested parties invoked this statutory provision, nor do the domestic interested parties claim to have done so in their joint remand comments.

[30] Domestic Interested Parties' Comments at 19.

[31] Domestic Interested Parties' Comments at 20 (citations omitted).

volume and market share at the domestic industry's expense between 2009 and 2011, establishes that the industry lost significant sales to subject imports.[32] They also claim that the domestic industry's market share loss to subject imports during the 2009-2011 period would have been worse had the industry not reduced its prices in the second half of 2011, thereby recouping some market share lost to subject imports.[33] In the domestic interested parties' view, the domestic industry's need to reduce prices in the second half of 2011 to regain market share lost to subject imports is evidence of lost revenues.[34]

Universal and Al Jazeera argue that the Commission did not take an adverse inference against the domestic producers, but rather found that the absence of any evidence supporting the producers' lost sales and revenue allegations was consistent with its finding of no price depression or suppression.[35] As additional evidence supporting this finding, Universal notes that a majority of responding domestic producers reported that they had not reduced prices or rolled back announced price increases to avoid losing sales to subject imports, and had not lost sales to subject imports, during the POI.[36]

Zenith argues that the Commission should explain that its analysis of lost sales and revenue allegations was not necessary to support its finding of no significant price depression or suppression.[37]

---

[32] Domestic Interested Parties' Comments at 20-21. Citing pricing product data, the domestic interested parties claim that the domestic industry lost market share to subject imports as underselling margins increased during the POI. *Id.*

[33] Domestic Interested Parties' Comments at 21.

[34] Domestic Interested Parties' Comments at 22.

[35] *See* Universal's Comments at 1-5; Al Jazeera's Comments at 2-3.

[36] Universal's Comments at 6-7. Universal also notes that three responding domestic producers, including two of the largest producers, declined to respond to these questions. *Id.*

[37] Zenith's Comments at 10.

C. Analysis

The Court has already held that substantial evidence supports our original findings that subject imports neither depressed nor suppressed domestic prices to a significant degree,[38] and we adopt those findings here in their entirety.[39] Consequently, we have no need to rely on the absence of confirmed lost sales and revenue allegations as further support for these findings, and do not do so.[40]

Additionally, we wish to clarify that we did not, nor did we intend to, take an adverse inference against the domestic interested parties for their alleged inability to report lost sales and revenue allegations. The Commission does not require domestic producers to report lost sales and revenue allegations in the way that it requires domestic producers to report certain other types of information, such as trade and operating data, in domestic producers' questionnaires. Rather, petitioners normally volunteer lost sales and revenue allegations in

---

[38] *See* Oct. 15, 2014 Opinion at 16-19.

[39] *See* Original Views, USITC Pub. 4362 at 23-24.

[40] We are also unpersuaded by the domestic interested parties' characterization that the increase in subject import volume and market share between 2009 and 2011 constitutes evidence of lost sales, and that the decline in domestic prices in the second half of 2011 relative to the first half of 2011 constitutes evidence of lost revenue. *See* Domestic Interested Parties' Comments at 20-22. The Commission's longstanding approach to analyzing lost sales and revenue has been to assess the magnitude of lost sales and revenue allegations made by domestic producers and confirmed by purchasers. In the absence of any compelling reason to depart from our normal practice, we decline to do so. *See* October 15, 2014 Opinion at 21-22 (holding that the court "has never required the Commission to examine volume in lieu of anecdotal evidence" and that "the ITC did not err in its reliance on anecdotal evidence of lost sales or revenues."). Furthermore, contrary to the domestic interested parties' argument, we have found that the increase in subject import volume and market share had no significant adverse effects on the domestic industry, and that subject imports neither depressed nor suppressed domestic like product prices to a significant degree. *See* Original Views, USITC Pub. 4362 at 22, 23-24; *see also* Section IV.C., below. We have also considered and rejected the domestic interested parties' argument that there was a causal link between subject imports and the domestic industry's performance in the second half of 2011, and we adopt that analysis here in its entirety. *See* Original Views, USITC Pub. 4362 at 40-41.

their antidumping and countervailing duty petitions, as a means of buttressing their injury allegations.[41] Although the Commission invites domestic producers to report additional lost sales and revenue allegations in domestic producers' questionnaires, responses to these questions are voluntary and the questions make clear that responding producers are not to repeat lost sales and revenue allegations included in the petition. Domestic producers are requested to report certain information for each of their lost sales and revenue allegations, including contact information for the purchasers to whom sales or revenues were allegedly lost, so that Commission staff may investigate the allegations, and ascertain whether purchasers agree or disagree with them. The Commission staff investigates such allegations to the fullest extent possible even when producers are unable to provide all of the requested details of a lost sales or revenue allegation.

In these investigations, the domestic interested parties claimed that they lost sales and revenue to subject imports, but provided no formal lost sales or revenue allegations in their petition or questionnaire responses.[42] Because the reporting of lost sales and revenue allegations is voluntary, however, the domestic interested parties' alleged inability to report such allegations to the Commission would not have constituted a failure of the domestic interested parties to cooperate to the best of their ability with a request for such allegations, within the meaning of the statutory provision governing adverse inferences.[43]

When an interested party fails to comply to the best of its ability with a request for information, the Commission's practice has been to rely on the information available, rather

[41] *See* 19 C.F.R. § 207.11(b)(2)(v).
[42] CR at V-21; PR at V-12; *see also* Hearing Tr. at 28, 96 (Magno), 94-95 (Schagrin).
[43] 19 U.S.C. § 1677e(a).

than resorting to the use of adverse inferences. This comports with the Commission's role of making determinations that affect multiple members of an industry.[44] In the rare instances in which the Commission has intended to take an adverse inference against an uncooperative party, it has done so explicitly.[45]

IV. The Business Cycle

A. The Court's Instructions

In addressing the Plaintiffs' challenge to the Commission's consideration of the business cycle, the Court held that:

> While the Commission referenced the dismal economic conditions that affected the industry at the beginning of the POI, it did not clearly address whether the improvements in 'nearly every measure of industry performance' may appear significant because of the broader economic recovery, thereby masking the injurious impact of subject imports on the domestic industry. Without expressly discussing the effects of the economic recovery on the domestic industry and explicitly addressing those effects in contrast to the effects of subject imports, the court cannot assume that the Commission has evaluated all relevant factors having a bearing on the state of the industry 'within the contest of the business cycle.'

---

[44] *See Geo Specialty Chemicals, Inc. v. United States*, 33 CIT 125, 136 (2009) ("Unlike the Department of Commerce, which often draws adverse inferences against particular non-cooperative companies when calculating dumping margins . . . the Commission rarely draws adverse inferences because its decisions affect all industry participants.") (citing Statement of Administrative Action for the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994), as reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99).

[45] *See*, *e.g., Internal Combustion Industrial Forklift Trucks from Japan*, Inv. 731-TA-377 (Review), USITC Pub. 3287 (April 2000) at 13 n.68 ("We take an adverse inference against Komatsu, Toyota, and Mitsubishi Heavy in selecting from the facts otherwise available and rely upon the Japanese production capacity figures provided by U.S. producer NACCO."); *Polychlorprene Rubber from Japan*, Inv. No. AA1921-129 (Review), USITC Pub. 3212 (July 1999) at 13 n.83 ("We take an adverse inference against Denka in selecting from the facts otherwise available and rely upon the higher Japanese production capacity figures provided by the U.S. producer.").

> The court recognizes that certain other issues discussed in this opinion (*e.g.*, the use of pre-POI data, *see infra*) could be considered part of the Commission's proper consideration of the business cycle; however, in light of the emphasis placed on the distortive effect of the 2009 economic collapse, it was incumbent upon the Commission to be clear about how it evaluated all relevant factors, particularly in the aftermath of the economic collapse, in the context of the business cycle.[46]

Accordingly, the Court remanded the determinations "so that the Commission may explain how it has evaluated the relevant economic factors bearing on the state of the domestic industry within the context of the business cycle . . . mak{ing} additional determinations, including reconsidering issues otherwise addressed and affirmed in this opinion, as are necessary to account for such explanations."[47]

B. Party Arguments

The domestic interested parties argue that the Commission should "isolate" the impact of subject imports on the domestic industry, while "controlling" for the impact of the business cycle, in two ways.[48] First, they contend that market share shifts during the POI, which were independent of absolute changes in demand, support affirmative determinations.[49] In their view, the domestic industry would have increased its U.S. shipments by far more than 10.2 percent between 2009 and 2011 had subject imports not captured a disproportionate share of the increase in apparent U.S. consumption during the period, including 41.2 percent of the increase between 2009 and 2010 and 38.6 percent of the increase between 2010 and 2011.[50]

[46] Oct. 15, 2014 Opinion at 29-30.
[47] Oct. 15, 2014 Opinion at 30.
[48] Domestic Interested Parties' Comments at 4.
[49] *See* Domestic Interested Parties' Comments at 4, 9.
[50] Domestic Interested Parties' Comments at 6-7.

Accordingly, they argue, the 5.3 percentage point increase in subject import market share between 2009 and 2011 came directly at the expense of the domestic industry, which lost 5.8 percentage points of market share during the same period.[51] The domestic interested parties assert that these adverse volume effects alone, which in their view represented $100 million in lost revenues, are sufficient to support affirmative determinations.[52]

Second, they argue that the Dissenting Views correctly considered the impact of subject imports independent of the business cycle in recognizing that subject imports significantly depressed and suppressed domestic like product prices.[53] In their view, the Dissent correctly found significant price depression because domestic prices for all four pricing products declined between the second and third quarters of 2011, when subject import volume peaked, despite increasing demand.[54] The Dissent correctly found significant price suppression because the domestic industry experienced a cost-price squeeze between 2010 and 2011, despite increasing demand.[55]

The domestic interested parties also claim that significant subject import underselling, coupled with the increase in subject import volume and market share, prevented the industry

[51] Domestic Interested Parties' Comments at 7-8.

[52] Domestic Interested Parties' Comments at 8-9.

[53] Domestic Interested Parties' Comments at 10.

[54] Domestic Interested Parties' Comments at 11. The domestic interested parties also argue that the Commission's finding that domestic prices were higher in the second quarter of 2012 than in the first quarter of 2009 for three of four pricing products does not support negative determinations. *Id.* at 15. When the business cycle is taken into account, they claim, domestic prices for three of four pricing products were little changed between the first quarter of 2009 and the second quarter of 2012, establishing price suppression, and domestic prices for all four pricing products declined between interim 2011 and interim 2012, establishing price depression. *Id.* at 15-16. We note that the Court has affirmed our finding that subject imports neither depressed nor suppressed domestic like product prices to a significant degree. *See* October 15, 2014 Opinion at 16-19.

[55] Domestic Interested Parties' Comments at 11.

from achieving the prices necessary to regain financial health.[56] In this regard, they contend that the domestic industry's operating profit margins of 3.5 percent in 2010 and 2.3 percent in 2011 were far lower than the industry's operating profit margin of 16.2 percent in 2008, and that the industry's operating profit margins in 2011 and interim 2012 were lower than the industry's operating profit margin of 3.3 percent in 2007, when there were over 700,000 short tons of unfairly traded imports from China.[57]

Finally, the domestic interested parties maintain that there was a strong relationship between subject import volumes and prices and the impact of subject imports on the domestic industry.[58] In this regard, they contend that subject import market share increased as subject import underselling margins increased between 2008 and 2010, and as the gap between the average unit value of subject import shipments and the average unit value of domestic industry shipments increased between 2010 and interim 2011.[59] Subject import market share only declined in the second half of 2011, they claim, after the domestic industry reduced its prices and subject import underselling margins declined.[60] The domestic interested parties also assert that for each pricing product, increases in subject import underselling margins were accompanied by declining domestic industry sales volumes for the product.[61]

The respondent interested parties argue that the Commission thoroughly analyzed the business cycle and reasonably concluded that the domestic industry's recovery from the

---

[56] Domestic Interested Parties Comments at 11-12.

[57] Domestic Interested Parties' Comments at 11-12 & n.49. The domestic interested parties' also note that the domestic industry's ratio of COGS to net sales was higher in 2011 and interim 2012, and the industry's operating income margin lower, than in 1991, 1998, 2005, 2006, and 2008. *Id.* at 12 n.49.

[58] Domestic Interested Parties' Comments at 12.

[59] Domestic Interested Parties' Comments at 12-13.

[60] Domestic Interested Parties' Comments at 13.

[61] *See* Domestic Interested Parties' Comments at 14-15.

recession was influenced primarily by the weak demand recovery and competition from nonsubject imports, not subject imports.[62] Despite these factors, they contend, most domestic industry performance indicators outperformed nonresidential construction spending, which was a key demand driver that declined 13.5 percent during the POI.[63] They further claim that the only industry performance indicators that declined during the POI -- market share, capacity, and employment -- did not reflect material injury.[64] In particular, they maintain that the industry's market share declined from an abnormally high level in 2009, due to the recession that year, to a level in 2010 and 2011 that was still higher than during the 2000-2008 period, thereby enabling the industry to benefit more from demand growth than in the past.[65] Finally, they argue that there is no evidence that the industry would have performed better but for subject imports because demand remained far below pre-recession levels and there was no correlation between subject import volume, market share, and prices, and the industry's performance during the POI.[66]

C. Analysis

The Court has instructed us to "expressly discuss[] the effects of the economic recovery on the domestic industry" and to "explicitly address[] those effects in contrast to the effects of subject imports."[67] As in our original views, we consider our analysis of the domestic industry's performance in the context of the severe economic downturn in 2009 that depressed apparent

---

[62] *See* Universal's Comments at 8-10; Zenith's Comments at 12; Al Jazeera's Comments at 4-6.
[63] *See* Universal's Comments at 10; Zenith's Comments at 19; Al Jazeera's Comments at 7-10.
[64] *See* Universal's Comments at 12-13; Zenith's Comments at 17-18; Al Jazeera's Comments at 11-13.
[65] *See* Universal's Comments at 11; Zenith's Comments at 17; Al Jazeera's Comments at 12.
[66] *See* Universal's Comments at 13; Zenith's Comments at 18-20; Al Jazeera's Comments at 14-16.
[67] Oct. 15, 2014 Opinion at 29.

U.S. consumption to a level 37.5 percent below that in 2008, and the weak demand recovery thereafter.[68] CWP demand is driven by the U.S. economy generally and more directly by nonresidential construction spending, and to a lesser extent residential construction spending.[69] Although U.S. gross domestic product increased after the first half of 2009, monthly nonresidential construction spending declined throughout 2009 before stabilizing in 2010-2012 at levels lower than in most of 2009,[70] and all parties agreed that the recovery in U.S. CWP demand was weak during the POI.[71] Apparent U.S. consumption increased from a period low of 1,235,065 short tons in 2009 to 1,404,869 short tons in 2010, and to 1,481,915 short tons in 2011, a level 20.0 percent higher than in 2009.[72] Apparent U.S. consumption was 795,851 short tons in interim 2012, up 5.9 percent from 751,399 short tons in interim 2011.[73]

The weakness of the recovery in CWP demand during the POI is evident from the fact that apparent U.S. consumption in 2011 remained well below pre-recession levels. Specifically, apparent U.S. consumption in 2011, at 1,481,895 short tons, remained 24.6 percent lower than apparent U.S. consumption in 2008, at 1,964,935 short tons.[74] It also remained 28.7 to 42.3 percent below the level of apparent U.S. consumption that prevailed during the 2000-2007 period, which ranged from 2,078,160 short tons to 2,566,352 short tons.[75]

---

[68] *CWP from Oman, India, the UAE, and Vietnam*, Inv. Nos. 701-TA-482-484 and 731-TA-1191-1194 (Preliminary), USITC Pub. 4298 (Dec. 2011) ("Preliminary Views") at Table C-1; CR/PR at Tables IV-9 and C-1.

[69] CR at II-12; PR at II-8.

[70] *See* CR/PR at Figures II-1 and II-2.

[71] *See* CR at II-14; PR at II-9; CR/PR at Figure II-2, Table II-3; *see also* Hearing Tr. at 33 (Johnson), 41 (Clark), 49 (Scott), 84-85 (Schagrin), 231-32 (Marshak); Allied's Posthearing Brief at 4.

[72] CR/PR at Tables IV-9 and C-1.

[73] CR/PR at Tables IV-9 and C-1.

[74] *Compare* Preliminary Views, USITC Pub. 4298, at Table IV-5 *with* CR/PR at Table IV-10.

[75] *See* EDIS Doc No. 496494.

Consistent with the Court's instructions, we first discuss the effects of the economic recovery on the domestic industry. Notwithstanding the weakness of the recovery in CWP demand, we find that the domestic industry's performance improved markedly during the POI according to every measure except market share, capacity, and employment.[76]

The 20.0 percent increase in apparent U.S. consumption between 2009 and 2011 enabled the domestic industry to increase its production by 15.3 percent and its U.S. shipments by 10.2 percent during the period.[77] Similarly, apparent U.S. consumption was 5.9 percent higher in interim 2012 than in interim 2011, spurring domestic industry production that was 6.3 percent higher and U.S. shipments that were 4.1 percent higher.[78]

Although the domestic industry's market share declined from 71.2 percent in 2009 to 65.6 percent in 2010 and 65.4 percent in 2011, the industry's market share in 2009 was elevated by the recession, which had a disproportionate impact on imports.[79] Moreover, the domestic industry's market share remained higher in 2010 and 2011 than during the 2000-2008 period.[80] Similarly, the domestic industry's market share in interim 2012, at 62.7 percent, was

[76] We adopt by reference our full discussion of the domestic industry's performance during the POI in the original views. *See* Public Views, USITC Pub. 4362 at 25-27; Confidential Views, *CWP from Oman, India, the UAE, and Vietnam*, Inv. Nos. 701-TA-482-484 and 731-TA-1191-1194 (Final) ("Confidential Views") at 34-37.

[77] CR/PR at Tables IV-9, C-1. As discussed in our original views, the domestic industry's end-of-period inventories declined as a share of production and were stable as a share of U.S. shipments and total shipments during the POI. *See* Original Views, USITC Pub. 4362 at 26 n.168.

[78] CR/PR at Tables III-3, C-1.

[79] Between 2008 and 2009, U.S. imports from all sources declined 48.4 percent, whereas U.S. shipments of domestically-produced CWP declined 31.6 percent. Preliminary Views, USITC Pub. 4298 at Table C-1.

[80] *See* Original Views, USITC Pub. 4362 at 22.

down from 63.8 percent in interim 2011 but higher than during the 2000-2007 period.[81] Thus, the domestic industry captured a sufficient portion of the increase in apparent U.S. consumption during the POI to maintain its market share at historically high levels.

Although the domestic industry's capacity declined 2.9 percent between 2009 and 2011, the record indicates that the decline resulted from the recession, not subject imports.[82] In fact, the slight reduction in capacity was accompanied by a stable level of capital investment by the industry, as numerous domestic producers invested in the expansion and enhancement of their facilities.[83] Moreover, the slight capacity decline, coupled with a 15.3 percent increase in industry production, boosted the industry's rate of capacity utilization from 46.3 percent in 2009 to 55.0 percent in 2011.[84] The industry's rate of capacity utilization was 58.9 percent in interim 2012, up from 54.9 percent in interim 2011, because industry capacity was 0.9 percent lower and industry production 6.3 percent higher in interim 2012 relative to interim 2011.[85]

Increased production and shipments during the POI translated into certain gains for production related workers in the domestic industry. Although industry employment declined 4.7 percent between 2009 and 2011, hours worked increased 15.9 percent and wages paid increased 23.7 percent during the period.[86] Industry employment was 2.0 percent higher and

[81] *See* Original Views, USITC Pub. 4362 at 22. We note that the domestic industry's lower market share in interim 2012 relative to interim 2011 was not due to subject imports, which were significantly lower in terms of both volume and market share in interim 2012 than in 2011. *See id.*

[82] *See* Original Views, USITC Pub. 4362 at 30; Confidential Views at 41-42 (the domestic interested parties acknowledged that the three plant closures that occurred during the 2009-2011 period resulted from the economic downturn); *see also* CR at III-11-12; PR at III-8; CR/PR at Table III-2 (all shutdowns and production curtailments during the 2009-2011 period occurred in 2009).

[83] *See* Original Views, USITC Pub. at 31; Confidential Views at 42-43.

[84] CR/PR at Tables III-3, C-1.

[85] CR/PR at Tables III-3, C-1.

[86] CR/PR at Tables III-7, C-1.

wages paid 6.6 percent higher in interim 2012 than in interim 2011, while hours worked were flat.[87] The industry's productivity was flat during the 2009-2011 period, but reached a period high in interim 2012.[88]

Consistent with recovering demand, domestic prices for three of four pricing products increased during the POI, along with the average unit value of the industry's U.S. shipments, while the industry's COGS to net sales ratio declined.[89] The industry's net sales value increased 25.9 percent between 2009 and 2011 and was 1.5 percent higher in interim 2012 than in interim 2011.[90]

The industry's recovering sales and prices translated directly into improved financial performance. The industry's operating income improved from a loss of $129.5 million in 2009, equivalent to negative 15.1 percent of net sales, to a positive $32.3 million in 2010, equivalent to 3.5 percent of net sales, and $25.2 million in 2011, equivalent to 2.3 percent of net sales.[91] As explained in our original views, the industry's operating income in 2011 would have been higher but for ***.[92] Although the domestic industry's operating income margin was lower in interim 2012 than in interim 2011, the industry's operating income margin reached a period high of 6.2 percent in interim 2011 at the same time that subject import market share peaked at

[87] CR/PR at Tables III-7, C-1.
[88] CR/PR at Tables III-7, C-1.
[89] Original Views, USITC Pub. 4362 at 30-31; Confidential Views at 30-32.
[90] CR/PR at Tables VI-1 and C-1.
[91] CR/PR at Tables VI-1, C-1.
[92] Confidential Views at 36 & n.177.

14.7 percent, while the industry's lower operating income margin in interim 2012 coincided with significantly lower subject import volume and market share.[93] As discussed in our original views, the industry's capital expenditures were stable during the POI, and its research and development expenses were minimal.[94]

Based on the preceding analysis, we find that the domestic industry improved its performance markedly by most measures, and experienced no significant decline in any measure of its performance, during the POI. In particular, the domestic industry recovered from an operating loss of $129.5 million in 2009, equivalent to negative 15.1 percent of net sales, to post an operating profit of $32.3 million in 2010, equivalent to 3.5 percent of net sales, even though apparent U.S. consumption increased only 13.7 percent between 2009 and 2010, and remained 28.5 percent below that in 2008.[95] The domestic industry's similar level of profitability in 2011 and interim 2012 is consistent with the reduced rate of demand growth toward the end of the POI.[96] We also find it significant that weak demand growth did not prevent the domestic industry from maintaining a stable level of capital expenditures during the POI, as numerous domestic producers invested to enhance and expand their capacity.[97]

We further find that the inability of the domestic industry to return to the performance levels achieved in 2008, prior to the economic downturn, was due to the anemic recovery in

---

[93] *See* CR/PR at Tables IV-2, IV-10, VI-1. The industry's operating income of $15.4 million in interim 2012, equivalent to 2.7 percent of net sales, was down from $34.2 million in interim 2011, equivalent to 6.2 percent of net sales. *Id.* at Tables VI-1, C-1.

[94] Original Views, USITC Pub. 4362 at 27; Confidential Views at 37.

[95] CR/PR at Tables VI-1, C-1; Preliminary Confidential Staff Report at Table IV-4.

[96] Apparent U.S. consumption increased 13.7 percent between 2009 and 2010 but only 5.5 percent between 2010 and 2011. CR/PR at Table C-1. Apparent U.S. consumption was 5.9 percent higher in interim 2012 than in interim 2011. *Id.*

[97] *See* Original Views, USITC Pub. 4362 at 31; Confidential Views at 42-43.

CWP demand during the POI.[98] Apparent U.S. consumption remained 24.6 percent lower in 2011 than in 2008, prior to the economic downturn, making it unsurprising that the domestic industry's U.S. shipments were 24.0 percent lower by quantity and 27.2 percent lower by value in 2011, as compared to 2008.[99] Although the domestic industry's prices and COGS to net sales ratio improved between 2009 and 2011, the weakness of the recovery in CWP demand restrained domestic prices and prevented a return to the COGS to net sales ratio that prevailed in 2008, when demand was much stronger.[100] The industry's lower U.S. shipments and net sales value in 2011 as compared to 2008 translated into relatively weaker operating and financial performance, in terms of production, capacity utilization, operating income, operating income margin, and other factors.[101]

---

[98] We consider 2008 to be an appropriate base year for our reconsideration of the business cycle, as the year immediately prior to the economic downturn and a year in which unfairly traded imports from China were eliminated. *See* Original Views, USITC Pub. 4362 at 22 n.134. Moreover, the record of these investigations contains ample information, collected in the preliminary phase of the investigations, concerning the CWP market, subject imports, and the domestic industry in 2008. *See* Preliminary Confidential Staff Report (EDIS Doc. No. 465976). Because interim 2012 period data is not comparable to full year 2008 data, however, we focus the endpoint of our analysis on 2011.

[99] *Compare* Preliminary Views, USITC Pub. 4298 at Table C-1 *with* CR/PR at Table C-1.

[100] The domestic interested parties assert that pricing product data is somehow independent of the business cycle. *See* Domestic Interested Parties' Comments at 10, 14. It is axiomatic, however, that demand for a good influences the price of the good, all else being equal. *See, e.g., Committee for Fair Beam Imports v. United States*, 27 CIT 932, 953 (2003) (affirming the Commission's finding that "the price decline at the end of the POI was a result of weak demand in this period and a rise of distributors' inventories."). The record here confirms that principal. That is, domestic prices for all four pricing products declined substantially between 2008 and 2009, as demand for CWP collapsed due to the economic downturn. *See* Preliminary Confidential Staff Report at Tables V-1-4. Although domestic prices for three of four pricing products were higher in the second quarter of 2012 than the first quarter of 2009, the weak demand recovery during the POI prevented domestic prices from returning to the higher levels achieved in 2008. *Compare* Preliminary Confidential Staff Report at Tables V-1-4 *with* CR at Tables V-1-4.

[101] The domestic interested parties argue that the domestic industry's operating income margin and COGS to net sales ratio in 2011 and interim 2012 should have approached the levels the industry achieved in 2005, 2006, and 2008. Domestic Interested Parties' Comments at 11-12 & n.49. As explained in our original views, the domestic industry could not have been expected to generate an

(continued…)

We next contrast the effects of the economic recovery with the effects of subject imports by considering whether subject imports had a significant adverse impact on the domestic industry that is distinguishable from the ill effects of the economic downturn of 2009 and the weak recovery thereafter. As in our original views, we find that the domestic industry's recovery would not have been significantly stronger but for the increase in subject import volume and market share, for the following reasons.

First, we do not find a significant decline in domestic industry performance during the POI that could support a significant adverse impact finding. The domestic industry's performance improved markedly during the period according to most measures, as discussed above, irrespective of trends in subject import volume, market share, and underselling. During the POI, the domestic industry: increased its U.S. shipments and maintained a market share that compared favorably to that during the 2000-2008 period; increased prices on three of four pricing products and the average unit value of its U.S. shipments also increased; reduced its COGS to net sales ratio; and improved its operating income and operating income margin,

---

(…*continued*)
operating income margin approaching or exceeding 9.0 percent in 2011, as it did in 2005, 2006, and 2008, when apparent U.S. consumption that year was 37.3 percent lower than in 2005, 38.5 percent lower than in 2006, and 24.6 percent lower than in 2008. *See* Original Views, USITC Pub. 4362 at 31 n.217. Similarly, the domestic industry's lower operating income margin in 2011 relative to 2007 coincided with apparent U.S. consumption that was 34.6 percent lower than in 2007. *Compare* EDIS Doc. No. 496494 (USITC Pub. 4333 at Table C-1) with CR/PR at Table IV-10. The same logic extends to the domestic industry's COGS to net sales ratio, which was lower in 2005, 2006, and 2008 than in 2011 and interim 2012 because of the much stronger demand in those years. *Compare* EDIS Doc. No. 496494 (USITC Pub. 4333 at Table I-1; USITC Pub. 4019 at Table C-1; USITC Pub. 3807 at Table C-1) *with* CR/PR at Table IV-10. We also decline the domestic interested parties' invitation to consider the domestic industry's performance in 1991 and 1998 because information on apparent U.S. consumption in those years is not on the record. *See* Allied's Posthearing Brief, Ex. 4. Moreover, we have already looked further backward in this case than we usually do, by examining and relying on data from the 2000-2008 period to provide historical context for our analysis. These data represent the only continuous historical time series on the record.

albeit irregularly.[102] These improvements in the industry's performance were consistent with the weak recovery in CWP demand during the period.

Second, as discussed in our original views, we find no correlation between domestic industry performance trends and either subject import market share or underselling.[103] The only period in which subject imports captured significant market share from the industry, between 2009 and 2010, coincided with an improvement in the industry's performance by almost every measure, including an improvement in the industry's operating income margin from negative 15.1 percent to positive 3.5 percent.[104] Between 2010 and 2011, subject imports gained 1.4 percentage points of market share largely at the expense of nonsubject imports, yet

---

[102] We recognize that the domestic industry's operating income and operating income margin were lower in interim 2012 than in interim 2011. CR/PR at Table VI-1. Nevertheless, the domestic industry's performance was stronger in interim 2012 than in interim 2011 in terms of production, capacity utilization, U.S. shipments, employment, wages paid, productivity, net sales value, and capital expenditures. *See* CR/PR at Tables III-3, III-7, VI-1, and VI-4. Moreover, as further discussed below, the industry's reduced financial performance in interim 2012 relative to interim 2011 coincided with a significant decline in subject import volume and market share. *See* CR/PR at Tables IV-9, IV-10.

[103] We incorporate by reference our discussion of the correlation issue from our original views, *see* Public Views, USITC Pub. 4362 at 28-29; Confidential Views at 38-40, which the Court has affirmed. *See* October 15, 2014 Opinion at 16, 31.

[104] CR/PR at Tables IV-10, VI-1, and C-1. We are unpersuaded by the domestic interested parties' argument that the increase in subject import market share at the domestic industry's expense between 2009 and 2011, alone, warrants affirmative injury determinations. *See* Domestic Interested Parties' Comments at 4-9. The Commission is not required to render affirmative determinations whenever it finds a significant increase in subject import volume and market share because the statute provides that "[t]he presence or absence of any factor which the Commission is required to evaluate . . . shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury." 19 U.S.C. § 1677(7)(E)(ii); *see also* October 15, 2014 Opinion at 10 (citing 19 U.S.C. § 1677(7)(E)(ii)), 19 ("The court rejects JMC, Wheatland, and Allied's argument for a *per se* rule that a growing volume of subject imports which undersell the domestic like product, in the context of a highly competitive market for a fungible good, necessarily must produce negative price effects."). In these remand views and in our original views, *see* Original Views, USITC Pub. 4362 at 22; Confidential Views at 28-29, we have explained why the increase in subject import market share does not support affirmative determinations in light of other evidence supporting negative determinations.

the industry's operating income and operating income margin declined.[105] During the interim period, the industry's operating income margin peaked in interim 2011, when subject market share also peaked, and was lower in interim 2012, despite much lower subject import volume and market share relative to interim 2011.[106]

We also find no correlation between subject import underselling and industry performance.[107] Significant subject import underselling throughout the POI neither depressed nor suppressed domestic like product prices to a significant degree.[108] To the contrary, the domestic industry was able to increase prices on three of four pricing products and the average

[105] CR/PR at Tables IV-10, VI-1, and C-1.

[106] CR/PR at Tables IV-10, VI-1, and C-1.

[107] The domestic interested parties argue that the alleged correlation between the magnitude of the price "gap" between subject imports and the domestic like product, measured using both average unit value and pricing product data, and the domestic industry's sales during the POI warrants affirmative determinations. *See* Domestic Interested Parties' Comments at 12-16. We have found no correlation between subject imports and either significant adverse price effects or the domestic industry's performance during the POI, *see* Original Views, USITC Pub. 4362 at 23-24, 28-29; Confidential Views at 30-32, 38-39, and the Court has affirmed those findings. *See* October 15 Opinion at 16, 31. Contrary to the domestic interested parties' argument, the domestic industry's performance improved by nearly every measure as the "degree of underselling," based on average unit value data, increased between 2009 and interim 2011. *See* Domestic Interested Parties' Comments at Ex. 4. In particular, the domestic industry industry's COGS to net sales ratio declined from 105.1 percent in 2009 to 88.4 percent in 2010 and 83.5 percent in interim 2011, while the industry's operating income margin increased from negative 15.1 percent in 2009 to positive 3.5 percent in 2010 and 6.2 percent in interim 2011. CR/PR at Table VI-1. Nor does the record support the domestic interested parties' claim that the price gap narrowed in the second half of 2011 because the domestic industry cut its prices to regain market share from subject imports. Domestic Interested Parties' Comments at 13. The margin of subject import underselling was no less significant in the second half of 2011 than in the first half of the year, and the margin narrowed in part because subject import prices increased. *See* Domestic Interested Parties' Comments at Ex. 6; CR/PR at Tables V-1-4. Moreover, domestic prices trended lower in the second half of 2011 in tandem with declining prices for hot-rolled steel and zinc prices, which were key inputs in the production of CWP that domestic prices closely tracked during 2011. CR/PR at V-3.

[108] *See* Original Views, USITC Pub. 4362 at 23-24; Confidential Views at 30-32. Notwithstanding the domestic interested parties' invitation, *see* Domestic Interested Parties Comments at 10-11, we see no need to reconsider our findings -- affirmed by the Court -- that subject imports neither depressed nor suppressed domestic like product prices to a significant degree. *See* October 15, 2014 Opinion at 16-19.

unit value of its U.S. shipments, reduce its COGS to net sales ratio, and increase its metal margin during the period.[109]

Furthermore, trends in the prevalence of subject import underselling and the magnitude of underselling margins do not correlate with industry performance. Between 2009 and 2010, the prevalence of subject import underselling increased and the margin of underselling increased to a period high, yet the industry's performance improved markedly by most measures.[110] The industry's performance continued to improve in 2011, with the exception of a decline in the industry's operating income and operating income margin, even though the prevalence of subject underselling increased further that year.[111] The industry's operating income margin reached a period high in interim 2011, despite subject underselling in all quarterly comparisons, and declined in interim 2012, despite a reduction in the prevalence of subject underselling and the underselling margin.[112]

Finally, we find that the significant presence of competitively-priced nonsubject imports in the U.S. market throughout the POI further undermines any possible relationship between subject import competition and the domestic industry's performance during the period. Nonsubject imports possessed a higher market share than subject imports and generally lower prices than either subject imports or domestically produced CWP during the POI.[113]

---

[109] *See* Original Views, USITC Pub. 4362 at 23-24; Confidential Views at 30-32.

[110] CR/PR at Tables V-1-4, VI-1.

[111] CR/PR at Tables V-1-4, VI-1. As noted above, the domestic industry's operating income and operating income margin would have been higher in 2011 than in 2010 but for ***. *See* Confidential Views at 36 n.177.

[112] CR/PR at Tables V-1-4, VI-1.

[113] *See* CR/PR at Tables IV-3, IV-10, C-1, Appendix D. The domestic interested parties assert that nonsubject imports were not a significant factor in the U.S. market because of their allegedly stable

(continued…)

Accordingly, nonsubject import competition was no less a factor in the U.S. market than subject imports. Indeed, the only appreciable decline in the domestic industry's operating income and operating income margin occurred during the interim period, when the market share lost by subject imports was gained by nonsubject imports instead of the domestic industry.[114]

In sum, we have found that subject imports had no significant adverse volume or price effects on the domestic industry. We have also found that the domestic industry's improving performance during the POI was consistent with the weak recovery in CWP demand from the economic downturn in 2009, which prevented the industry's performance from returning to 2008 levels. The record indicates that subject imports did not significantly impede the domestic industry's progress. We therefore conclude that subject imports did not have a significant adverse impact on the domestic industry.

(…*continued*)
market share and relatively higher average unit values as compared to subject imports. *See* Domestic Interested Parties' Comments at 7, 13. The record belies this claim. Nonsubject import market share was stable between 2009 and 2011 at a much higher level than subject imports, and nonsubject import market share was 5.8 percentage points higher in interim 2012 than in interim 2011. CR/PR at Table IV-10. Moreover, we find the pricing product data collected on nonsubject import sales to be more instructive than average unit value data because average unit value comparisons between subject imports, nonsubject imports, and domestically produced CWP would be influenced by differences in product mix. *See* CR/PR at Tables V-1-4, Appendix D (showing different price levels for each of the four pricing products), and Appendix E (official imports statistics showing different volumes and unit values for subject and nonsubject imports under different HTS statistical reporting numbers). In any event, the market share lost by subject imports in interim 2012 relative to interim 2011, due in part to the filing of the petitions, was gained by nonsubject imports rather than the domestic industry, even though the average unit value of nonsubject imports was nearly equal to that of the domestic industry. *See* CR/PR at Table C-1. Nonsubject imports also gained 1.1 percentage points of market share at the domestic industry's expense during the interim period. *See id.*

[114] CR/PR at Tables IV-10, VI-1.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of CWP from India, Oman, the UAE, and Vietnam that are sold in the United States at LTFV, and that are subsidized by the governments of India, Oman, and the UAE.