

UNITED STATES INTERNATIONAL TRADE COMMISSION

IRON METAL CASTINGS FROM INDIA,
HEAVY IRON CONSTRUCTION CASTINGS FROM BRAZIL, AND
IRON CONSTRUCTION CASTINGS FROM BRAZIL, CANADA, AND CHINA

Investigations Nos. 303-TA-13 (Review); 701-TA-249 (Review); and
731-TA-262, 263 and 265 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3247, October 1999)

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DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing duty order on heavy iron construction castings from Brazil 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 Commission further determines³ that revocation of the countervailing duty order on iron metal castings from India 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. The Commission also determines⁴ that revocation of the antidumping duty orders on heavy iron construction castings from Brazil, Canada, and China 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 Commission further determines⁵ that revocation of the antidumping duty orders on light iron construction castings from Brazil and China would 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 November 2, 1998 (63 F.R. 58758), and determined on February 4, 1999, that it would conduct full reviews (64 F.R. 9176, February 24, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on March 8, 1999 (64 F.R. 11039). The hearing was held in Washington, DC, on August 5, 1999, 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 Carol T. Crawford dissenting.

³ Vice Chairman Marcia E. Miller and Commissioner Jennifer A. Hillman dissenting.

⁴ Commissioner Carol T. Crawford dissenting with regard to heavy iron construction castings from Brazil and China.

⁵ Commissioner Carol T. Crawford 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 covering light iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹ We further determine that revocation of the antidumping duty orders covering heavy iron construction castings from Canada, Brazil, and China, and the countervailing duty order covering heavy iron construction castings from Brazil, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.² Finally, we determine that revocation of the countervailing duty order covering heavy iron construction castings from India 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.³

I. BACKGROUND

In September of 1980, the Commission determined that an industry in the United States was materially injured by reason of imports of certain iron-metal castings from India that were being subsidized by the government of India.⁴ On October 16, 1980, the Department of Commerce (Commerce) published a countervailing duty order covering the subject merchandise from India.⁵ In February of 1986, the Commission determined that an industry in the United States was materially injured by reason of imports from Canada of heavy iron construction castings which were being sold at less than fair value.⁶ On March 5, 1986, Commerce published an antidumping duty order covering the subject merchandise from Canada.⁷ In April of 1986, the Commission determined that an industry in the United States was materially injured by reason of imports of heavy iron construction castings from Brazil that were being subsidized by the government of Brazil, that an industry in the United States was materially injured by reason of imports from Brazil, India, and the People’s Republic of China (China) of heavy iron construction castings that were being sold at less than fair value, and that an industry in the United States was threatened with material injury by reason of imports from Brazil, India, and China of light iron construction castings that were being sold at less than fair value.⁸ On May 9, 1986, Commerce published antidumping duty orders covering the subject merchandise from Brazil and China.⁹ On May 15, 1986, Commerce published a

¹ Commissioner Crawford dissenting.

² Commissioner Crawford dissenting with respect to Brazil and China. Commissioner Crawford joins the majority in sections I, II, III.A., III.C.1., and IV.A.-B. of these views. For a complete discussion of her views, see *Dissenting Views of Commissioner Carol T. Crawford*.

³ Vice Chairman Miller and Commissioner Hillman dissenting. See *dissenting Views of Vice Chairman Marcia E. Miller and Commissioner Jennifer A. Hillman*.

⁴ Certain Iron-Metal Castings from India, Inv. No. 303-TA-13 (Final), USITC Pub. 1098 (Sept. 1980).

⁵ 45 Fed. Reg. 68650 (Oct. 16, 1980).

⁶ Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986).

⁷ 51 Fed. Reg. 7600 (Mar. 5, 1986); 51 Fed. Reg. 34110 (Sept. 25, 1986) (amended). The order on light castings from Canada was subsequently revoked by Commerce.

⁸ Iron Construction Castings from Brazil, India and the People’s Republic of China, Inv. No. 701-TA-249 (Final) and Invs. Nos. 731-TA-262, 264 and 265 (Final), USITC Pub. 1838 (Apr. 1986).

⁹ 51 Fed. Reg. 17220 (May 9, 1986). The antidumping duty orders with respect to light and heavy

(continued...)

countervailing duty order covering the subject merchandise from Brazil.¹⁰ The antidumping (AD) and countervailing (CVD) duty orders that are currently outstanding with respect to heavy construction castings and light construction castings are as follows:

Heavy Castings: India (CVD), Brazil (CVD and AD), Canada (AD), and China (AD).

Light Castings: Brazil (AD) and China (AD).¹¹

On November 2, 1998, the Commission instituted five-year reviews pursuant to section 751(c) of the Act, to determine whether revocation of the orders on iron metal castings would be likely to lead to continuation or recurrence of material injury.¹²

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.¹³ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant a full review, it will determine to conduct a full review.

In these reviews, the Commission received responses to the notice of institution on behalf of the Municipal Castings Fair Trade Council (MCFTC), an association of United States producers of iron construction casting, and on behalf of the MCFTC's ten members, and from the Engineering Export Promotion Council (EEPC), an association of exporters in India, that included individual responses from 12 Indian producers/exporters. The Commission received no responses to the notices of institution on behalf of producers in Brazil, Canada, or China.

On February 4, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews. With regard to iron metal castings from India, the Commission determined that both domestic and respondent interested party group responses were adequate and voted to conduct a full review.¹⁴ With regard to iron construction castings from Brazil, Canada, and China, and heavy iron

⁹ (...continued)

construction castings from India that were also issued at that time were revoked in 1991. CR at I-4, n. 3; PR at I-3, n. 3.

¹⁰ 51 Fed. Reg. 17786 (May 15, 1986).

¹¹ The countervailing duty order on light iron construction castings from Brazil was terminated in 1987. 52 Fed. Reg. 29902 (Aug. 12, 1987). The antidumping duty order on light and heavy iron construction castings from India was revoked in 1991. 56 Fed. Reg. 4789 (Feb. 6, 1991). The antidumping duty order on light iron construction castings from Canada was revoked in 1998. 63 Fed. Reg. 49687 (Sept. 17, 1998), 63 Fed. Reg. 50881 (Sept. 23, 1998) (corrected). See also CR at I-4, n. 3; PR at I-3, n. 3.

¹² 63 Fed. Reg. 58758 (Nov. 2, 1998).

¹³ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602–05 (June 5, 1998).

¹⁴ 64 Fed. Reg. 9176 (Feb. 24, 1999). See Explanation of Commission Determination on Adequacy in Iron Metal Castings from India, Inv. No 303-TA-13 (Review), Heavy Iron Construction Castings from Brazil, Inv. No. 701-TA-249 (Review), Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 731-TA-262,

(continued...)

construction castings from Brazil, the Commission determined that the domestic interested party group response was adequate, but that, because no respondent interested party responded to the notice of institution, the respondent interested party group response was inadequate.¹⁵ The Commission further determined to conduct full reviews with respect to all the grouped orders on iron construction castings to promote administrative efficiency in light of the Commission's decision to conduct a full review with respect to iron metal castings from India.¹⁶

On August 5, 1999, the Commission held a hearing in these reviews, at which representatives of the MCFTC, individual United States producers, and the EEPC appeared. The domestic producers filed briefs in support of continuation of all orders, and EEPC filed briefs urging revocation of the countervailing duty order on heavy construction castings from India.

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."¹⁷ 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."¹⁸

In its five-year review determinations regarding iron construction castings from India, Canada, Brazil, and China, Commerce has defined the subject merchandise as follows:

- *For the CVD order on iron metal (heavy) castings from India:* manhole covers and frames, clean-out covers and frames, and catch basin grates and frames.¹⁹
- *For the CVD order on heavy iron construction castings from Brazil:* manhole covers, rings and frames, clean-out covers and frames, and catch basin grates and frames.²⁰

¹⁴ (...continued)
263, and 265 (Review).

¹⁵ Id. See Explanation of Commission Determination on Adequacy in Iron Metal Castings.

¹⁶ Id. See Explanation of Commission Determination on Adequacy in Iron Metal Castings.
Commissioner Crawford dissenting.

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹⁹ Final Results of Expedited Sunset Review: Iron Metal Castings from India, 64 Fed. Reg. 30316 (June 7, 1999). The scope definition also notes that these articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems.

²⁰ Final Results of Expedited Sunset Review: Heavy Iron Construction Castings from Brazil, 64 Fed. Reg. 30313 (June 7, 1999). The scope for Brazil excludes the DGO700 frame and the DGO641 grate from Southland Marketing. Id. See also Notice of Scope Ruling, 60 Fed. Reg. 36782 (July 18, 1995).

- *For the AD order on heavy iron construction castings from Canada:* manhole covers, rings and frames, clean-out covers and frames, and catch basin grates and frames.²¹

- *For the AD order on heavy and light iron construction castings from Brazil:* (heavy castings) manhole covers, rings and frames, clean-out covers and frames, and catch basin grates and frames; and (light castings) valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves or gas water meters.²²

- *For the AD order on heavy and light iron construction castings from China:* (heavy castings) manhole covers, rings and frames, clean-out covers and frames, and catch basin grates and frames; and (light castings) valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves or gas water meters.²³

All the subject castings are of cast iron, not alloyed, and not malleable.²⁴ This merchandise is currently classifiable under subheading 7325.10.00 of the Harmonized Tariff Schedules of the United States.²⁵

In the original determination concerning iron metal (heavy) castings from India, the Commission found one like product consisting of manhole covers and frames, clean-out covers and frames, and catch basin grates and frames.²⁶ In its original determinations concerning iron construction castings from Brazil, Canada, and China, the Commission found with respect to Canada one domestic like product consisting of all heavy construction castings, and with respect to Brazil and China, two separate like products, consisting of all heavy iron construction castings and all light iron construction castings. The Commission defined heavy iron construction castings as manhole covers, rings and frames, clean-out covers and frames, and catch basin grates and frames, and defined light construction castings as valve, service, and meter boxes.²⁷ The parties in these five-year reviews did not argue for like products different from those in the original determinations.²⁸ Consistent with the Commission's prior determinations, as well as with our traditional like product analysis,²⁹ we find, with respect to India and Canada, one domestic like product consisting of all heavy construction castings and, with respect to Brazil and China, two domestic like products consisting

²¹ Final Results of Expedited Sunset Review: Certain Iron Construction Castings from Brazil, Canada, and the People's Republic of China, 64 Fed. Reg. 30310 (June 7, 1999).

²² Id. The scope for Brazil excludes the DGO700 frame and the DGO641 grate from Southland Marketing. Id. See also Notice of Scope Ruling, 60 Fed. Reg. 36782 (July 18, 1995).

²³ Id. The scope for China excludes certain cast iron floor area drains, and "Y" pipe strainers. Id. See also Notice of Scope Ruling, 60 Fed. Reg. 54213 (Oct. 20, 1995); Notice of Scope Ruling, 62 Fed. Reg. 62288 (Nov. 21, 1997).

²⁴ 64 Fed. Reg. 30310, 30313, 30316.

²⁵ Id.

²⁶ Certain Iron-Metal Castings from India, Inv. No 303-TA-13 (Final), USITC Pub. 1098 (Sept. 1980).

²⁷ USITC Pub. 1838; Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986).

²⁸ Indian Interested Parties' Response to Notice of Institution (Dec. 22, 1998) at 17; Domestic Producers' Prehearing Brief (July 26, 1999) at 6-9.

²⁹ In its like product analysis, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon Steel Corp. v. United States, 19 CIT 450, 455 n. 4 (1995).

of all heavy construction castings and all light construction castings.

Iron construction castings are routinely divided by U.S. industry terminology and usage into two categories: “heavy” construction castings, and “light” construction castings.³⁰ Heavy castings are used for drainage or access purposes by utilities and municipalities in storm drainage, water transportation and water treatment, sanitary systems, natural gas transmission, and highway systems.³¹ Heavy castings generally weigh from 270 to 1,000 pounds.³² Light construction castings, in contrast, are used by utilities and municipalities to encase the underground valves and meters of water, gas, or other utilities and to provide access to this equipment for periodic adjustment or readings.³³ Light castings generally weigh from 10 to 120 pounds.³⁴ Having different functions and configurations, heavy castings and light castings are not interchangeable in end use and are perceived by producers and customers as separate products. Heavy and light castings are produced in the United States by different companies, and in different facilities using different employees. Heavy castings are produced by the sand cast method.³⁵ Light castings are produced in the United States by sand cast, shell mold, or permanent mold processes.³⁶ Accordingly, we again find heavy iron construction castings and light iron construction castings to be separate like products.

B. Domestic Industry

1. In General

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”³⁷ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.³⁸

The only issue concerning the definition of the domestic industry is whether certain producers should be excluded from the domestic industry under the statute’s “related party” provision. For the reasons discussed below, we define the domestic industries for purposes of these reviews as all producers of heavy iron construction castings and all producers of light iron construction castings.

³⁰ CR at I-23; PR at I-21.

³¹ CR at I-23-24; PR at I-21.

³² CR at I-23; PR at I-21.

³³ CR at I-24; PR at I-22.

³⁴ Id.

³⁵ CR at I-23, I-25; PR at I-21, I-22.

³⁶ CR at I-24, I-25–I-26; PR at I-22–I-23.

³⁷ 19 U.S.C. § 1677(4)(A).

³⁸ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682–83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

2. Whether to Exclude Importers or Purchasers of Subject Merchandise From the Heavy Castings Industry as Related Parties

The related parties provision, 19 U.S.C. § 1677(4)(B), as amended by the URAA, allows for the exclusion of certain domestic producers from the domestic industry for the purposes of an injury determination. Applying the provision involves two steps. First, the Commission must determine whether a domestic producer meets the definition of a related party. The statute defines related parties in terms of importation of the subject imports or direct or indirect control by an exporter or importer of the subject merchandise.³⁹

Second, if a producer is a related party, the Commission may exclude such producer from the domestic industry if “appropriate circumstances” exist.⁴⁰ Exclusion of a related party is within the

³⁹ The statute, 19 U.S.C. § 1677(4)(B), reads as follows:

(B) RELATED PARTIES --

(i) If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry.

(ii) For purposes of clause (i), a producer and an exporter or importer shall be considered to be related parties, if --

- (I) the producer directly or indirectly controls the exporter or importer,
- (II) the exporter or importer directly or indirectly controls the producer,
- (III) a third party directly or indirectly controls the producer and the exporter or importer, or
- (IV) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

⁴⁰ 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party 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 producer 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 (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 interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid from the People’s Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7-I-8 (July 1994). Indeed, this factor appears to be the principal factor the Commission has reviewed to date in determining whether “appropriate circumstances” exist to exclude related parties from the domestic industry in a review investigation. See Sorbital from France, Inv. No. 731-TA-44 (Review), USITC Pub. 3165 at 6 (Mar. 1999); Pressure Sensitive Tape from Italy, Inv. No. AA1921-167 (Review), USITC Pub. 3157 at 5 (Feb. 1999); Titanium Sponge from Japan, Kazakhstan, Russia, and Ukraine, Inv. Nos. 751-TA-17-20, USITC Pub. 3119 at 5-6 (Aug. 1998).

Commission's discretion based upon the facts presented in each case.⁴¹ The rationale for the related parties provision is the concern that domestic producers who are related parties may be shielded from any injury that might be caused by the imports.⁴²

In these reviews four U.S. producers, ***, import subject heavy castings.⁴³ They are, therefore, related parties under the statute. No party has requested the exclusion of any of these producers from the industry. Indeed, *** are members of the participating domestic producer group, the MCFTC, and have sought continuation of the orders at each phase of these reviews.⁴⁴

*** subject imports equaled *** percent of its total 1998 production, *** equaled *** percent of its production, *** equaled *** percent of its production, and *** equaled *** percent of its production.⁴⁵ The relatively low ratio of imports of subject merchandise to the companies' individual total production and the fact that most of the companies favor extending the orders indicate that the firms' primary interests lie in production.

All of the importing producers have operating income stated as a percent of net sales ranging from *** percent to *** percent in 1998, compared with an industry average of 15.5 percent.⁴⁶ ***.⁴⁷ Hence, it appears that those producers import to enable them to continue production and compete in the U.S. market, and that they, as well as ***, have not benefitted from the subsidized imports to any degree that distorts the industry's performance or that shields them to any significant degree from the effects of unfairly traded imports. Accordingly, we do not exclude any of these producers.

III. CUMULATION

A. Framework⁴⁸

Section 752(a) of the Act provides that:

⁴¹ See Torrington Co., 790 F. Supp. at 1168; Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

⁴² See Torrington Co. v. United States, 790 F. Supp. at 1168; Empire Plow Co. v. United States, 675 F. Supp. at 1353-54 (analysis of "[b]enefits accrued from the relationship" as a major factor in deciding whether to exclude a related party held a "reasonable approach in light of the legislative history"); S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979) ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

⁴³ CR at I-32; PR at I-26. Another U.S. producer, ***, purchases imported subject castings through a third party. The record does not establish that this producer constitutes a related party under the statute or that appropriate circumstances exist to exclude it from the domestic industry.

⁴⁴ ***. CR at I-30; PR at I-25.

⁴⁵ CR at Table I-4; PR at Table I-3. ***. ***. CR at I-32, n. 20; PR at I-27, n. 20.

⁴⁶ CR at Table III-B-2.

⁴⁷ CR at I-32; PR at I-26.

⁴⁸ Chairman Bragg does not join Section III.A of this opinion. For a complete statement of Chairman Bragg's analytical framework regarding cumulation in sunset reviews, see Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (October 1999). In particular, Chairman Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition, in the event of revocation.

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

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 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. For these reviews, our “no discernible adverse impact” analysis is focused on subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the order is revoked.^{51 52}

⁴⁹ 19 U.S.C. § 1675a(a)(7).

⁵⁰ Id.

⁵¹ Vice Chairman Miller, and Commissioners Hillman and Koplman note that the legislative history to the URAA provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five year reviews] where imports are likely to be negligible.” S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate “to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernible adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year review provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide guidance in applying the “no discernible adverse impact” provision in five-year reviews.

⁵² Commissioner Askey notes that the language of section 752(a)(7) of the Tariff Act of 1930 (the “Act”), as amended, clearly states that the Commission has the discretion to cumulate subject imports for purposes of its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied. Section 752(a)(7) also clearly states, however, that the Commission is precluded from exercising this discretion if the imports from a country subject to review are likely to have “no discernible adverse impact on the domestic industry” upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, under this provision, the Commission must find that the subject imports from a country will have a “discernible adverse impact on the domestic industry” after revocation of the order before cumulating those imports with other subject imports. Accordingly, the Commission’s task under this provision is a straightforward one. To determine whether the Commission is precluded from cumulating subject imports from a particular country, the Commission must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not simply on whether there will be a small volume of imports after revocation, i.e., by assessing their negligibility after revocation of the order. If the impact of the imports is not discernible, then the Commission is precluded from cumulating those imports with other subject imports. See Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125–126 (Review), USITC Pub. 3245

(continued...)

As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and the domestic like product. The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.^{53 54 55} Only a “reasonable overlap” of competition is required.⁵⁶ In five-year reviews, the relevant inquiry is whether there would likely 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.⁵⁷

B. Light Construction Castings⁵⁸

Because the reviews of the orders on light construction castings were initiated on the same day, the threshold criterion for cumulation is satisfied.

1. No Discernible Adverse Impact

While current levels of subject light construction castings imports from China and Brazil are insignificant or zero, this can reasonably be attributed to the effects of the antidumping duty orders. We discuss below in section IV.C our affirmative likely material injury determination with respect to light castings from Brazil and China if the orders are revoked. The finding is based on such factors as the high

⁵² (...continued)
(Oct. 1999).

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.

⁵⁴ Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. E.g. U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int’l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n. 9 (Ct. Int’l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int’l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute.

⁵⁵ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁵⁶ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 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 (Ct. Int’l Trade 1994, *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996)).

⁵⁷ 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 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

⁵⁸ Commissioner Crawford does not join this section of the majority views.

production capacity in each country, the substitutability of light castings made in Brazil, China, and the United States, and the Commission's original determination that the subject imports from each country posed a threat of material injury to the domestic industry. Accordingly, we do not find that imports of light construction castings from Brazil or those from China are likely to have no discernible adverse impact on the domestic industry if the order on Brazil or the order on China were revoked.⁵⁹

2. Exercise of Commission Discretion to Cumulate⁶⁰

In determining whether to exercise our discretion to cumulate subject imports from Brazil and China, we examine whether, upon revocation of the antidumping duty orders, subject imports from Brazil, China, and the domestic like product are likely to compete in the U.S. market under similar conditions of competition. As an initial matter, we find it likely that there will be a reasonable overlap of competition between the subject imports from Brazil and China and between those imports and the domestic merchandise. During the original investigations in 1985–86, Chinese and Brazilian light castings were simultaneously present in the market and competed with each other and with the domestic like product.⁶¹ There is nothing on the record to indicate that these circumstances warranting cumulation in the original investigation would not recur if the orders were revoked.

In light of these considerations, we find a “reasonable overlap” of competition between the subject imports and between the subject imports and the domestic like product. We also see no indication that conditions of competition would be significantly different for subject imports from Brazil and China if the antidumping duty orders were revoked. Accordingly, we exercise our discretion to cumulate the likely volume and effect of subject imports of light construction castings from Brazil and China.

C. Heavy Construction Castings

Here, the requirements that the reviews of the orders on heavy construction castings be initiated on the same day is satisfied.

1. No Discernible Adverse Impact

We find that revocation of the order with respect to heavy construction castings from India would have no discernible adverse impact on the U.S. industry and, therefore, do not cumulate subject heavy construction castings from India with the subject heavy iron construction castings from Canada, Brazil or China.⁶² ⁶³ The volume of subject imports from India was 61.1 million pounds in 1978 and 94.4 million

⁵⁹ Chairman Bragg notes that she reaches this determination only after having first found a reasonable overlap of competition between the subject imports from Brazil and China and between those imports and the domestic merchandise.

⁶⁰ Chairman Bragg does not join this section. Chairman Bragg finds, based upon the Commission's traditional four-factor test, that there is likely to be a reasonable overlap of competition between the subject imports from Brazil and China and between those imports and the domestic merchandise, in the event of revocation.

⁶¹ USITC Pub. 1838.

⁶² Vice Chairman Miller and Commissioners Hillman dissent from the finding of no discernible adverse impact with respect to India and cumulate subject imports of heavy iron construction castings from India with the subject imports from Brazil, Canada, and China. See Dissenting Views of Vice Chairman Marcia E. Miller and Commissioner Jennifer A. Hillman. Commissioner Koplán does not join this section. See Separate Views of

(continued...)

pounds in 1979, then declined after issuance of the antidumping duty order in 1980.⁶⁴ Imports of the subject merchandise from India have now increased, notwithstanding the order, above pre-order levels to 118.0 million pounds in 1997 and 115.8 million pounds in 1998, representing 17.9 percent of apparent consumption in 1997 and 16.9 percent of apparent consumption in 1998.⁶⁵ Therefore, we find that the volume of the subject heavy castings imports from India is not likely to change to a significant degree as a result of revocation of the countervailing duty order. While Commerce has found that the Indian subsidy programs constitute export subsidies as defined in Article 3.1(A) of the Subsidies Agreement, it has also found that the likely countervailable subsidy would range from 0.84 percent to 1.82 percent.⁶⁶ We find it unlikely that significant additional exports to the U.S. would therefore result if the order were revoked. Moreover, current imports from India already undersell the U.S. product by considerable margins,⁶⁷ indicating that removal of the countervailing duty order would not have an increased significant adverse price effect on the domestic like product.⁶⁸ The effect of any small additional amounts of subject imports from India would be further attenuated by the fact that some portion of the U.S. market is governed by Buy American restrictions,⁶⁹ and by the somewhat limited substitutability of the Indian product with the U.S. domestic like product.⁷⁰ Accordingly, we find that removal of the order with respect to India will have no

⁶² (...continued)

Stephen Koplan on Cumulation.

⁶³ Commissioner Crawford finds that subject imports from India are only eligible for cumulation with subject imports from China and those subject imports covered by the countervailing duty order on Brazil. Her framework and analysis on the issue of cumulation are set forth separately in her dissenting views.

⁶⁴ CR at Table I-1 n. 2; Revisions to Staff Report, Memorandum INV-W-234 (Oct 15, 1999) at Tables I-1, I-2; PR at Table I-1, I-2. The subject imports from India thus represented 14.1 percent of apparent consumption in 1978, 20.1 percent in 1979, then decreased to shares ranging between 10.3 percent and 11.6 percent between 1983 and 1985. *Id.* We note that the market share data for 1978 versus 1983–85, and for 1983–85 versus 1997–98 and interim periods, are not directly comparable because different bases for calculating consumption were used.

⁶⁵ CR at Table I-1; Memorandum INV-W-234 at Table I-1, PR at Table I-1.

⁶⁶ 64 Fed. Reg. 30316, 30320 (June 7, 1999). In five-year reviews concerning countervailing duty orders, the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(6). Section 752(a)(6) of the Act also states that “the Commission may consider . . . the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6).

⁶⁷ CR Table V-5; PR at Table V-5.

⁶⁸ Commissioner Crawford concurs with the majority that revocation of the countervailing duty order likely would not have a significant adverse price effect on the domestic like product. However, she does not adopt the majority’s analysis on this point. Instead, Commissioner Crawford has considered the very small margins, low elasticity of demand for heavy castings, and the moderate substitutability between the domestic like product and subject imports from India. From this framework, Commissioner Crawford concludes that there likely would be no significant shift in demand away from the domestic like product following revocation of the order on India. Absent an increase in demand for the domestic product, it is not likely that revocation of the order would have any effect on domestic prices or impact on the domestic industry. Her analysis of the conditions of competition that factor into this analysis is set forth separately in her dissenting views.

⁶⁹ The domestic producers stated that 14 percent of the market is governed by Buy American restrictions. Importer responses were mixed, with some importers indicating that a substantial portion of purchases were governed by such restrictions. CR at II-14; PR at II-9.

⁷⁰ We note that there are non-price differences between the U.S. and Indian product, including that the purchase of the imported product generally requires longer lead times.

discernible adverse impact upon the U.S. industry.^{71 72}

2. Reasonable Overlap of Competition^{73 74}

The record indicates generally that domestic heavy construction castings and the subject heavy construction castings are fungible.⁷⁵ The record also indicates that U.S. sales of heavy castings are made through similar channels of distribution.⁷⁶ Heavy castings are sold by U.S. producers and importers in all areas of the United States, although individual producers, importers, and distributors geographically limit sales to some extent.⁷⁷

Although China and Brazil currently are not exporting heavy castings to the United States in more than small quantities, during the original investigations, Chinese, Brazilian, and Canadian heavy castings were simultaneously present in the market and competed with each other and domestic product.⁷⁸ There is nothing on the record to indicate that these circumstances warranting cumulation in the original investigation would not recur if the orders were revoked.

Therefore, based on findings in the original investigation and in these reviews, we conclude that the subject imports from China, Brazil, and Canada would be likely to compete with each other and with the domestic like product in the U.S. market if the order were revoked. For these reasons, and because there is no indication of other significant differences in the conditions of competition in these markets such that the likely volume and effect of subject imports would be substantially different, we conclude that it is appropriate to exercise our discretion to cumulate subject heavy construction castings imports from China, Brazil, and Canada in these reviews.

IV. WHETHER REVOCATION OF THE ORDERS IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

⁷¹ Commissioner Koplán did not join in this finding. Nevertheless, he did not find that appropriate circumstances exist to cumulate subject imports from India with subject imports from China, Brazil, and Canada. See Views of Commissioner Stephen Koplán on Cumulation. Commissioner Koplán joins in the remainder of the discussion on reasonable overlap of competition.

⁷² Chairman Bragg joins the majority's determination that subject imports from India are likely to have no discernible adverse impact. Chairman Bragg notes that she reaches this determination only after having first found a reasonable overlap of competition between the subject imports from Brazil, Canada, and China and between those imports and the domestic merchandise.

⁷³ Chairman Bragg does not join this section. Chairman Bragg finds, based upon the Commission's traditional four-factor test, that there is likely to be a reasonable overlap of competition between the subject imports from Brazil, China, India, and Canada and between those imports and the domestic merchandise, in the event of revocation.

⁷⁴ Commissioner Crawford does not join this section of the majority views.

⁷⁵ Indian Exporters' Prehearing Brief at 16 ("heavy castings from all the subject countries do compete with one another in the sense that the castings are fungible"); Domestic Producers' Prehearing Brief at 17-24; CR at II-9-II-15; PR at II-5-II-9.

⁷⁶ CR at II-1, I-27-I-28; PR at II-1, I-23-I-24. Most product is sold to distributors; the percent of sales to distributors rather than directly to end users is greater in the case of imports. CR at II-1; PR at II-1.

⁷⁷ CR at II-1-II-2; PR at II-1. Heavy castings from Canada are sold mainly in the Northeastern United States. CR at II-2; PR at II-1.

⁷⁸ USITC Pub. 1838; Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986).

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping finding or 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 the finding or order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁷⁹ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo - the revocation [of the finding or order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁸⁰ Thus, the likelihood standard is prospective in nature.⁸¹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁸² 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].”^{83 84}

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.”⁸⁵ 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, and whether the industry is vulnerable to material injury if the order is revoked.^{86 87 88}

⁷⁹ 19 U.S.C. § 1675a(a).

⁸⁰ SAA at 883–84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁸¹ 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 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.

⁸² 19 U.S.C. § 1675a(a)(5).

⁸³ 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.*

⁸⁴ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplán examine all the current and likely conditions of competition in the relevant industry. They define “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, they consider 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, their 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.

⁸⁵ 19 U.S.C. § 1675a(a)(1).

⁸⁶ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that

(continued...)

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁸⁹ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. markets for both light iron construction castings and heavy iron construction castings.

The heavy and light construction castings industries are mature industries, primarily employing the basic sand-cast method that has changed little since the original investigations, although light castings are also produced in permanent molds in higher-volume, standardized production.⁹⁰ The markets for heavy and light castings are highly cyclical, closely following trends in housing, highway, public works, and building construction.⁹¹ The majority of all sales of heavy and light castings by U.S. producers and importers are to

⁸⁶ (...continued)

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.

⁸⁷ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in these matters.

⁸⁸ In these reviews, the domestic producers argued that the Commission must make an affirmative determination as long as any reasonable interpretation of the facts of record will support such a conclusion. Domestic Producers’ Posthearing Brief (Aug. 17, 1999) at 14, citing SAA at 883. The referenced language of the SAA states:

The determination called for in these types of reviews is inherently predictive and speculative. There may be more than one likely outcome following revocation or termination. The possibility of other likely outcomes does not mean that a determination that revocation or termination is likely to lead to continuation or recurrence of dumping or countervailable subsidies, or injury is erroneous, as long as the determination of likelihood of continuation or recurrence is reasonable in light of the facts of the case. In such situations, the order or suspended investigation will be continued.

As we have previously stated, to the extent the petitioners seek with that argument to constrain the Commission’s discretion, they misconstrue the cited SAA language, which simply underscores the predictive nature of sunset reviews and recognizes that the Commission’s determination will not be deemed erroneous as long as it is reasonable in light of the facts of the case. Synthetic Methionine from Japan, Inv. No. AA1921-115 (Review), USITC Pub. 3205 at 8–9 (July 1999); Sugar From the European Union; Sugar From Belgium, France and Germany; and Sugar and Syrups From Canada Inv. Nos. 104-TAA-7 (Review); AA1921-198–200 (Review); and 731-TA-3 (Review), USITC Pub. 3238 at 21 (Sept. 1999) (“The guidance offered by this passage of the SAA thus is not a mandatory instruction for the Commission to rule a certain way, nor is it intended to curb or otherwise limit the Commission’s discretion to reach any reasonable determination based upon its view of the facts of the case.”).

⁸⁹ 19 U.S.C. § 1675a(a)(4).

⁹⁰ CR at I-25–I-26; PR at I-22–I-23; see also Domestic Producers’ Prehearing Brief at 17.

⁹¹ CR at II-1; PR at II-1.

distributors.⁹² There is no overlap in the applications of light and heavy castings as heavy castings are mainly used for drainage purposes and light castings are mainly used to encase underground valves and meters.⁹³

1. Light Iron Construction Castings

Light construction castings are manufactured in a range of dimensions but are relatively standardized nationwide.⁹⁴ Some producers and respondents indicated that plastics have made gains in the market for light castings.⁹⁵ The petitioners estimate that about 28 percent of light castings sales were subject to “Buy American” provisions in 1997 and 1998.⁹⁶

2. Heavy Iron Construction Castings

Domestic foundries, by virtue of their proximity to the municipalities and construction supply distributors, require relatively short lead times and can fill most orders for less popular or customized models without maintaining inventories for such items.⁹⁷ Importers, with their longer lead times, generally handle only the faster-moving, more standardized models because of the resulting inventory carrying costs associated with supplying a range of products.⁹⁸ Thus, while domestic producers may typically handle 4,000 to 5,000 items, importers may carry only 150 to 200.⁹⁹ In the case of heavy castings, the substitutes for cast iron most frequently identified in questionnaire responses were plastics, concrete, fiberglass, and composites.¹⁰⁰ The record also indicates that some domestic sales are subject to “Buy American” provisions.¹⁰¹

C. Revocation of the Antidumping Duty Orders on Light Construction Castings from Brazil and China Would be Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time¹⁰²

For the reasons stated below, we determine that revocation of the antidumping duty orders on light iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury to the domestic industry producing light iron construction castings within a reasonably foreseeable time.

1. Likely Volume of Subject Imports

⁹² Id.

⁹³ Id.

⁹⁴ CR at I-24; PR at I-22.

⁹⁵ CR at II-9; PR at II-5.

⁹⁶ CR at II-14; PR at II-9.

⁹⁷ CR at I-24; PR at 22.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ CR at II-9; PR at II-5.

¹⁰¹ CR at II-14; II-9.

¹⁰² Commissioner Crawford does not join the remainder of the majority views. Her analysis is set forth separately in her dissenting views.

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹⁰³ 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.¹⁰⁴

In the original determination, the Commission concluded that the domestic industry producing light construction castings was threatened with material injury by reason of the subject imports from Brazil, China, and India.¹⁰⁵ The Commission found that imports of light castings from Brazil increased from zero in 1982 to 1.64 million pounds in 1985,¹⁰⁶ and found that imports of light castings from China increased from 95,000 pounds in 1982 to 1.64 million pounds in 1985.¹⁰⁷

In 1997, there were no imports of the subject merchandise from Brazil and China. In 1998, imports from China totaled *** pounds, and imports from Brazil remained at zero.¹⁰⁸ In assessing the likely volume of imports if the orders are revoked, we view the recent near-absence from the U.S. market of imports from Brazil and China as reflecting the remedial effects of the antidumping duty orders.

In the original investigation, although production and capacity information were not available for China, the available export information showed that China’s exports of iron construction castings, both heavy and light, to all markets, including the United States, ranged between 135 million pounds and 201.6 million pounds annually between 1981 and 1985.¹⁰⁹ Brazil’s exports of all cast-iron products to all markets, including the United States, ranged from 102 million pounds to 224 million pounds annually between 1981 and 1985.¹¹⁰ There is no record information indicating any likely limitations on Brazil’s and China’s resumption of significant export shipments to the United States if the orders were revoked.¹¹¹

Accordingly, we find that imports of Brazilian and Chinese light iron construction castings into the United States would be likely to increase significantly in the reasonably foreseeable future if the antidumping duty orders were revoked.

2. Likely Price Effects of Subject Imports

¹⁰³ 19 U.S.C. § 1675a(a)(2).

¹⁰⁴ 19 U.S.C. § 1675a(a)(2)(A)–(D).

¹⁰⁵ The antidumping duty order on light castings from India was revoked in 1991. CR at I-4, n. 3.

¹⁰⁶ USITC Pub. 1838 at A-45, Table 20.

¹⁰⁷ *Id.* at A-45, Table 20 (Apr. 1986); see also CR at Table I-2; PR at Table I-2.

¹⁰⁸ CR at Table I-2; PR at Table I-2.

¹⁰⁹ USITC Pub. 1838 at A-37, Table 15.

¹¹⁰ USITC Pub. 1838 at A-35, Table 14. Brazil’s annual production capacity for all cast-iron products ranged from 3.6 billion pounds (1.753 million short tons) to 3.8 billion pounds (1.918 million short tons) between 1981 and 1985. *Id.* The MCFTC maintains that the annual production capacity for both light and heavy castings of the industries in Brazil and China are 450 million pounds and 626 million pounds, respectively. CR at IV-9; PR at IV-8.

¹¹¹ Chairman Bragg infers that, in the absence of the orders, Chinese and Brazilian producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission’s original determinations. Based upon the record in these reviews, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the orders are revoked.

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.¹¹²

In the original determinations, the Commission found that the available pricing data for one Brazilian light castings product demonstrated margins of underselling in excess of 10 percent throughout 1985. The Commission found that the light castings from China undersold the domestic product in each quarter from 1983 to 1985, in most periods by margins of approximately 30 percent.¹¹³ There are no current price data on imports from Brazil and China. Prices for U.S. light castings generally declined over 1997 and 1998.¹¹⁴

Purchasers consider price to be one of the most important factors in purchasing decisions.¹¹⁵ In the original investigations the Commission found that the domestic like product and the subject imported light castings are essentially fungible.¹¹⁶ Thus, we find it likely that Brazilian and Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share if the antidumping duty orders were revoked.

Accordingly, we find that the likely volume of imports from Brazil and China resulting from revocation of the antidumping duty orders would be likely to have a significant effect on domestic prices for light iron construction castings. Accordingly, we conclude that the Brazilian and Chinese subject merchandise is likely to enter the United States at prices that would significantly undersell domestic castings and have a significant depressing or suppressing effect on prices for the domestic like product.¹¹⁷

3. Likely Impact of Subject Imports

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

¹¹² 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.

¹¹³ USITC Pub. 1838 at 23.

¹¹⁴ CR at V-15.

¹¹⁵ CR at II-10; PR at II-6.

¹¹⁶ USITC Pub. 1838 at 6.

¹¹⁷ Chairman Bragg infers that, in the event of revocation, Brazilian and Chinese producers will revert to aggressive pricing practices with regard to exports to the United States, as evidenced in the Commission’s original determinations.

¹¹⁸ 19 U.S.C. § 1675a(a)(4).

competition that are distinctive to the industry.¹¹⁹ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.¹²⁰

In concluding in its original determination that the domestic industry producing light construction castings was threatened with material injury by reason of subject imports from Brazil and China (as well as, at that time, India), the Commission found that the domestic industry producing light construction castings was beginning to experience difficulties and was vulnerable to material injury from imports, particularly in terms of declining income toward the end of the period and flat or decreasing prices for the domestic product.¹²¹

We find that the domestic industry producing light iron construction castings is vulnerable to material injury if the order is revoked. We base this finding primarily upon the operating loss of the domestic industry of *** in 1997 and *** in 1998.¹²²

Given the generally substitutable nature of the subject and domestic product, we find that the significant volume of low-priced subject imports, when combined with the expected adverse price effects of these imports, would have a significant adverse impact on the production, shipments, 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 and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty orders are revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

¹¹⁹ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

¹²⁰ 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.

¹²¹ USITC Pub. 1838 at 18–19.

¹²² CR at III-B-7–III-B-10; PR at III-9. Capital expenditures relating to light castings also decreased somewhat between 1997 and 1998. CR at III-B-11; PR at III-10. See also discussion of trends in cost of goods sold, SG&A, and average selling prices at CR III-B-7; PR at III-9.

D. Revocation of the Antidumping Duty Orders on Heavy Construction Castings from Canada, Brazil, and China Would be Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time^{123 124}

For the reasons stated below, we determine that revocation of the antidumping duty orders on heavy iron construction castings from Canada, Brazil, and China and the countervailing duty order on heavy iron construction castings from Brazil would be likely to lead to continuation or recurrence of material injury to the domestic industry producing heavy iron construction castings within a reasonably foreseeable time.

1. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹²⁵ 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.¹²⁶

In the original determinations, the Commission concluded that the domestic industry producing heavy construction castings was materially injured by reason of the subject imports from Canada, Brazil, and China. The Commission found that imports of heavy castings from Canada increased from 5.4 million pounds in 1982 to 21.0 million pounds in 1985, representing an increase from 1.5 percent of domestic consumption in 1982 to 3.7 percent in 1985.¹²⁷ The Commission found that imports of heavy castings from Brazil increased from 23,000 pounds in 1982 to 19.5 million pounds in 1985, representing an increase from less than 1 percent of domestic consumption in 1982 to 3.4 percent in 1985.¹²⁸ The Commission also found that imports of heavy castings from China increased from 4.1 million pounds in 1982, 1.2 percent of domestic consumption, to 19.5 million pounds in 1985, 3.4 percent of domestic consumption.¹²⁹ Accordingly, in 1985, imports from Canada, Brazil, and China totaled 60.0 million pounds, and represented 10.5 percent of domestic consumption.

In 1997, imports from Canada, Brazil, and China totaled 12.62 million pounds, or 1.8 percent of domestic consumption, and 11.53 million pounds in 1998, or 1.7 percent of domestic consumption.¹³⁰ In assessing the likely volume of imports if the orders are revoked we view the sharp reduction in imports from Canada, Brazil, and China as reflecting the remedial effects of the antidumping duty orders. In the case of Canada, a number of factors suggest that exports of heavy castings to the United States could

¹²³ Commissioner Crawford dissenting with respect to Canada.

¹²⁴ Vice Chairman Miller and Commissioner Hillman do not join this section.

¹²⁵ 19 U.S.C. § 1675a(a)(2).

¹²⁶ 19 U.S.C. § 1675a(a)(2)(A)–(D).

¹²⁷ USITC Pub. 1838 at A-45–46, Tables 20, 21.

¹²⁸ *Id.* at A-45–46, Tables 20, 21.

¹²⁹ *Id.* at A-45, Tables 20, 21.

¹³⁰ CR at Table I-1; PR at Table I-1.

increase. ***¹³¹ ***¹³²

There is no information available on the record with respect to current heavy casting production capacity in China or Brazil because Chinese and Brazilian producers did not respond to our requests for data. The information available in the original investigation showed that China's exports of both heavy and light iron construction castings to all markets, including the United States, ranged between 135 million pounds and 201.6 million pounds annually between 1981 and 1985,¹³³ significant quantities in relation to current total consumption in the United States.¹³⁴ Brazil's exports of all cast-iron products iron products to all markets, including the United States, ranged from 102 million pounds (51 thousand short tons) to 224 million pounds (112,000 short tons) annually between 1981 and 1985, which exceeds total U.S. consumption.¹³⁵ Accordingly, the record indicates that Canada, Brazil, and China have ample production capacity to increase their shipments to the United States if the orders were revoked.¹³⁶ Nor does the record indicate that there would be any limitations on Canada's, Brazil's, or China's resumption of significant export shipments to the United States if the orders were revoked.¹³⁷

Accordingly, we find that Canadian, Brazilian, and Chinese exports to the United States would be likely to increase significantly in the reasonably foreseeable future if the antidumping duty order were revoked.

2. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.¹³⁸

In the original determinations, the Commission found general underselling by the subject heavy castings imports.¹³⁹ In this review, we also find significant underselling by the Canadian heavy castings in each quarter examined from January 1997 to March 1999.¹⁴⁰ As noted above, we find that Canada, Brazil, and China are likely to significantly increase exports to the United States in the reasonably foreseeable

¹³¹ CR at II-6; PR at II-4. ***. Id.

¹³² Moreover, the record indicates that there are other producers of heavy construction castings in Canada. See, e.g., 64 Fed. Reg. 30310, 30313 (Commerce expedited sunset determination lists others).

¹³³ USITC Pub. 1838 at A-37, Table 15.

¹³⁴ CR at Table I-1; PR at Table I-1.

¹³⁵ USITC Pub. 1838 at A-37, Table 14. Brazil's annual production capacity for all cast-iron products ranged from 3.5 billion pounds to 3.8 billion pounds between 1981 and 1985. Id.

¹³⁶ Chairman Bragg infers that, in the absence of the orders, Chinese, Brazilian, and Canadian producers would revert to their historical emphasis on exporting to the United States, as evidenced in the Commission's original determinations. Based upon the record in these reviews, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the orders are revoked. This inference, however, is not applied to the Canadian producer ***.

¹³⁷ Canada also has significant inventories. CR at Table IV-5.

¹³⁸ 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.

¹³⁹ USITC Pub. 1838 at 15, 17.

¹⁴⁰ CR at Table V-5; PR at Table V-5.

future if the antidumping duty orders are revoked. Because the market likely is fairly price competitive,¹⁴¹ if the orders were revoked, the imports would have to be priced aggressively to regain market share.¹⁴² In turn, they would be likely to have significant depressing and suppressing effects on prices of the domestic like product. Accordingly, we find that the likely volume of imports from Canada, Brazil, and China resulting from revocation of the antidumping duty order would be likely to have significant price effects, including significant underselling of the domestic like product, on domestic prices for heavy iron construction castings.¹⁴³

3. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹⁴⁴ 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.¹⁴⁵

As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked. In concluding in its original determinations that the domestic industry producing heavy construction castings was materially injured by reason of subject imports from Canada, Brazil, and China (as well as, at that time, India), the Commission found that, while apparent consumption increased markedly during the period of investigation, the rates at which the domestic producers of heavy construction castings increased production, shipments, capacity, capacity utilization, and employment were considerably below that of the increasing domestic consumption.¹⁴⁶ Although the domestic industry had shown some improvement during the period of investigation, six of the

¹⁴¹ CR at II-3; PR at II-2.

¹⁴² Chairman Bragg infers that, in the event of revocation, Brazilian, Canadian, and Chinese producers will revert to aggressive pricing practices with respect to exports to the United States, as evidenced in the Commission's original determination. This inference, however, is not applied to the Canadian producer ***.

¹⁴³ In its final five-year review determinations, Commerce found that revocation of the antidumping duty orders on heavy castings from Brazil, Canada, and China would be likely to lead to continuation or recurrence of dumping margins of the following magnitudes: for Brazil from 5.95 percent to 58.74 percent; for Canada from 4.40 percent to 9.80 percent; and for China, 92.74 percent. In its final five-year review determinations in the CVD investigation concerning Brazil, Commerce published a net countervailable subsidy rate of 1.06 percent for Brazil.

¹⁴⁴ 19 U.S.C. § 1675a(a)(4).

¹⁴⁵ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

¹⁴⁶ USITC Pub. 1838 at 9.

fifteen domestic producers reported operating losses during the entire period of investigation.¹⁴⁷ The Commission found particularly significant that there were net operating losses in the domestic industry during the first year of the period of investigation and marginal operating income during the other years when considered in light of increased domestic consumption and increases in domestic production and shipments.¹⁴⁸

In 1997, operating income of the domestic industry as a percent of net sales was 12.9 percent, and in 1998, it was 15.5 percent. Production exceeded capacity in both 1997 and 1998, and U.S. shipments, net sales, and number of production workers in 1998 exceeded levels in 1997.¹⁴⁹ Domestic producers' share of apparent U.S. consumption, 78.6 percent in 1997 and 79.6 percent in 1998, is comparable to the share at the beginning of the period originally investigated, 79.8 percent in 1983.¹⁵⁰

We find that the domestic industry producing heavy iron construction castings is not currently vulnerable. However, given the generally substitutable nature of the subject and domestic product, we find that the significant potential volume of LTFV and subsidized subject imports, when combined with the expected adverse price effects of these imports, would have a significant adverse impact on the production, shipments, 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 and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty orders are revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

E. Revocation of the Antidumping Duty Orders on Heavy Construction Castings from India Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time.¹⁵¹

As discussed above, we find that imports from India are likely to have no discernible adverse impact on the domestic industry if the countervailing duty order is revoked and thus decline to cumulate any projected imports from India with those from the other subject countries.¹⁵² We find that the volume of the subject heavy castings imports from India is not likely to change to a significant degree as a result of revocation of the countervailing duty order. We note that Commerce found that the likely countervailable subsidy would range from 0.84 to 1.82 percent, and we find it unlikely that significant additional exports to the U.S. would, therefore, result if the order were revoked.¹⁵³

Moreover, the domestic market is expected to continue its moderate growth.¹⁵⁴ Thus, the additional volume of subject imports from India are likely to enter an expanding U.S. market for heavy metal castings

¹⁴⁷ USITC Pub. 1838 at 10.

¹⁴⁸ *Id.* at 10-11.

¹⁴⁹ CR at Table I-1; PR at Table I-1.

¹⁵⁰ *Id.*

¹⁵¹ Vice Chairman Miller and Commissioner Hillman dissenting.

¹⁵² Commissioner Koplan did not join this finding. Nevertheless, he did not find that appropriate circumstances exist to cumulate subject imports from India with subject imports from China, Brazil, and Canada. See Views of Commissioner Stephen Koplan on Cumulation. Commissioner Koplan joins in the remainder of this discussion of the likely effects of revocation of the countervailing duty order on heavy metal castings from India.

¹⁵³ We also note that there is no antidumping or countervailing duty order in place on light construction castings from India and, therefore, no identifiable incentive for Indian producers to shift from production of light castings to production of heavy castings.

¹⁵⁴ CR at II-8-II-9; PR at II-4-II-5.

in which the domestic industry is operating at full capacity utilization and with relatively high net operating ratios.¹⁵⁵ Indeed, there is some indication that the imports of heavy construction castings from India currently have allowed domestic producers to fill gaps in their product lines.¹⁵⁶ With no plans to expand capacity and the orders in place on China, Canada, and Brazil, subject imports from India may in fact be needed to fill a portion of the growth in demand.

Nor do we find that the subject imports from India will have any adverse effect on domestic prices. Our pricing data show that while subject Indian import prices generally were stable throughout the period examined, domestic prices fluctuated significantly.¹⁵⁷ These data suggest that domestic prices were not adversely affected by the relative levels of subject Indian import prices. We also note that the Indian product, while generally stable, undersold the domestic product by considerable margins. Accordingly, we find that removal of the relatively low countervailing duty order would not have any significant adverse effect on domestic prices.

The effect of subject imports from India would be further attenuated by the fact that some portion of the U.S. market is governed by Buy American restrictions,¹⁵⁸ by the somewhat limited substitutability of the Indian product with the U.S. domestic like product, and by the fact that we have found the domestic industry not to be in a vulnerable condition.¹⁵⁹ Thus, we determine that revocation of the countervailing duty order against India would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of light iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury to the U.S. light iron construction castings industry within a reasonably foreseeable time. We also determine that revocation of the antidumping duty orders on imports of heavy iron construction castings from Canada, Brazil, and China, and the countervailing duty order on imports of heavy iron construction castings from Brazil, would be likely to lead to continuation or recurrence of material injury to the U.S. heavy iron construction castings industry within a reasonably foreseeable time. We further determine that revocation of the countervailing duty order on imports of heavy iron construction castings from India would not be likely to lead to continuation or recurrence of material injury to the U.S. heavy iron construction castings industry within a reasonably foreseeable time.

¹⁵⁵ The domestic industry's capacity utilization rate is above 100 percent. CR at Table III-A-1. In 1998, the industry achieved a net operating ratio of 15.5 percent. CR at Table I-2.

¹⁵⁶ CR at I-32; PR at I-26-I-27.

¹⁵⁷ CR at Tables V-1, V-2; PR at Tables V-1, V-2.

¹⁵⁸ See supra n. 69.

¹⁵⁹ In this regard, the domestic industry's capacity utilization is above 100 percent. CR at Table III-A-1. There is some indication that the imports of heavy construction castings from India bring some stability to the market, allowing domestic producers to fill gaps in their product lines. CR at I-32. The market is expected to continue its moderate growth. CR at II-8-II-9. Hence, it is expected that, with the orders in place for China, Canada, and Brazil, the domestic industry will continue to maintain its profit margins and to perform generally as well or better than it is currently.

VIEWS OF COMMISSIONER STEPHEN KOPLAN REGARDING CUMULATION

I. Analytical Framework

Section 752(a) of the Tariff Act of 1930, as amended, 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.¹

Thus, under the statute cumulation is discretionary in five-year reviews and I may exercise my discretion to cumulate only if the reviews are initiated on the same day and I determine that the subject imports are likely to compete with each other and with the domestic like product in the U.S. market. The statute precludes cumulation if I find that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.

I do not find, as discussed below, that subject imports from any of the subject countries in these five year reviews are likely to have no discernible adverse impact on the domestic industry if the respective orders are revoked. The threshold requirement that the reviews be initiated on the same day is satisfied. However, although I find that it is likely that there would be a reasonable overlap of competition among subject imports from India, China, Brazil, and Canada and with the domestic like product, for the reasons set forth below, I have not exercised my discretion to cumulate imports from India with those from China, Brazil, and Canada.

II. Discussion

A. No Discernible Adverse Impact

As stated in the Commission's opinion, I do not join in the Commission's finding that subject imports of heavy metal castings from India are likely to have "no discernible adverse impact" on the domestic industry. In evaluating whether the "no discernible adverse impact" provision is met, I assess, among other things, whether imports are likely to have a negligible impact on the domestic industry.²

¹ 19 U.S.C. § 1675a(a)(7).

² See Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125, 126 (Review). In short, the current cumulation provision is similar to the cumulation provision in the statute prior to the Uruguay Round Agreements Act (URAA) amendments. In the prior provision, the Commission was not required to cumulate imports from a subject country if those imports were "negligible and have no discernible adverse impact on the domestic industry." 19 U.S.C. § 1677(7)(C)(v)(1994). The Senate Report accompanying the URAA amendments suggests that the term "negligible" was dropped in the current cumulation provision because that term now (*i.e.*, post-URAA) applies a defined numerical standard that would be difficult to implement given the prospective counter-factual nature of five year reviews. S. Rep. No. 103-412, at 51 (1994). The Senate Report further states that it nevertheless "is appropriate to preclude cumulation [in five year reviews] where imports are likely to be

(continued...)

As an initial matter, I note that the statute states that I may not cumulate imports from a subject country if I determine that “such imports are likely to have no discernible adverse impact.”³ Thus, this provision does not state that I am to determine whether *revocation* of the order would have a discernible adverse impact on the domestic industry, but rather whether “such” (*i.e.* all subject) imports from a country are likely to have a discernible adverse impact on the domestic industry if the order is revoked. Therefore, I do not interpret this provision as contemplating an analysis of whether any likely *change* in the volume of subject imports resulting from revocation of the order will have a discernible adverse impact on the domestic industry. Rather, I am to determine whether the likely volume of subject imports post-revocation would have a discernible adverse impact on the domestic industry, in light of the conditions of competition unique to the industry. It is conceivable, for instance, that I would expect import market share to remain stable or even to decline in a particular review, but still decline to find that at the post-revocation levels the subject imports are likely to have no discernible adverse impact on the domestic industry. I note that such an analysis is consistent with the overall scheme of five year reviews in which I am to determine whether material injury is likely to continue or recur if an order is revoked.

I have examined the current volume of imports from India and have evaluated the likely volume of imports from India if the order is revoked. Imports from India represented 83.2 percent of U.S. imports of heavy metal castings in 1997, 82.7 percent in 1998 and 85 percent of U.S. imports in interim (January–March) 1999.⁴ U.S. shipments of heavy metal castings from India were roughly 118 million pounds in 1997 and 115 million pounds in 1998, representing 17.9 percent of 1997 apparent domestic consumption and 16.9 percent of 1998 apparent domestic consumption.⁵

I find that current volumes of subject imports from India, even with the countervailing duty order in place, exceed levels that would satisfy the “no discernible adverse impact” provision. There is no evidence in the record indicating that subject imports from India are likely to decline significantly upon revocation of the order. I recognize that subject imports from India are likely to enter an expanding U.S. market for heavy metal castings in which the domestic industry is operating at full capacity utilization and with relatively high net operating ratios. Nevertheless, with at least a 17 percent share of the market, I cannot conclude that the subject imports from India are likely to have a negligible impact on the domestic industry’s performance. Accordingly, I do not find that subject imports from India are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order is revoked.

² (...continued)

negligible.” *Id.* Thus, the intent appears to have been for the Commission to apply the provision in a manner that is similar to the way it was applied under the pre-URAA statute, but in the context of the unique nature of five-year reviews. Essentially, under the prior standard, the Commission generally determined whether the subject imports were having only a negligible impact on the domestic industry taking into account the subject import market share and other relevant conditions of competition. *See, e.g., Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela*, Inv. Nos. 701-TA-311, and 731-TA-532–537 (Final), USITC Pub. 2359 at 27–32 (October, 1992)(exception applied to imports from Romanian with market share of 0.5 percent to 0.7 percent and imports deemed inferior quality and having sporadic sales; exception not applied to imports from Brazilian and Mexican with market shares of one to three percent each and growth in volume, products deemed highly substitutable, market considered price sensitive, and import sales not sporadic or isolated). Accordingly, I have determined whether the subject imports are likely to have no discernible adverse impact on the domestic industry given the likely market penetration of subject imports from India and likely prevailing conditions of competition if the order is revoked.

³ 19 U.S.C. § 1675a(a)(7)(emphasis added).

⁴ CR at I-8, Table I-2

⁵ *Id.*

B. Cumulation Analysis

In determining whether to exercise my discretion to cumulate subject imports from India, China, Brazil, and Canada, I examined several factors to evaluate whether, upon revocation of the respective orders, the subject imports would likely compete among themselves and with the domestic like product in the U.S. market under similar conditions of competition. As an initial matter, I find that there is a likelihood that there would be a reasonable overlap of competition among the imported products from all four subject countries and with the domestic like product if the orders were all revoked. In this regard, although there are some relatively significant quality differences regarding the subject merchandise from India, the products are generally interchangeable and the record reflects that the products are, and would be, sold through similar channels of distribution and in overlapping geographic areas.⁶

Nevertheless, my cumulation analysis in a five-year review encompasses more than an examination of whether there would likely be a reasonable overlap of competition. To aid me in the exercise of my discretion, I also have examined the overall similarities and differences in the conditions of competition that likely would prevail if the orders under review are revoked. I find that, in the absence of the respective orders, the likely prevailing conditions of competition concerning subject imports of heavy metal castings from India would differ significantly from those concerning subject imports from China, Brazil, and Canada.⁷

Subject imports from India are covered only by a countervailing duty order, whereas all other subject imports under review are covered either by antidumping duty orders or, in the case of subject imports from Brazil, both an antidumping duty order and a countervailing duty order. Moreover, the magnitude of the antidumping duty margins, and likely margins of dumping, for imports from China, Brazil, and, to a lesser extent Canada, are all significantly higher than the current and likely countervailing duty rate on subject imports from India. These are significant differences in the conditions of competition for subject imports from India as opposed to subject imports from China, Brazil, and Canada.⁸

Given this central condition of competition, I join the Commission's conclusion that neither the volume nor the price of subject imports of heavy metal castings from India are likely to significantly change if the countervailing duty order is revoked. Unlike the other subject countries, the current countervailing duty order has not had a material effect on the volume or price of subject imports from India. The Commerce Department, in its review of that order, found that the likely prevailing countervailable subsidy rate would be unchanged from the current rate. Viewed in this light, the capacity and capacity utilization

⁶ CR at II-1–II-2.

⁷ In this regard, I note that the Commission has considered factors in addition to its traditional competition analysis in evaluating whether to exercise its discretion to cumulate for the purposes of threat determinations in original antidumping and countervailing duty investigations. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); *Metallwerken Nederland B.V. v. United States* 728 F. Supp. 730, 741–42 (Ct. Int'l Trade 1989); *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

⁸ In this regard, I note that unlike antidumping duty margins, which are affected by the U.S. price charged by each foreign producer, countervailing duty rates are affected by governmental programs administered abroad. In addition, antidumping duty orders (with administrative reviews and potential retroactive liability) may place a certain discipline on the prices charged by foreign producers subject to such orders. In those cases, even relatively low existing antidumping duty margins may not be probative of likely import prices and volumes in the event of revocation of an order.

figures for the Indian producers are not probative of the likely volume of subject imports if the order is revoked. The levels and ratios of their home market shipments and U.S. and third country exports have been largely unaffected by the existing countervailing duty order. Thus, unlike the other subject imports which are being restrained by the respective orders, current capacity and capacity utilization rates for producers in India are not indicative of whether exports to the United States likely would increase significantly if the order were revoked.⁹ In other words, since the subject Indian imports are not being restrained by the order, the current level of capacity utilization at the Indian foundries does not bear on the likely volume of shipments to the U.S. if the order is revoked.¹⁰

The record does not show that prices of subject imports from India had a significant effect on domestic prices during the period examined. In this regard, as stated previously, the Indian government Export Promotion Council maintains a price floor for exports to ensure fair market prices (and the antidumping duty order for India was revoked).¹¹ More important, perhaps reflecting these price floors, our pricing data show that while subject Indian import prices generally were stable throughout the period examined, domestic prices fluctuated significantly.¹² These data suggest that domestic prices were not adversely affected by the relative levels of subject Indian import prices. To some extent, the underselling by subject Indian producers can be explained by the fact that the quality of much of that product is perceived to be inferior to the domestic product.¹³ Indeed, if the products were generally comparable, one would expect that widespread underselling would result in increased import volume and market penetration, not the declining volume and share experienced by subject imports from India at the end of the period examined.¹⁴ In sum, I find that subject Indian import volume and prices have been largely unaffected by the existing order and are likely to continue to be stable if the order is revoked.

In light of the fact that the Commission received no responses from respondent interested parties regarding the reviews on heavy metal castings from China, Brazil, and Canada, the analysis of the conditions of competition concerning those subject imports must, of necessity, be based principally on the best information available in the record. The record evidence leads me to conclude that the conditions of competition among those subject countries would be quite similar, and distinct from those relating to subject imports from India. Those three subject countries are all restrained to a significant degree by the respective antidumping duty orders and the Commerce Department has determined that all are likely to

⁹ In addition, there is no incentive for the Indian producers to significantly alter the proportion of exports to the U.S. and third country markets. I note that the Indian government Export Promotion Council maintains a price floor for exports. CR at V-7. The price floor for exports to Europe and other markets geographically closer to India is comparable to that for exports to the U.S. *Id.* Moreover, unlike subject imports from China and Brazil, there is no antidumping duty or countervailing duty order on imports of light metal castings from India and, therefore, no incentive to shift production from light to heavy metal castings. CR at I-1.

¹⁰ The same reasoning holds true for inventories of subject merchandise in India. Since the order has had no material effect on the levels of imports, the existence or lack of inventories in India is not probative in this review.

¹¹ CR at V-7.

¹² CR at V-11, Table V-1 and V-12, Table V-2.

¹³ Published reports indicate that poor quality pig iron and coke raw materials are major problems facing the industry in India. CR at IV-11. A large percentage of Indian iron casting capacity is dedicated to the production of lower-valued heavy castings used in municipal applications. CR at IV-11. I note that, although the subject Canadian product undersold the domestic product in these comparisons, the record indicates that the Canadian product generally is of comparable quality to the domestic product and is sold for comparable uses. CR at II-12.

¹⁴ CR at I-35, Table I-4, and I-38, Table I-6.

have significant dumping margins in the event of revocation. Thus, in stark contrast to the subject imports from India, the existing orders have effectively eliminated or, in the case of Canada, severely curtailed subject imports from those countries. For this reason, as discussed in the Commission's opinion in which I join, the enormous capacity and substantial excess capacity in those three countries leads me to conclude that subject imports from those countries are all likely to face the same conditions of competition upon revocation of the respective orders. As a result, unlike subject imports from India, I find that removal of the existing orders covering subject merchandise from China, Brazil, and Canada would result in substantial changes in the volume of subject imports from those countries.

In addition, unlike subject imports from India, subject imports from China, Brazil, and Canada are not covered by stable minimum price floors. Accordingly, the record indicates that prices for subject imports from those three countries are likely to fluctuate to a significant degree if the respective orders are revoked. Finally, unlike subject imports from India, the record does not contain any indication that the quality of heavy metal castings produced in China, Brazil, or Canada differs significantly from that produced by the domestic industry.

Overall, the conditions of competition would be significantly different for subject imports from India as opposed to those for subject imports from China, Brazil and Canada if the respective orders were revoked. Consequently, I find that it is not appropriate to assess cumulatively the likely volume and price effects of subject imports from India with those of subject imports from China, Brazil, and Canada. Accordingly, I have not exercised my discretion to cumulate subject imports from India with subject imports from China, Brazil, and Canada for purposes of determining whether revocation of the respective antidumping duty orders is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DISSENTING VIEWS OF VICE CHAIRMAN MARCIA E. MILLER AND
COMMISSIONER JENNIFER A. HILLMAN**

We write these views to explain: (1) our conclusion that it is not likely that imports of heavy iron castings from India would have no discernible adverse impact on the domestic industry if the CVD order were revoked; (2) our decision to cumulate imports of heavy iron castings from India with heavy iron castings imports from Brazil, Canada, and China; and (3) our determination that revocation of the existing orders on heavy iron castings imports from Brazil (AD and CVD), Canada (AD), China (AD), and India (CVD) would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.

We join the majority's discussion of the Framework for the cumulation analysis and do not repeat that discussion here.

A. It is not likely that imports of heavy iron castings from India would have no discernible adverse impact on the domestic industry if the CVD order were revoked

The volume of subject imports from India was 61.1 million pounds in 1978 and 94.4 million pounds in 1979, then declined after issuance of the antidumping duty order in 1980.¹ Imports of the subject merchandise from India have now increased, notwithstanding the order, above pre-order levels to 118.0 million pounds in 1997 and 115.8 million pounds in 1998, representing 17.9 percent of apparent consumption in 1997 and 16.9 percent of apparent consumption in 1998.²

Both the domestic industry and the Indian exporters agree that domestic and Indian heavy castings are fungible products.³ Imports of heavy castings from India have consistently undersold prices for domestic heavy castings in 1997 and 1998.⁴

We find that current volumes of subject imports from India, even with the CVD order in place, exceed levels that would satisfy the "no discernible adverse impact" provision, particularly when viewed in the context of the information on fungibility and persistent underselling.⁵ In addition, there is no evidence in the record indicating that subject imports from India are likely to decline significantly upon revocation of the order.

B. Cumulation of imports of heavy iron castings from India with heavy iron castings imports from Brazil, Canada, and China is appropriate

The record indicates that domestic heavy construction castings and the subject heavy construction castings are generally fungible.⁶ The record also indicates that U.S. sales of domestic and imported heavy

¹ CR at Table I-1 n. 6. The subject imports from India thus represented 14.1 percent of apparent consumption in 1978, and 20.1 percent in 1979.

² CR at Table I-1.

³ Domestic Producers' Prehearing Brief at 17-24; Indian Exporters' Prehearing Brief at 16.

⁴ CR at Tables V-1 and V-2.

⁵ We note that the "no discernible adverse impact" provision in the statute refers to whether the "imports" are likely to have no discernible adverse impact. The statute does not refer to whether any *change* in imports brought about by revocation of an order or orders is likely to have no discernible adverse impact. Thus we have focused our analysis on the total volume of imports that would likely occur should the order be revoked.

⁶ Indian Exporters' Prehearing Brief at 16 ("heavy castings from all the subject countries do compete with
(continued...)

castings are made through similar channels of distribution.⁷ Heavy castings are sold by U.S. producers and importers in all areas of the United States, although individual producers, importers and distributors geographically limit sales to some extent.⁸

Although China and Brazil currently are not exporting heavy castings to the United States in more than small quantities, during the original investigations, Chinese, Brazilian, Canadian, and Indian heavy castings were simultaneously present in the market and competed with each other and the domestic product.⁹ There is nothing on the record to indicate that these circumstances would not recur if the orders were revoked.

We therefore conclude, based on findings in the original investigation and in these reviews, that the subject imports from Brazil, Canada, China, and India would be likely to compete with each other and with the domestic like product in the U.S. market if the order were revoked.

As noted above in the main opinion, the Commission's cumulation decision is discretionary even where the Commission finds that there would be a reasonable overlap of competition of the products in the U.S. market. To aid us in our exercise of discretion, we have also examined the overall similarities in the conditions of competition that would prevail if the orders are revoked. Because the conditions of competition would be similar if the orders are revoked, we conclude that it is appropriate to exercise our discretion to cumulatively assess the likely volume and effects of the subject imports.

First, the productive capacity in each country is substantial, and each is likely to have significant available capacity to increase exports to the United States. The two countries for which we have current questionnaire data—Canada and India—both have *** current levels of capacity utilization, and both have *** inventories held abroad or by U.S. importers.

Second, Canadian and Indian castings are currently underselling the prices of domestic heavy castings. Moreover, we find it likely, in the absence of contrary information from respondents and in view of the Commission's underselling finding in the original investigation, that imports from producers in Brazil and China would also be priced aggressively in the U.S. market.

Third, there are no significant import barriers or other industry developments with respect to any of the subject countries that indicate that the conditions of competition would be significantly different if the orders are revoked.

We have examined the argument of Indian respondents that we should not cumulate subject imports from India with other subject imports on grounds that, unlike the orders pertaining to Brazil, China, and Canada, the CVD order on Indian heavy castings has not restrained the volume or low prices of Indian imports. The import volume and price data collected by the Commission indicate that, since at least 1992, imports from Brazil and China have been shut out of the U.S. market, whereas substantial quantities of imports have entered the U.S. market from India, and smaller (but still meaningful) quantities of imports

⁶ (...continued)

one another in the sense that the castings are fungible"); Domestic Producers' Prehearing Brief at 17–24; CR at II-9–15.

⁷ CR at II-1, I-27–I-28. Most product is sold to distributors; the percent of sales to distributors rather than directly to end users is greater in the case of imports. CR at II-1.

⁸ CR at II-1–2. Heavy castings from Canada are sold mainly in the Northeastern United States. *Id.*

⁹ Iron Construction Castings from Brazil, India and the People's Republic of China, Inv. No. 701-TA-249 (Final) and Inv. Nos. 731-TA-262, 264 and 265 (Final), USITC Pub. 1838 (Apr. 1986), Views of Chairwoman Stern, Commissioner Eckes, Commissioner Lodwick, and Commissioner Rohr at 12 n. 36; Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986).

have entered from Canada.¹⁰

We do not believe that this difference in current import volumes from India versus the other subject countries outweighs the broad similarities in the conditions of competition described above. Each subject country has the wherewithal and incentive to ship significantly increased quantities of low-priced imports in a post-revocation environment.

We recognize that, upon revocation of the orders, imports from Brazil and China might well show the greatest rate, and perhaps absolute size, of an increase in imports, given that these countries are starting from a minuscule current base. However, conditions pertinent to India (huge capacity, export orientation of industry, substantial increasing trend in imports from 1992 to 1998) point in the same increasing direction as conditions pertinent to Brazil and China.

For the reasons given above, we choose to exercise discretion to cumulate the volume and effect of subject imports from Brazil, Canada, China, and India.

C. Revocation of the antidumping duty orders on heavy castings from Brazil, Canada, and China, and the countervailing duty orders on Brazil and India, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended, that revocation of the antidumping duty orders on heavy iron construction castings from Brazil, Canada, and China, and the countervailing duty orders on heavy iron construction castings from Brazil and India, would be likely to lead to continuation or recurrence of material injury to the domestic industry producing heavy iron construction castings within a reasonably foreseeable time.

We join the views of the majority in its discussion of the conditions of competition facing the heavy iron construction castings industry in the U.S. market.

1. Likely volume of subject imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.¹¹ 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

¹⁰ CR at Appendix E. We acknowledge that the CVD order on heavy castings from India has restrained imports substantially less than the relevant orders have restrained imports from Brazil or China, and that the level of heavy castings imports from India may be influenced to a substantial degree by the level of new housing construction. *See* Indian Respondents Post-Hearing Brief at ex. 3. We are not, however, prepared to find that the CVD order on heavy castings from India has had no restraining effect at all, particularly given the Indian producers’ substantial excess capacity and the uncertainty for importers over ultimate duty assessment because of the possibility or likelihood of administrative reviews.

¹¹ 19 U.S.C. § 1675a(a)(2).

produce the subject merchandise, are currently being used to produce other products.¹²

In the original determinations, the Commission concluded that the domestic industry producing heavy construction castings was materially injured by reason of the subject imports from India, Brazil, Canada, and China.¹³ The Commission found in each respective investigation that subject imports of heavy iron construction castings had increased significantly over the periods examined. During the period examined for these reviews, imports from Brazil, Canada, China, and India totaled 130.7 million pounds in 1997, or 19.7 percent of domestic consumption, and 127.3 million pounds in 1998, or 18.6 percent of domestic consumption.¹⁴ In assessing the likely volume of imports if the orders are revoked, we view the sharp reduction in imports from Brazil and China, and, to a lesser degree, Canada, as reflecting the remedial effects of the antidumping duty orders.

Information in the record for Canada suggests that exports of heavy castings to the United States would increase if the antidumping duty order were revoked. The United States is ***.¹⁵ ***.¹⁶

Data for India show an industry that not only remained an active participant in the U.S. market since the original investigations, but one that has significantly increased its total shipments and market share. In 1998, imports from India captured almost 17 percent of the U.S. market for heavy construction castings.¹⁷ The Municipal Castings Fair Trade Council (MCFTC) maintains that Indian capacity to produce heavy and light castings is 684 million pounds. The Indian Export Promotion Council estimate annual production of heavy castings of 441 million pounds, which is almost 65 percent of U.S. annual consumption. Data received from Indian exporters, while not covering all Indian exporters, show an increase in capacity of nearly 20 percent from 1997 to 1998, but low capacity utilization (53 percent in 1998), allowing further increased shipments. Inventory levels in India and inventories held by U.S. importers are also significant (over 20 percent of production or imports, as the case may be). The United States is only one of several export markets, allowing the exporters in India to shift export shipments to the U.S. market.¹⁸ Finally, we note that India is also a significant producer of light construction castings, and thus may be able to shift production between the two products.

No producers or importers of Brazilian and Chinese heavy iron construction castings submitted information in these reviews; thus there is no information on the record with respect to current heavy casting production capacity in either country. Information in the original investigations showed that China's exports of iron construction castings, both heavy and light, to all markets including the United States, ranged between 135.0 million pounds and 201.6 million pounds annually between 1981 and 1985.¹⁹

¹² 19 U.S.C. § 1675a(a)(2)(A)-(D).

¹³ Certain Cast Iron-Metal Castings from India, Inv. No. 303-TA-13 (Final), USITC Pub. No. 1098 (Sept. 1980); Iron Construction Castings from Brazil, India, and the People's Republic of China, Inv. No. 701-TA-249 (Final) and Invs. Nos. 731-TA-262, 264, and 265 (Final), USITC Pub. No. 1838 (Apr. 1986); and Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. No. 1811 (Feb. 1986). The antidumping duty order against India was revoked in 1991.

¹⁴ CR at Table I-1.

¹⁵ CR at II-6. ***. *Id.*

¹⁶ There are no known outstanding orders against Canada in third markets.

¹⁷ CR at Table I-6.

¹⁸ CR at IV-7.

¹⁹ Iron Construction Castings from Brazil, India and the People's Republic of China, Inv. No. 701-TA-249 (Final) and Invs. Nos. 731-TA-262, 264 and 265 (Final), USITC Pub. 1838 at A-37, Table 15 (Apr. 1986). We note that the Commission's February 1986 determination with respect to Canada was based on the same record as the record for its April 1986 determinations with respect to Brazil, China and India, and that all four countries

(continued...)

Brazil's exports of all cast iron products to all markets, including the United States, ranged from 102 million pounds to 224 million pounds annually between 1981 and 1985.²⁰ The MCFTC estimates that Brazilian and Chinese capacity to produce both heavy and light castings is 450 million pounds and 626 million pounds, respectively.²¹

In sum, the record indicates that Brazil, Canada, China, and India have ample production capacity to increase their shipments to the United States if the orders were revoked. The record also suggests no limitations on any of these four countries resuming significant export shipments to the United States, or in the case of India, increasing already significant shipments, if the orders were revoked.

Accordingly, we find that Brazilian, Canadian, Chinese, and Indian exports to the United States would be likely to increase significantly in the reasonably foreseeable future if the orders were revoked.

2. Likely price effects of subject imports

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.²²

In the original 1986 determinations, the Commission found general underselling by the subject heavy castings imports.²³ Data for the current period examined, January 1997 through March 1999, also show significant underselling by the Canadian and Indian heavy castings in each quarter.²⁴ As noted above, we find that Brazil, Canada, China, and India are likely to significantly increase exports to the United States in the reasonably foreseeable future if the orders are revoked. As described above, the record indicates that domestic heavy construction castings and the subject imports are essentially fungible. Moreover, purchasers indicated that price is one of the most important factors in the purchase decision.

Thus, if the orders were revoked, the imports would have to be priced aggressively to regain market share. In turn, they would be likely to have significant depressing and suppressing effects on prices of the domestic like product. Accordingly, we find that the likely volume of imports from Brazil, Canada, China, and India resulting from revocation of the orders would be likely to have significant price effects, including significant underselling and significant price depression or suppression, on domestic prices for heavy iron construction castings.

3. Likely impact of subject imports

¹⁹ (...continued)

were cumulated in each determination.

²⁰ Iron Construction Castings from Brazil, India and the People's Republic of China, Inv. No. 701-TA-249 (Final) and Invs. Nos. 731-TA-262, 264 and 265 (Final), USITC Pub. 1838 at A-37, Table 14 (Apr. 1986). Brazil's annual production capacity for all cast-iron products ranged from 3.6 billion pounds (1.753 million short tons) to 3.8 billion pounds (1.918 million short tons) between 1981 and 1985. *Id.*

²¹ CR at IV-9.

²² 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.

²³ USITC Pub. 1838 at 15, 17.

²⁴ CR at V-18, Table V-5.

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.²⁵ 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.²⁶ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping and countervailing duty orders at issue and whether the industry is vulnerable to material injury if the order is revoked.

In concluding in its original 1986 determinations that the domestic industry producing heavy construction castings was materially injured by reason of subject imports from Brazil, Canada, China, and India, the Commission found that, while apparent consumption increased markedly during each of the periods of investigation, the rates at which the domestic producers of heavy construction castings increased production, shipments, capacity, capacity utilization and employment were considerably below that of the increasing domestic consumption.²⁷ Although the domestic industry had shown some improvement during the periods examined, six of the fifteen domestic producers reported operating losses during the entire period of investigation.²⁸ The Commission found particularly significant that there were net operating losses in the domestic industry during the first year of the period of investigation and marginal operating income during the other years when considered in light of increased domestic consumption and increases in domestic production and shipments.²⁹

As required by the statute, we have considered whether the domestic industry is vulnerable to material injury if the orders are revoked. Based on the strong recent operating and financial performance, we do not consider the industry to be vulnerable.³⁰ However, given the generally substitutable nature of the subject and domestic product, we find that the significant volume of low-priced subject imports, when combined with the expected adverse price effects of these imports, would have a significant adverse impact on the production, shipments, 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 and employment levels as well as its ability to raise capital and make and maintain necessary

²⁵ 19 U.S.C. § 1675a(a)(4).

²⁶ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). In its final five-year review determinations concerning heavy iron construction castings, Commerce determined that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping margins of the following magnitudes: for Brazil, from 5.95 percent to 58.74 percent; for Canada, from 4.40 percent to 9.80 percent; and for China, 92.74 percent. In its final five-year review determinations in the CVD investigations, Commerce published the following net countervailable subsidy rates: for Brazil, 1.06 percent; and for India, from 0.84 percent to 1.82 percent.

²⁷ USITC Pub. 1838 at 9.

²⁸ USITC Pub. 1838 at 10.

²⁹ USITC Pub. 1838 at 10–11.

³⁰ CR at Table I-1.

capital investments. Accordingly, we conclude that, if the orders are revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Section 751(d) of the Act requires that the Department of Commerce (Commerce) revoke a countervailing duty or an antidumping order in a five-year (sunset) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.¹ In the reviews of the antidumping and countervailing duty orders on subject imports from India, Brazil, and China, I find that material injury would not be likely to continue or recur within a reasonably foreseeable time if the orders are revoked. In the review of the antidumping duty order on subject imports from Canada, I find that material injury would be likely to continue or recur within a reasonably foreseeable time if the order is revoked.

I join my colleagues in their discussion regarding the domestic like products and the domestic industries, and in their explanation of the relevant legal standard. I also join in their discussion of the relevant conditions of competition. However, I add further observations regarding such conditions of competition below.

In addition, with respect to the discussion regarding cumulation, I join the majority in its determination that revocation of the existing countervailing duty order covering subject imports from India likely would have no discernible adverse impact on the domestic industry producing heavy castings. In light of this determination, I find that revocation of the order would not be likely lead to a continuation or recurrence of material injury within a reasonably foreseeable time. A full discussion of my views on this issue is provided below.

However, unlike the majority, I also have determined that revocation of the existing countervailing duty order covering subject imports from Brazil likely would have no discernible adverse impact on the domestic industry producing heavy castings. In light of this determination, I find that revocation of the countervailing duty order with respect to Brazil would not be likely lead to a continuation or recurrence of material injury within a reasonably foreseeable time. A full discussion of my views on this issue is provided below.

I. CUMULATION

A. General

My approach to the issue of cumulation differs from the approach outlined in the majority opinion. To the extent that my analysis differs from the approach taken by the majority, the following discussion serves as a framework for an analysis under my reading of the statute. In determining whether to cumulate imports from subject countries, I follow a sequential, four-step analytical process that addresses eligibility for cumulation, statutory prohibition, Commission discretion, and competition.

The first question presented in my analysis is whether the imports from the subject countries are eligible for cumulation. In Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238 (Sept. 1999), I determined that the statute precludes the Commission from cumulatively assessing the volume and effect of imports from two or more countries

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

when such imports do not consist of the same subject merchandise.² In my view, section 752(a)(7) of the Tariff Act of 1930, as amended, gives the Commission discretion to assess cumulatively the volume and effect of imports of “the subject merchandise” from all countries as to which reviews were initiated on the same day, “if such imports would be likely to compete with each other and with the domestic like products in the United States market.”³ The statute specifically defines the term “the subject merchandise” as “the class or kind of merchandise that is within the scope of an investigation.”⁴ Thus, where the classes or kinds of merchandise that are within the scopes of the orders under review are not the same, they are not the same subject merchandise, and therefore are not eligible for cumulation. In addition, the statute clearly states that the Commission may cumulate only where the reviews of the orders are initiated on the same day.⁵

The second question in my analysis is whether there is a statutory prohibition on cumulation. The statute clearly prohibits cumulation where the subject imports are likely to have no discernible adverse impact on the domestic industry.⁶ Third, where subject imports are eligible for cumulation and are not covered by the statutory prohibition on such cumulation, the Commission has the statutory discretion to cumulate such imports. The fourth and final question I address is whether the subject imports to be cumulated are likely to compete with each other and with the domestic like product.⁷

In these sunset reviews, the specific scope language differs among several of the orders. All of these reviews were initiated on the same day. The Brazilian countervailing duty (CVD) order, the Canadian order, and the Indian order cover only heavy castings.⁸ Since the scopes are the same, these subject imports are eligible for cumulation with each other. Similarly, the Brazilian antidumping duty (AD) order and the Chinese order cover both heavy and light castings. Since these scopes are the same, these subject imports are eligible for cumulation with each other. However, the scopes of the Brazilian CVD order, the Canadian order, and the Indian order are not the same as the scopes of the Brazilian AD order and the Chinese order. Therefore, heavy castings from Brazil (CVD), Canada, and India are not eligible for cumulation with heavy and light castings from Brazil (AD) and China.

B. No Discernible Adverse Impact

1. *Heavy Castings from Brazil (CVD), Canada, and India.* With respect to the reviews of the orders covering subject imports from Brazil (CVD), Canada, and India, I determine that revocation of the orders on subject imports from both Brazil (CVD) and India likely would have no discernible adverse impact on the domestic industry producing heavy castings. Therefore, the statute precludes cumulation of the subject imports from Brazil (CVD), Canada, and India with each other. Consequently, I do not reach a determination on whether to exercise my discretion to cumulate such imports, or whether such imports compete with each other and the domestic like product in the U.S. market.

a. *Subject Imports from India.* As previously stated, I join the majority in the determination that revocation of the existing countervailing duty order covering subject imports of heavy castings from India

² See *id.* at 16 n. 83.

³ 19 U.S.C. § 1675a(a)(7).

⁴ 19 U.S.C. § 1677(25).

⁵ 19 U.S.C. § 1675a(a)(7).

⁶ *Id.*

⁷ *Id.*

⁸ The scope of the order on India does not specifically mention manhole rings (circular frames). However, the term “frames” as used in the India scope appears to include both circular and noncircular frames. Therefore, the scope coverage of heavy castings is the same for the Brazilian CVD order, the Canadian order, and the Indian order, although the language is not identical.

likely would have no discernible adverse impact on the domestic industry producing heavy castings. Therefore, the statute precludes cumulation of these subject imports from India with subject imports of heavy castings from Brazil (CVD) or Canada for purposes of these three reviews.

b. *Subject Imports from Brazil (CVD)*. Revocation of the order on Brazil (CVD) likely would have no discernible adverse impact on the domestic industry because current import quantities from Brazil are minimal and likely will continue to be minimal within a reasonably foreseeable time if the order is revoked. In this review, Commerce has calculated a likely countervailing duty margin of 1.06 percent. This margin is not based on calculations from the original investigation.⁹ This margin is so small that if the existing order is revoked, demand for heavy castings from Brazil is not likely to increase. Given the very small margin and the low elasticity of demand for heavy castings, revocation of the order is not likely to lead to an increase in subject imports from Brazil. As discussed below, subject imports of heavy castings from Brazil are poor substitutes for domestic heavy castings, and thus there likely would not be a shift in demand away from domestic heavy castings. Absent an increase in demand for the domestic product, it is not likely that revocation of the order would have any effect on domestic prices or impact on the domestic industry. Therefore, I determine that revocation of the order on Brazil (CVD) likely would have no discernible adverse impact on the domestic industry producing heavy castings. Consequently, the statute precludes cumulating subject imports from Brazil (CVD) with subject imports from Canada or India for purposes of these reviews.

c. *Subject Imports from Canada*. In light of my conclusions that subject imports from Brazil (CVD) and India are both likely to have no discernible adverse impact on the domestic industry if the order is revoked, there is no further issue regarding cumulation among the subject imports of heavy castings from Brazil (CVD), Canada, and India. I address the likely effects of revocation of the order on subject imports from Canada below.

2. *Heavy and Light Castings from China and Brazil (AD)*. I do not find that revocation of either of the orders covering subject imports of heavy and light castings from these two countries likely would have no discernible adverse impact on the domestic industry. However, I have exercised my discretion not to cumulate these imports. Therefore, I do not reach the question of whether such imports compete with each other and the domestic like product in the U.S. market.

II. CONDITIONS OF COMPETITION

As previously noted, I join the majority in the discussion of the relevant conditions of competition. However, discussed below are additional conditions of competition that weigh significantly in my analyses of the subject reviews.

⁹ “Because the [original subsidy programs] were found to be terminated, [Commerce has] adjusted the original countervailing duty rate to reflect these terminations. Further, Brazilian exporters/producers of castings have not been found to have benefitted from any additional countervailable programs.” 64 Fed. Reg. 30310, 30315 (June 7, 1999). Thereafter, Commerce determined that an original, on-going countervailable export subsidy was the sole subsidy likely to prevail if the order were revoked. *Id.*

A. Supply Considerations

In all respects, heavy and light castings are distinct segments of the broader castings market. There is no overlap in the application of these products because heavy castings are used almost exclusively as manhole rings and covers, or as catch basins, while light castings are used primarily as valve and meter boxes. There is a clear division between domestic firms that produce heavy castings and domestic firms that produce light castings. Currently, nine domestic firms produce heavy castings and four produce light castings.¹⁰

Through the 1997–98 review period, the heavy and light castings industries have been operating at high capacity utilization rates and have maintained high ratios of inventories to shipments. For heavy castings, the capacity utilization rate exceeded 100.0 percent throughout the period.¹¹ With respect to light castings, the rate was *** percent in 1997 and *** percent in 1998.¹² In the heavy castings industry, the ratio of inventories to shipments was 21.2 percent in 1997 and 19.9 percent in 1998.¹³ For light castings, the rate was 27.1 percent in 1997 and 23.2 percent in 1998.¹⁴ Finally, product shifting capabilities and exports do not appear to be a significant factor in the assessment of supply elasticities for either industry. Only one firm is known to export heavy castings, and such exports are small. In addition, while minimal amounts of light castings were exported in 1997, none were exported in 1998.¹⁵

Overall, despite the high levels of product inventory, based on the high capacity utilization figures, small export shipments and lack of product shifting capability, I conclude that the elasticity of supply is relatively low for both the heavy and light castings domestic industries.

There is little information concerning supply considerations involving subject Chinese and Brazilian imports.¹⁶ Production data for China were not available in the original investigation.¹⁷ Similarly, although complete production data are unavailable in this review, according to the information available on the current record, Chinese producers of castings appear to have ample available production capabilities. Reportedly, China currently possesses 625.6 million pounds of iron castings production capacity. However, this figure includes both light and heavy castings.¹⁸ Based on the limited information available, I conclude that the elasticity of supply is relatively high for Chinese producers of both heavy and light castings.

In the original investigation regarding Brazil (AD), the foundry industry in Brazil was considered to be well-developed. At that time, Brazilian iron foundries had a practical capacity of 1.9 million short tons in 1985 (3.8 billion pounds).¹⁹ According to the information available on the current record, Brazilian producers of castings appear to have ample available production capabilities. Reportedly, Brazil currently possesses 449.5 million pounds of iron castings production capacity. However, this figure includes both

¹⁰ CR at Table I-3; PR at Table I-4.

¹¹ CR at Table III-A-1; PR at ___.

¹² CR at Table III-A-2; PR at ___.

¹³ CR at Table III-A-5; PR at ___.

¹⁴ CR at Table III-A-6; PR at ___.

¹⁵ CR at II-5; PR at ___.

¹⁶ No producers of light castings from China or Brazil responded to Commission questionnaires. CR at IV-9; PR at ___.

¹⁷ Original Staff Report at A-48.

¹⁸ See CR at IV-9; PR at ___.

¹⁹ Original Staff Report at A-35, Table 14.

heavy and light castings.²⁰ Based on the limited information available, I conclude that it that the elasticity of supply is relatively high for Brazilian producers of both heavy and light castings.

Only heavy castings from Canada and India are under order, and thus only the information relating to the heavy castings industries in those two countries is relevant in those reviews. In the original investigation regarding Canada, Canadian iron foundries producing heavy castings had a capacity of *** million pounds in 1984. According to the available information, Canadian producers likely have ample available production capabilities.²¹ One large Canadian producer of heavy castings accounting for *** of the U.S. imports from Canada has ***.²² This firm also has a *** capacity utilization rate, and keeps a ***. This firm alone had capacity of *** pounds in 1998.²³ Moreover, this firm's *** export market is the United States.²⁴

In the review regarding India, the current available data also suggest that Indian producers are capable of increasing exports to the United States. The reported production capacity for heavy castings in India was 106.1 million pounds in 1997 and 126.0 million pounds in 1998. The reported capacity utilization rate was 68.2 percent in 1997 and 53.2 percent in 1998. The ratio of inventories to shipments was 14.5 percent in 1997 and 22.1 percent in 1998.²⁵ Moreover, unlike Canada, which appears to rely on its domestic market and the U.S. market for sales of heavy castings, India produces only for export.²⁶

Based on the limited information available, I conclude that the elasticity of supply is relatively high for both the Canadian and Indian producers of heavy castings.

B. Demand Considerations

Few alternative products may be substituted for castings, principally because of their long-term heavy load bearing properties and durability. Although infrequently used, fabricated steel, galvanized steel, and ductile iron are potential substitutes for heavy castings. In the case of light castings, more substitution is possible. Plastics, concrete, fiberglass and composites are all potential substitutes for light castings. Practically speaking, however, none of these products appear to be viable substitute products for heavy and light castings.²⁷

Accurate estimates of downstream cost shares for heavy and light castings are not available on the current record. However, because such castings are primarily used in large construction projects, it is reasonable to assume that the estimated share of the total cost accounted for by such castings in these applications is necessarily fairly small.²⁸

In light of the general lack of viable substitute products and the minor share of overall construction costs accounted for by castings, I find that the elasticity of demand is relatively low for both heavy and light castings. However, given the availability of some substitute products in the case of light castings

²⁰ See CR at IV-9; PR at __.

²¹ One Canadian producer, accounting for approximately *** percent of Canadian imports of heavy castings in 1998, responded to a Commission questionnaire. Revision to Staff Report Memorandum INV-W-234 (Oct. 15, 1999); CR at IV-9 & n. 9; PR at __ & __.

²² CR at II-6; PR at __.

²³ See CR/PR at Table IV-5.

²⁴ CR at II-6; PR at __.

²⁵ CR at Table IV-6; PR at __.

²⁶ CR at II-7; PR at __.

²⁷ See CR at II-9; PR at __.

²⁸ Id.

(e.g., plastics), the elasticity of demand for that product is likely to be somewhat higher than for heavy castings.

C. Substitutability

1. *Heavy Castings*. Based on physical characteristics, heavy castings produced in the United States and in the subject countries usually are considered to be interchangeable in their applications.²⁹ However, while the basic configurations of heavy castings vary little, individual models differ by dimension, marking, vents, and pick holes. These variations reflect regional differences in weathering and wear problems.³⁰ U.S. producers manufacture 4,000–5,000 different types of heavy castings in order to meet demand for less popular or specialty items, while U.S. importers typically handle only 150–200 high-volume standardized models.³¹ Thus, these product mixes are quite different. Purchasers report that U.S. producers typically manufacture a broader range of higher quality heavy castings than are available from India and China, while U.S.-produced and Canadian heavy castings generally are considered to be comparable in product quality and range. None of the purchasers responding to Commission questionnaires compared U.S. and Brazilian merchandise.³²

One of the most important non-product characteristics distinguishing U.S.-produced heavy castings from imports of the subject merchandise is lead times for merchandise produced to order. Such lead times range from about two weeks for Canadian producers, up to six weeks for U.S. producers, and up to four months for Indian producers.³³ A second important non-product characteristic is market coverage. U.S. producers and importers of Indian subject merchandise sell throughout the United States, while Canadian sales are primarily limited to the northeastern United States. There is no information on the record with respect to sales of subject imports from Brazil or China.³⁴ Purchasers responding to Commission questionnaires frequently reported that heavy castings manufactured by U.S. producers are superior in terms of product availability, delivery times, reliability of supply, and technical support compared to heavy castings from India and China, but comparable or inferior compared to Canadian heavy castings.³⁵

Other issues affecting substitutability include “Buy American” restrictions. Eleven of 15 reporting purchasers indicated that “Buy American” policies influence some of their purchases. The domestic interested parties estimate that 14 percent of all sales of heavy castings are subject to “Buy American” policies.³⁶ All imported manhole covers must be marked with their country of origin on the top surface.³⁷ Finally, about one percent of U.S. producers’ domestic sales are internal shipments.³⁸

Based on the lack of a significant distribution network, likely inferior quality, and “Buy American” restrictions, I find that subject imports of heavy castings from both China and Brazil are poor substitutes for the domestic like product. However, based on the comparable levels of quality and availability, but

²⁹ CR at II-11; PR at ___.

³⁰ CR at I-24; PR at ___.

³¹ Id.

³² CR at II-12–13; PR at ___.

³³ CR at II-2; PR at ___. However, lead times for U.S. producers’ and U.S. importers’ sales from inventory are comparable. U.S. producers and importers of the subject merchandise from Canada and India maintain sizeable inventories. Id.

³⁴ CR at II-2; PR at ___.

³⁵ CR at II-12–13; PR at ___.

³⁶ CR at II-14; PR at ___.

³⁷ CR at II-11 n. 11; PR at ___.

³⁸ CR at III-A-3; PR at ___.

recognizing the existence of some regional and “Buy American” restrictions, I find that heavy castings from Canada are fairly good for the domestic like product. Similarly, based on the widespread distribution network of Indian imports of heavy castings, but recognizing the inferior level of the quality of Indian imports and the existence of “Buy American” restrictions, I find imports of heavy castings from India are moderate substitutes for the domestic like product.

2. *Light Castings.* Based on physical characteristics, light castings produced in the United States and in the subject countries usually are considered to be interchangeable in their applications.³⁹ Unlike heavy castings, light castings are relatively standardized nationwide, although they may be produced in a range of dimensions.⁴⁰ Purchasers responding to Commission questionnaires report that U.S. producers typically manufacture a broader range of higher quality light castings than are available from China, while no purchasers compared U.S. and Brazilian merchandise.⁴¹

The most important non-product characteristics distinguishing U.S.-produced light castings from imports of the subject merchandise are lead times and market coverage. Purchasers reported that light castings manufactured by U.S. producers are superior in terms of product availability, delivery times, reliability of supply, and technical support compared to light castings from China, but made no comparisons between U.S. and Brazilian light castings.⁴²

Substitutability is further reduced due to “Buy American” restrictions. Three of 10 reporting purchasers responding to Commission questionnaires indicated that “Buy American” policies influence some of their purchases. The domestic interested parties estimate that 28 percent of all sales of light castings are subject to “Buy American” policies.⁴³ Finally, more than *** percent of U.S. producers’ U.S. sales are internal shipments.⁴⁴ Thus, more than one-half of the light castings market is not available to subject imports.

Based on non-product differences, differences in product mixes, “Buy American” restrictions, and the portion of domestic production consumed internally, I find that subject imports of light castings from both China and Brazil are poor substitutes for the domestic like product.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM CHINA IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

Heavy Castings. In the original investigation, U.S. imports of heavy castings from China increased 80.5 percent, from 10.8 million pounds in 1983 to 19.5 million pounds in 1985. In terms of U.S. market share, such imports rose from 2.6 percent by quantity in 1983 to 3.4 percent by quantity in 1985. Over the 1997–98 period of review, smaller amounts of subject Chinese heavy castings were imported. In 1997, 0.5 million pounds were imported from China. In 1998, 1.3 million pounds were imported from

³⁹ CR at II-11; PR at ___.

⁴⁰ CR at I-24; PR at ___.

⁴¹ CR at II-12–13; PR at ___.

⁴² *Id.*

⁴³ CR at II-14; PR at ___.

⁴⁴ CR at III-A-4; PR at ___.

China. In 1997, Chinese market share was minimal. In 1998, Chinese market share for heavy castings increased to 0.2 percent by quantity.⁴⁵ Therefore, the data indicate that the market shares held by the subject imports from China have always been fairly small. Thus, it is likely that the volume of the subject imports will not be large if the order is revoked. In light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

Light Castings. In the original investigation, U.S. imports of light castings from China increased from 0.9 million pounds in 1983 to 1.6 million pounds in 1985. In terms of U.S. market share, such imports rose from 1.2 percent by quantity in 1983 to 1.7 percent by quantity in 1985. Over the 1997–98 period of review, there were minimal imports of subject Chinese light castings. In 1997, subject Chinese merchandise accounted for zero percent of U.S. consumption and only *** percent in 1998.⁴⁶ Therefore, the data indicate that the market shares held by the subject imports from China have always been very small. Thus, it is likely that the volume of the subject imports will not be large if the order is revoked. In light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

B. Likely Price Effects of Subject Imports

Heavy Castings. As previously discussed, demand for heavy castings is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic product and the subject imports are poor substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject and “other” imports, which currently hold a market share of 20.2 percent.⁴⁷ Absent a significant shift in demand away from the domestic product, revocation of the order is not likely to have any effect on domestic prices. Consequently, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices within a reasonably foreseeable time.

Light Castings. As previously discussed, demand for light castings is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic product and the subject imports are poor substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject and “other” imports, which currently hold a market share of *** percent.⁴⁸ Absent a significant shift in demand away from the domestic product, revocation of the order is not likely to have significant effects on domestic prices. Consequently, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices within a reasonably foreseeable time.

⁴⁵ CR at Table I-2; PR at Table ___.

⁴⁶ CR at Table I-3; PR at Table ___.

⁴⁷ See CR at Table I-2; PR at Table ___. “Other imports” include those from Brazil, Canada, and India. Thus, this figure represents the 1998 total import market share of 20.4 percent, less the 1998 Chinese market share of 0.2 percent. *Id.*

⁴⁸ CR at Table I-3; PR at Table ___.

C. Likely Impact of Subject Imports

Heavy Castings. As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry's output and sales will not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

In this analysis, I have also considered the other statutory factors that the Commission is directed to take into account.⁴⁹ However, my consideration of these factors does not have any effect on my determination.

Light Castings. As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry's output and sales will not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

In this analysis, I have also considered the other statutory factors that the Commission is directed to take into account.⁵⁰ However, my consideration of these factors does not have any effect on my determination.

D. Conclusion

Subject imports of heavy and light castings from China likely would not have a significant effect on the domestic industries' prices, output and sales, and therefore their revenues, if the existing order is revoked. Therefore, I determine that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.

⁴⁹ 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has not issued a duty absorption finding, therefore it is not an issue in this review. The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The margins of dumping that Commerce found likely to prevail if the existing order on China is revoked is 92.74 percent for all manufacturers/exporters. 64 Fed. Reg. 30310, 30313 (June 7, 1999).

⁵⁰ 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has not issued a duty absorption finding, therefore it is not an issue in this review. The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The margins of dumping that Commerce found likely to prevail if the existing order on China is revoked is 92.74 percent for all manufacturers/exporters. 64 Fed. Reg. 30310, 30313 (June 7, 1999).

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM BRAZIL IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

Heavy Castings. In the original investigation, U.S. imports of subject heavy castings from Brazil increased 926.3 percent, from 1.9 million pounds in 1983 to 19.5 million pounds in 1985. In terms of U.S. market share, such imports rose from 0.4 percent by quantity in 1983 to 3.4 percent by quantity in 1985. Over the 1997–98 period of review, smaller amounts of subject Brazilian heavy castings were imported. In 1997, 0.2 million pounds were imported from Brazil. In 1998, 0.07 million pounds were imported from Brazil. In 1997–1998, the Brazilian market share for heavy castings was less than 0.05 percent.⁵¹ Therefore, the data indicate that the market shares held by the subject imports from Brazil have always been fairly small. Thus, it is likely that the volume of the subject imports will not be large if the order is revoked. In light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

Light Castings. In the original investigation, U.S. imports of light castings from Brazil increased from zero in 1983 to 1.6 million pounds in 1985. In terms of U.S. market share, such imports rose from zero percent by quantity in 1983 to 1.7 percent by quantity in 1985. Over the 1997–98 period of review, there were no imports of subject Brazilian light castings.⁵² Therefore, the data indicate that the market shares held by the subject imports from Brazil have always been very small. Thus, it is likely that the volume of the subject imports will not be large if the order is revoked. In light of the likely lack of significant price effects and impact on the domestic industry, I find that the volume of the subject imports is not likely to be significant if the order is revoked.

B. Likely Price Effects of Subject Imports

Heavy Castings. As previously discussed, demand for heavy castings is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic product and the subject imports are poor substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject and “other” imports, which currently hold a market share of 20.4 percent.⁵³ Absent a significant shift in demand away from the domestic product, revocation of the order is not likely to have significant effects on domestic prices. Consequently, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices within a reasonably foreseeable time.

⁵¹ CR at Table I-2; PR at Table ___.

⁵² CR at Table I-3; PR at Table ___.

⁵³ See CR at Table I-2; PR at Table ___. “Other imports” include those from China, Canada and India. Thus, this figure represents the 1998 total import market share of 20.4 percent, less the 1998 Brazilian market share of 0.0 percent. Id.

Light Castings. As previously discussed, demand for light castings is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be large either. Because the domestic product and the subject imports are poor substitutes for each other, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Rather, it is likely that demand will shift away from nonsubject and “other” imports, which currently hold a market share of *** percent.⁵⁴ Absent a significant shift in demand away from the domestic product, revocation of the order is not likely to have significant effects on domestic prices. Consequently, I find that revocation of the order likely would not have any significant suppressing or depressing effect on domestic prices within a reasonably foreseeable time.

C. Likely Impact of Subject Imports

Heavy Castings. As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry’s output and sales will not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

In this analysis, I have also considered the other statutory factors that the Commission is directed to take into account.⁵⁵ However, my consideration of these factors does not have any effect on my determination.

Light Castings. As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic product. Therefore, it is likely that the domestic industry’s output and sales will not decrease significantly if the order is revoked. Consequently, I find that there likely would not be a significant impact on the domestic industry if the order is revoked.

In this analysis, I have also considered the other statutory factors that the Commission is directed to take into account.⁵⁶ However, my consideration of these factors does not have any effect on my determination.

⁵⁴ CR at Table I-3; PR at Table ___.

⁵⁵ 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission’s prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has not issued a duty absorption finding, therefore it is not an issue in this review. The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The margins of dumping that Commerce found likely to prevail if the existing order on Brazil (AD) is revoked range from 5.95–58.74 percent. 64 Fed. Reg. 30310, 30313 (June 7, 1999).

⁵⁶ 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission’s prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. *Id.* Commerce has not issued a duty absorption finding, therefore it is not an issue in this review. The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The margins of dumping that Commerce found likely to prevail if the existing order on Brazil (AD) is revoked range from 5.95–58.74 percent. 64 Fed. Reg. 30310, 30313 (June 7, 1999).

D. Conclusion

Subject imports of heavy and light castings from Brazil likely would not have a significant effect on the domestic industries' prices, output and sales, and therefore their revenues, if the existing order is revoked. Therefore, I determine that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.

V. **REVOCATION OF THE COUNTERVAILING DUTY ORDERS ON SUBJECT IMPORTS FROM INDIA AND BRAZIL IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

As discussed above, I have determined that the subject imports of heavy castings from India and Brazil (CVD) are likely to have no discernible adverse impact on the domestic industry producing heavy castings if the orders are revoked. Therefore, it follows that there likely would be no continuation or recurrence of material injury within a reasonably foreseeable time if these orders are revoked.

VI. **REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM CANADA IS LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

A. Likely Volume of Subject Imports

In the original investigation, U.S. imports of heavy castings from Canada increased 144.2 percent, from 8.6 million pounds in 1983 to 21.0 million pounds in 1985. In terms of U.S. market share, such imports rose from 2.1 percent by quantity in 1983 to 3.7 percent by quantity in 1985. Over the 1997–98 period of review, smaller amounts of Canadian heavy castings were imported. In 1997, 11.9 million pounds were imported from Canada. In 1998, 10.2 million pounds were imported from Canada. In 1997, Canadian market share was 1.8 percent. In 1998, Canadian market share for heavy castings dropped to 1.5 percent by volume.⁵⁷

Therefore, the data indicate that the market shares held by the subject imports from Canada have always been fairly small, but have maintained a consistent presence in the market even after the order issued. While it is likely that the volume of the subject imports will not be particularly large if the order is revoked, it is likely to be significant in light of its price effects and impact. In light of the likely significant price effects and impact on the domestic industry discussed below, I find that the volume of the subject imports is likely to be significant if the order is revoked.

B. Likely Price Effects of Subject Imports

As previously discussed, demand for heavy castings is likely to be inelastic. Thus, lowering prices likely would not result in a significant increase in overall demand. I have found that the volume of the subject imports is not likely to be particularly large if the order is revoked, and thus any increase in demand for the subject imports is not likely to be particularly large either. Nonetheless, it is likely that the increase in demand for the subject imports from Canada will be large enough to be significant if the order is

⁵⁷ CR at Table I-2; PR at Table ___.

revoked. Although heavy castings from China and Brazil are poor substitutes for the domestic product, the same is not true for heavy castings from Canada. Domestic heavy castings and Canadian heavy castings are fairly good substitutes for each other. Therefore, a shift in demand towards the subject imports likely would result in a shift in demand away from the substitutable domestic product. Nonsubject and “other” imports are a significant presence in the market, with a current market share of 18.9 percent,⁵⁸ and thus one would expect that the likely shift in demand toward Canadian heavy castings would also come partially at the expense of these other sources of heavy castings. However, nonsubject and “other” imports are poor substitutes for the subject imports from Canada, and thus it is likely that very little demand would shift away from these sources of heavy castings, if the order is revoked. Therefore, I find that most of the increase in demand for the subject imports would likely result in a corresponding decrease in demand for the domestic product.

The decrease in demand for the domestic product likely would have significant negative effects on domestic prices. Demand for heavy castings is steady, and the domestic industry is operating at full capacity. Therefore, the domestic industry likely would have to maintain its prices, or lower them, in response to the decrease in demand for its product resulting from even a small volume of substitutable heavy castings from Canada. Consequently, I find that even the small increase in the volume of subject Canadian merchandise likely would have significant effects on domestic prices if the order is revoked.

C. Likely Impact of Subject Imports

As discussed above, revocation of the order is likely to lead to a significant shift in demand away from the domestic product, which likely would have a significant effect on domestic prices. Because the domestic industry is operating at full capacity, it is likely that its output and sales also would decrease if the order were revoked. Consequently, I find that there likely would be a significant impact on the domestic industry if the order is revoked.

In this analysis, I have also considered the other statutory factors that the Commission is directed to take into account.⁵⁹ However, my consideration of these factors does not have any effect on my determination.

D. Conclusion

Subject imports of heavy castings from Canada likely would have a significant effect on the domestic industry’s prices, output and sales, and therefore its revenues, if the existing order is revoked. Therefore, I determine that material injury would be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.

⁵⁸ See CR at Table I-2; PR at Table __. “Other imports” include those from China, Brazil and India. Thus, this figure represents the 1998 total import market share of 20.4 percent, less the 1998 Canadian market share of 1.5 percent. Id.

⁵⁹ 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission’s prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. Id. Commerce has not issued a duty absorption finding, therefore it is not an issue in this review. The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The margins of dumping that Commerce found likely to prevail if the existing order on Canada is revoked range from 4.40–9.80 percent. 64 Fed. Reg. 30310, 30313 (June 7, 1999).