

UNITED STATES INTERNATIONAL TRADE COMMISSION

**CARBON STEEL BUTT-WELD PIPE FITTINGS
FROM BRAZIL, CHINA, JAPAN, TAIWAN, AND THAILAND**
Investigations Nos. 731-TA-308-310 and 520-521 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3263, December 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, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty orders on butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand 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

BACKGROUND

The Commission instituted these reviews on May 3, 1999 (64 F.R. 23672, May 3, 1999) and determined on August 5, 1999 that it would conduct expedited reviews (64 F.R. 44536, August 16, 1999). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 22, 1999.

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 Crawford dissenting with respect to Brazil, Taiwan, and Thailand and Commissioner Askey dissenting with respect to Brazil.

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 carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand 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

I. BACKGROUND

In December 1986, the Commission determined that an industry in the United States was being materially injured by reason of imports of carbon steel butt-weld pipe fittings from Brazil and Taiwan that were being sold at less than fair value (LTFV).² In January 1987, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of carbon steel butt-weld pipe fittings from Japan.³ In June 1992, the Commission determined that LTFV imports of carbon steel butt-weld pipe fittings from China and Thailand threatened the domestic industry with material injury.^{4 5} The Department of Commerce issued antidumping duty orders in December 1986 on imports of butt-weld pipe fittings from Brazil and Taiwan, in February 1987 on imports from Japan, and in July 1992 on imports from China and Thailand. On May 3, 1999, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would likely lead to continuation or recurrence of material injury.⁶

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to

¹ Commissioners Crawford dissents with respect to Brazil, Taiwan, and Thailand. Commissioner Askey dissents with respect to Brazil. Commissioner Crawford determines that revocation of the antidumping duty orders covering carbon steel butt-weld pipe fittings from Brazil, Taiwan, and Thailand 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. See Dissenting Views of Commissioner Carol T. Crawford. Commissioner Askey determines that revocation of the antidumping duty order covering carbon steel butt-weld pipe fittings from Brazil 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.

² Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986).

³ Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1943 (Jan. 1987).

⁴ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992). Commissioner Rohr did not cumulate subject imports from Thailand with subject imports from China, and made a negative determination with respect to Thailand.

⁵ In April 1995, the Commission determined that the U.S. carbon steel butt-weld pipe fittings industry was not materially injured, or threatened with material injury, by reason of subsidized and/or LTFV imports of carbon steel butt-weld pipe fittings from France, India, Israel, Malaysia, Korea, Thailand (AST only), the United Kingdom, and Venezuela. Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. 2870, April 1995. Also, the domestic industry did not request the Commission to initiate under Sec. 753 a review of an outstanding CVD order on fittings from Thailand. Accordingly, in July 1995, the Commission determined that the domestic industry was not likely to be materially injured by reason of imports of the subject merchandise if the CVD order on butt-weld pipe fittings from Thailand were revoked. 60 Fed. Reg. 38367 (July 17, 1995).

⁶ 64 Fed. Reg. 23672 (May 3, 1999).

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.⁷ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review. Domestic producers Mills Iron Works, Inc. (“Mills”), Trinity Fitting and Flange Group Inc. (“TFFG”), and Tube Forgings of America (“TFA”) filed a joint response to the Commission’s notice of institution, while Weldbend Corp. submitted an individual response. No respondent interested party filed a response.⁸

On August 5, 1999, the Commission unanimously determined that the domestic interested party group response was adequate but that the respondent interested party group response was inadequate for each subject country.⁹ Pursuant to section 751(c)(3)(B) of the Act,¹⁰ the Commission voted to expedite these reviews. The Commission then established a schedule for the conduct of the expedited five-year reviews.¹¹ Subsequently, the Department of Commerce extended the date for its final results in the expedited reviews from August 31, 1999, to November 29, 1999.¹² The Commission, therefore, revised its schedule to conform with Commerce’s new schedule.

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.”¹³ 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.”¹⁴ In its final five-year review determination, Commerce defined the subject merchandise as carbon steel butt-weld pipe fittings from Brazil, Taiwan, Japan, Thailand, and China under 14 inches in diameter, whether finished or unfinished.¹⁵

⁷ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁸ Nor did any other person file a submission under Commission Rule 207.61(d).

⁹ See Explanation of Commission Determination on Adequacy in Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand (August 16, 1999). See also 64 Fed. Reg. 44536 (Aug. 16, 1999).

¹⁰ 19 U.S.C. § 1675(c)(3)(B).

¹¹ 64 Fed. Reg. 44536 (August 16, 1999).

¹² 64 Fed. Reg. 48579 (September 7, 1999).

¹³ 19 U.S.C. § 1677(4)(A).

¹⁴ 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 (CIT 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (CIT 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹⁵ Commerce’s notice stated as follows:

The products covered by these reviews are pipe fittings from Brazil, Taiwan, Japan, Thailand, and China. Pipe fittings from Brazil, Taiwan, and Japan are defined as carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished form, that have been formed in the shape of elbows, tees, reducer, caps, etc., and, if

(continued...)

Butt-weld pipe fittings are used in residential, commercial, or industrial pipe systems in petroleum refining, electrical power generation, construction, shipbuilding, and the chemical industry. They are used to connect pipe sections where conditions require permanent, welded connections.¹⁶

In each of the original investigations, the Commission determined that the domestic like product included both finished and unfinished carbon steel butt-weld pipe fittings with an inside diameter of less than 14 inches.¹⁷ Mills, TFFG, and TFA state that they agree with the Commission's previous like product definition and that there is no information that suggests changing the definition.¹⁸ We find that there is no new information obtained during these five-year reviews that would suggest a reason for revisiting the Commission's original determination of the domestic like product.¹⁹ Accordingly, we define the domestic like product as finished and unfinished carbon steel butt-weld pipe fittings with an inside diameter of less than 14 inches.

B. Domestic Industry and Related Parties

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."²⁰ The only issue concerning the definition of the domestic industry in these reviews is whether certain producers should be excluded from the domestic industry under the statute's "related party" provision.

Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or

¹⁵ (...continued)

forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. Such merchandise was classifiable under Tariff Schedules of the United States Annotated ("TSUSA") item number 610.8800. These imports are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item number 7307.93.30.

Pipe fittings from Thailand and China are defined as carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join section in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded grooved, or bolted fittings). These imports are currently classifiable under the HTSUS item number 7307.93.30. The TSUSA and HTSUS subheadings are provided for convenience and United States Customs purposes. The written description remains dispositive as to the scope of the product coverage for each of the orders.

These reviews cover imports from all manufacturers and exporters of pipe fittings from Brazil, Taiwan, Japan, Thailand, and China.

64 Fed. Reg. 67847 (Dec. 3, 1999).

¹⁶ Confidential Report (CR) at I-9-10, Public Report (PR) at I-7-8.

¹⁷ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 6; Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1943 (Jan. 1987) at 6; Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 4-5.

¹⁸ Comments of Mills, TFFG, and TFA (Nov. 8, 1999) ("Joint Comments") at 3.

¹⁹ See CR at I-7 -11, PR at I-7-9.

²⁰ 19 U.S.C. § 1677(4)(A).

which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²¹

In these reviews, a related party issue exists with respect to domestic producer Tube-Line.²² In the original investigations involving China and Thailand, Tube-Line was found to be partially owned by Benkan America, a wholly-owned subsidiary of Benkan Corporation of Japan. During this period, Benkan Corporation of Japan exported the subject merchandise produced by Thai Benkan in Thailand to the United States.²³ The available information in these reviews indicates that Tube-Line continues to be a related party because it is related to Japanese and Thai producers and exporters of the subject merchandise.²⁴ Nothing in the current record suggests that Tube-Line's situation has changed since the original China/Thailand investigations in which the Commission excluded Tube-Line from the domestic industry on

²¹ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer *vis-à-vis* the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary 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).

²² During the original investigations, Weldbend purchased unfinished pipe fittings from China, converted them, and sold them as their own. Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 13. The Commission concluded that Weldbend's relationship with the importers was sufficiently close so that the related party provision should be applied to Weldbend. However, Weldbend no longer is a converter of unfinished pipe fittings and does not purchase or import the subject merchandise. CR at I-13, PR at I-10. Therefore, it no longer indirectly controls an importer by making large purchases of the subject merchandise, and consequently, Weldbend no longer is a related party eligible for exclusion from the domestic industry. Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 12.

²³ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 9 n.28.

²⁴ Joint Response of Mills, TFFG, and TFA (June 22, 1999) at 14-15 (citing Response of Thai Benkan Corp. to Section A of the Commerce Department's Antidumping Administrative Review Questionnaire, October 22, 1998, at 8-9).

the basis that it, like Weldbend, depended on low-cost subject imports for its operations.²⁵ ²⁶ Consequently, we exclude Tube-Line from the domestic industry.²⁷ ²⁸

III. CUMULATION

A. Framework²⁹

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise

²⁵ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 15-16.

²⁶ Commissioners Crawford and Askey do not concur in this statement. They note that the Commission explored this issue in its 1995 investigations on carbon steel butt-weld pipe fittings, and found that:

In recent years, the industry as a whole has become less reliant on outside sources for unfinished fittings as two firms, Tube-Line and Weldbend, changed their focus from converting unfinished fittings to operating integrated production facilities. Tube-Line began *** and, in ***, started such operations in a new facility located in New Brunswick, NJ. The New Brunswick plant was completed by ***. Tube-Line operated primarily as an integrated manufacturer during the period reviewed.

Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. 2870 (April 1995) at II-16 and II-17 (footnotes excluded). As a converter, Tube-Line had been a large importer of subject merchandise (unfinished fittings). However, the 1995 staff report indicates that the firm had made the transition from a converter to an integrated producer. Moreover, by 1998, there were virtually no subject imports from the countries that used to supply Tube-Line's carbon steel butt-weld pipe fittings (Thailand and China, and before that, Japan).

²⁷ As discussed above, Commissioners Crawford and Askey find that Tube-Line's primary interest appears to be in the production of fittings. Accordingly, they do not exclude Tube-Line from the domestic industry.

²⁸ Tube-Line also did not respond to the Commission's notice of institution, and therefore, as a practical matter, there are no firm-specific data concerning Tube-Line which would enable the Commission to exclude Tube-Line from its database concerning the domestic industry. Consequently, our determination would have been the same even if we had included Tube-Line in the domestic industry. Tube-Line did not provide data in the original investigations concerning China and Thailand either, and the Commission excluded it from the domestic industry in those determinations. Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 16 n.50.

²⁹ 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, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 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.

in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.³⁰

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. We note that neither the statute nor the URAA Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.^{31 32}

As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and with 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.^{33 34 35} Only a “reasonable overlap” of

³⁰ 19 U.S.C. § 1675a(a)(7).

³¹ Vice Chairman Miller and Commissioners Hillman and Koplan 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 the 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 provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews.

³² 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, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

³³ 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

(continued...)

competition is required.³⁶ 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 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.³⁷

Here, the statutory requirement that all of the carbon steel butt-weld pipe fittings reviews be initiated on the same day is satisfied.³⁸ For the reasons discussed below, we determine to cumulate imports from Brazil, China, Japan, Taiwan, and Thailand.³⁹

³³ (...continued)

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.

³⁴ 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.

³⁵ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

³⁶ 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).

³⁷ See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992) (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).

³⁸ Commissioner Crawford does not cumulate any subject imports and does not join the remainder of section III. Commissioner Askey cumulates subject imports from China, Japan, Taiwan, and Thailand.

³⁹ Commissioner Askey determines that imports from Brazil fall within the "no discernible adverse impact" exception to cumulation and does not cumulate imports from Brazil with those from the other subject countries.

B. Discussion^{40 41}

The record indicates that domestically produced carbon steel butt-weld pipe fittings and the subject merchandise are fungible. All butt-weld pipe fittings, domestic or imported, must meet ASTM and ANSI specifications and can be used interchangeably, except perhaps in the nuclear power industry where butt-weld pipe fittings must be certified.⁴² While there was some dispute concerning the fungibility of the subject merchandise from China and Thailand with the domestic like product in the original investigations, the Commission found that they did compete.⁴³ In the original determinations, the Commission found that subject imports of carbon steel butt-weld pipe fittings were simultaneously present in the market and sold through the same channels of distribution.⁴⁴ In its determinations with respect to imports from China and Thailand, the Commission also found that the subject merchandise and the domestic like product were sold in the same geographical markets.⁴⁵ There is no evidence in the current record that suggests that the subject imports would not compete with each other and the domestic like product if the orders under review were revoked. Consequently, we find that there would likely be an overlap of competition between the subject imports and the domestic like product as well as among the subject imports from the five countries.

We also note that the industries in the subject countries, with the possible exception of China, remain structured as they were during the original investigations.⁴⁶ Hence, we would expect competitive conditions to return to those conditions in existence prior to imposition of the orders if the orders are

⁴⁰ Commissioner Askey joins this discussion with respect to all countries except Brazil. This being an expedited review, there is limited information on the record. However, the available information indicates that total Brazilian imports in each of the last three years have been minimal or zero. CR at Figure I-1, PR at Figure at I-1. Moreover, Brazil accounted for the lowest volume of imports of each of the subject countries. Brazilian imports peaked in 1985, at *** pounds, which is a level considerably lower than that of imports from any other subject country during each of their investigation periods. CR at Table I-3, PR at Table I-3. The order has been in place for 14 years and Brazilian imports have been nonexistent or negligible since at least 1989. CR at Figure I-1, PR at Figure I-1. Accordingly, given that Brazil has virtually ceased exporting subject product and had been a relatively minor source of imports in the original investigation, Commissioner Askey determines that imports from Brazil are likely to have no discernible adverse impact on the domestic industry and should not be cumulated with imports from the other subject countries.

⁴¹ Chairman Bragg joins in the Commission's analysis finding a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

⁴² CR at I-10-11, PR at I-8; Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 14-15.

⁴³ CR at I-11, PR at I-9; Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 23.

⁴⁴ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 15; Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1943 (Jan. 1987) at 8. Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 22.

⁴⁵ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 23.

⁴⁶ The same companies that manufactured the subject merchandise during the original investigations in Brazil, Taiwan, Japan, and Thailand currently produce the subject merchandise, and there are still several producers in China. CR at I-28-29, PR at I-22.

revoked. Given these circumstances, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from all five countries in these reviews.^{47 48}

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON CARBON STEEL BUTT-WELD PIPE FITTINGS WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME⁴⁹

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁵⁰ The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁵¹ Thus, the likelihood standard is prospective in nature.⁵² 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.”⁵³ 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].”^{54 55}

⁴⁷ Commissioner Askey dissenting with respect to Brazil.

⁴⁸ Chairman Bragg does not join this conclusion. Having found a likely reasonable overlap of competition, Chairman Bragg turns to the issue of discernible adverse impact. Chairman Bragg finds that revocation of the orders at issue will lead to a likely discernible adverse impact. Accordingly, Chairman Bragg cumulates all subject imports.

⁴⁹ Commissioners Crawford and Askey dissenting. Commissioner Crawford joins in sections IV A & B, except as otherwise noted. Commissioner Askey made a negative determination with respect to Brazil based upon her determination that imports from Brazil would have no discernible adverse impact on the domestic industry. Accordingly, she joins the following discussion with respect to China, Japan, Taiwan, and Thailand only.

⁵⁰ 19 U.S.C. § 1675a(a).

⁵¹ SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). 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.

⁵² While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁵³ 19 U.S.C. § 1675a(a)(5).

⁵⁴ 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.*

⁵⁵ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all
(continued...)

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.”⁵⁶ 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.^{57 58}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”^{59 60} As noted above, no respondent interested party responded to the Commission’s notice of institution. Accordingly, we have relied on the facts available in these reviews, which consist

⁵⁵ (...continued)

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.

⁵⁶ 19 U.S.C. § 1675a(a)(1).

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

⁵⁸ 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 stated in its expedited five-year review determination that it has not issued any duty absorption finding in this case. 64 Fed. Reg. 53996, 53997 (Oct. 5, 1999).

⁵⁹ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. Id.

⁶⁰ Chairman Bragg and Commissioners Koplán and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. “[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations.” SAA at 869 [emphasis added]. Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” Id.

primarily of the records in the Commission's original investigations on carbon steel butt-weld pipe fittings, limited information collected by the Commission since the institution of these reviews, and information submitted by several of the domestic producers.

For the reasons stated below, we determine that revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁶¹

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁶²

The supply and demand conditions as well as the business cycle for carbon steel butt-weld pipe fittings have not changed significantly since the original investigations.^{63 64} The domestic industry underwent considerable consolidation in the late 1980s, as the number of domestic producers declined from twelve in 1986 to seven in 1992.⁶⁵ A merger between two firms and a shift in the product mix of a third led to further concentration in the domestic industry in the 1990s.⁶⁶ Also in the 1990s, U.S. producers moved towards integrated production of finished fittings instead of purchasing imported, unfinished fittings and converting them to finished fittings.⁶⁷

Demand for carbon steel butt-weld pipe fittings is derived from demand for the products of the industries that use them: oil, chemical, electrical power, commercial construction, and shipbuilding.⁶⁸ Data collected by the Commission indicate that annual apparent U.S. consumption increased from 79.0 million pounds to *** million pounds from 1985 to 1998.⁶⁹

Finally, the domestic market for carbon steel butt-weld pipe fittings is divided into "approved" and "non-approved" segments based on the tolerance for failure in particular applications. End users in the petroleum, nuclear energy, and power generation industries often have approved manufacturer lists.⁷⁰

⁶¹ Commissioner Crawford determines that revocation of the antidumping duty orders covering carbon steel butt-weld pipe fittings from Brazil, Taiwan, and Thailand 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. See Dissenting Views of Commissioner Carol T. Crawford. Commissioner Askey determines that imports from Brazil are likely to have no discernible adverse impact on the domestic industry.

⁶² 19 U.S.C. § 1675a(a)(4).

⁶³ Weldbend's Response to Notice of Institution (June 22, 1999) at 6.

⁶⁴ Commissioner Crawford finds that the consolidation and increasing integration of the domestic industry constitute a significant change in the conditions of competition since the original investigations.

⁶⁵ CR at I-12, PR at I-9.

⁶⁶ CR at I-12-13, PR at I-10.

⁶⁷ CR at I-12 n.24, I-13 n.28, PR at I-9-10 n.24, I-12-13 n.28.

⁶⁸ CR at I-27, PR at I-19.

⁶⁹ CR at Table I-4-A, PR at Table I-4-A. Mills, TFFG, and TFA claim that the rate of increase in consumption was significantly smaller. Joint Comments of Mills, TFFG, and TFA (Nov. 8, 1999) at 7.

⁷⁰ CR at I-11 n.21, PR at 9 n.21.

While U.S. products are approved for use in critical applications, certain imported pipe fittings (such as those from China) are not.⁷¹

Based on the record evidence, we find that these conditions of competition in the U.S. butt-weld pipe fittings market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. butt-weld pipe fittings market provide us with a basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁷² 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.⁷³

The antidumping duty orders had a significant restraining effect on subject imports. During the period examined in the original investigation, the market penetration for cumulated subject imports for Brazil, Japan, and Taiwan was as high as *** percent; the Commission deemed this to be “a very significant presence in the market.”⁷⁴ Cumulated subject imports from China and Thailand captured over one-third of the market during the period examined in the original investigation for those countries.⁷⁵ Subject imports from Brazil, Japan, Thailand, and China fell precipitously after imposition of the orders.⁷⁶ Subject imports from Taiwan also fell after the order was imposed, although they now account for 16 percent of total U.S. imports, ***.⁷⁷ Subject imports from Brazil, Japan, and China were virtually nil in 1998,⁷⁸ and subject imports from Thailand also appear to be minimal.⁷⁹ The market share of the domestic producers rose from *** percent in 1985 to *** percent in 1998.⁸⁰ The record does not indicate any other substantial changes in the conditions of competition during this period. Therefore, we conclude that the

⁷¹ CR at 11 n.21, PR at 9 n.21; Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 18 n. 55; Confidential Report, INV-P-095 (June 9, 1992) at I-29.

⁷² 19 U.S.C. § 1675a(a)(2).

⁷³ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁷⁴ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 17.

⁷⁵ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 27.

⁷⁶ CR at I-20, I-24, PR at I-15, I-19. Subject imports from Brazil, Japan, and Taiwan fell from 51.3 million pounds in 1985 to 5.9 million pounds in 1998. Similarly, subject imports from China and Thailand dropped from *** pounds in 1991 to 14 thousand pounds in 1998. CR at Table I-3, PR at Table I-3.

⁷⁷ CR at I-20, PR at I-15.

⁷⁸ CR at Table I-3, PR at Table I-3.

⁷⁹ CR at Table I-3, n.3, PR at Table I-3, n.3.

⁸⁰ CR at Table I-4, PR at Table I-4. Because the only available 1985 data on domestic market share in 1985 includes Tube-Line, we have also used 1998 data including Tube-Line to effect a valid comparison.

orders were primarily responsible for the reduction in shipments of subject merchandise to the United States.

There is limited information concerning the industries in the subject countries because no producers responded to the Commission's notice of institution. Consequently, there are no data on current capacity, production, or home market shipments of butt-weld pipe fittings in any of the subject countries and limited data regarding exports.⁸¹ However, the industries in the subject countries, with the possible exception of China, remain structured as they were during the original investigations.⁸² The same companies that manufactured the subject merchandise during the original investigations in Brazil, Taiwan, Japan, and Thailand currently produce the subject merchandise, and there are still several producers in China.⁸³

Based on the foregoing, we find it likely that producers in the five subject countries would, upon revocation of the order, increase exports to the U.S. market, and that the import volume would rise significantly if the discipline of the orders was removed.^{84 85 86} Consequently, and in the absence of contrary information or argument,⁸⁷ we conclude that, absent the restraining effect of the order, subject imports would likely increase to a significant level and would regain some or all of the U.S. market share held during the original investigation period.

D. Likely Price Effects

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁸⁸

The record in these expedited reviews contains a limited amount of pricing data for the U.S. market. During the original investigations, the subject imports and the domestic like product were found to be relatively substitutable and price was an important factor in purchasing.⁸⁹ Moreover, the subject

⁸¹ CR at I-33, PR at I-26.

⁸² CR at I-28, PR at I-22.

⁸³ CR at I-28-29, PR at I-22.

⁸⁴ See SAA at 890.

⁸⁵ Commissioner Askey dissenting with respect to Brazil. The record indicates that Brazil has *** in the past three years. CR at Table I-5, PR at Table I-5.

⁸⁶ Chairman Bragg infers that, upon revocation, subject 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.

⁸⁷ Chairman Bragg and Commissioner Askey base their conclusion on the entirety of the record in these reviews. They do not base their conclusion on the absence of argument to the contrary.

⁸⁸ 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.

⁸⁹ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 18; Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1943 (Jan. 1987) at 10.

imports consistently undersold the domestic product⁹⁰ by significant margins.⁹¹ Domestic prices declined significantly as a result.⁹²

Despite the discipline of the orders, the average unit value for the subject imports was *** percent lower than that of the domestic product in 1998.⁹³ Information in the record also suggests that competition in the marketplace is still predominantly based on price.⁹⁴

Consequently, and in the absence of contrary information or argument,⁹⁵ we find it likely that, absent the present orders, competitive conditions would return to those prevailing prior to imposition of the orders.⁹⁶ Thus, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

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.⁹⁷ 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.⁹⁸ As instructed by the statute, we have considered the

⁹⁰ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 18; Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 27.

⁹¹ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 20; Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 27.

⁹² Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 20; Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 27.

⁹³ CR at Table I-1-A, and I-3, PR at Table I-1-A and I-3.

⁹⁴ CR at I-18, PR at I-13.

⁹⁵ Chairman Bragg and Commissioner Askey base their conclusion on the entirety of the record in these reviews. They do not base their conclusion on the absence of argument to the contrary.

⁹⁶ Chairman Bragg infers that, in the event of revocation, subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determinations.

⁹⁷ 19 U.S.C. § 1675a(a)(4).

⁹⁸ 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.

In its final five-year review determinations, Commerce assigned likely margins for all manufacturers in Brazil at 52.25 percent. The likely margins for four named Taiwanese producers range from 6.84 to 87.30 percent and the likely margin is 49.46 percent for all other Taiwanese producers. The likely dumping margins for two

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extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁹⁹

In the Brazil, Japan, and Taiwan original investigations, the Commission found that the domestic industry suffered material injury by reason of a significant volume of LTFV imports of carbon steel butt-weld pipe fittings that were underselling the domestic like product.¹⁰⁰ The Commission found that subject imports had caused price declines in the domestic market.¹⁰¹ These conditions had an adverse effect on the domestic industry in the form of a reduction in profitability, production levels, capacity utilization, and shipment volumes over the period examined in the original investigation.¹⁰² In the China and Thailand threat determinations, the Commission found that there was a likelihood of a substantial increase in subject imports at prices that would have significant price depressing and suppressing effects on domestic prices. The Commission therefore found that subject imports would have an injurious effect on a vulnerable domestic industry.¹⁰³

The orders apparently had an immediate positive effect on industry performance. The finished butt-weld pipe fittings industry registered a 14.2 percent net loss in 1985, which improved to a net *** percent operating profit in 1989 after issuance of the orders on Brazil, Japan, and Taiwan¹⁰⁴ but before the huge increases in capacity in China and Thailand that preceded the Commission's determinations concerning those countries.¹⁰⁵ In 1996, with all five orders in place, the butt-weld pipe fittings industry earned a *** percent return on sales compared to *** percent in 1991 prior to the orders covering the

⁹⁸ (...continued)

named Japanese producers range from 30.83 to 65.81 percent and the likely margin is 62.79 percent for all other Japanese producers. Three Thai producers are assigned likely margins ranging from 10.68 to 50.84 percent and the likely margin is 39.10 percent for all other Thai producers. Nine Chinese manufacturers received likely margins ranging from 35.06 to 182.90 percent and the likely margin is 182.90 percent for all other Chinese producers. 64 Fed. Reg. 67847, 67851 (Dec. 3, 1999).

⁹⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the orders are 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.

¹⁰⁰ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 20; Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1943 (Jan. 1987) at 10.

¹⁰¹ Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 20; Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1943 (Jan. 1987) at 11.

¹⁰² Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918 (Dec. 1986) at 11-13; Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1943 (Jan. 1987) at 6.

¹⁰³ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 30-31.

¹⁰⁴ CR at Table I-1, PR at Table I-1.

¹⁰⁵ Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 (June 1992) at 26.

subject imports from China and Thailand.¹⁰⁶ Domestic shipments rose from *** pounds in 1991 to *** pounds in 1996.¹⁰⁷

More recently, however, the domestic industry indicates that it has faced declining shipments and ***. The domestic industry argues that these factors render it vulnerable to material injury.¹⁰⁸ We agree. The number of domestic producers has declined from twelve in 1986 to only five producers.¹⁰⁹ The industry suffered *** in 1998.¹¹⁰ Production fell from *** pounds in 1996 to *** pounds in 1998, and likewise, domestic shipments fell to *** pounds in 1998 from *** in 1996.¹¹¹ Mills, TFFG, and TFA state that ***.¹¹² Despite increasing after imposition of the orders covering imports from Brazil, Japan, and Taiwan, the average unit value of the domestic industry's shipments of finished butt-weld fittings was *** in 1998 as in 1983.¹¹³ Based on the foregoing, we conclude that the industry is in a "weakened state," as contemplated by the vulnerability criterion of the statute.¹¹⁴

We find it likely that revocation of the orders would result in a significant increase in the volume of subject imports at prices significantly lower than the U.S. industry currently receives from its U.S. customers. These shipments would likely depress the industry's prices significantly, and have a significant adverse impact on the production, shipment, sales, and revenue levels of a vulnerable domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the limited record in this review, and in the absence of contrary information or argument,¹¹⁵ we conclude that, if the antidumping duty orders were revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.¹¹⁶

¹⁰⁶ CR at Table I-2, PR at Table I-2. Data for 1996-98 reported in Table I-2 data are for *** of the industry consisting of Mills, TFFG, and TFA.

¹⁰⁷ CR at Table I-2, PR at Table I-2.

¹⁰⁸ Joint Comments at 11.

¹⁰⁹ CR at I-12, PR at I-9-10.

¹¹⁰ CR at Table I-2, PR at Table I-2.

¹¹¹ CR at Table I-2, PR at Table I-2.

¹¹² Joint Response at 10.

¹¹³ CR at Table I-1, PR at Table I-1.

¹¹⁴ 19 U.S.C. § 1675a(a)(1)(C). See SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury. . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.").

¹¹⁵ Chairman Bragg and Commissioner Askey base their conclusion on the entirety of the record in these reviews. They do not base their conclusion on the absence of argument to the contrary.

¹¹⁶ Because Commissioner Askey made a finding that the subject imports from Brazil would have no discernible adverse impact on the domestic industry, her conclusion extends only to subject imports from China, Japan, Taiwan, and Thailand.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.¹¹⁷

¹¹⁷ Commissioner Askey dissenting with respect to Brazil.

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DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Section 751(d) of the Tariff Act of 1930, as amended, requires that the Department of Commerce (Commerce) revoke a countervailing duty or an antidumping duty 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.¹¹⁸ In the reviews of the antidumping duty orders on subject imports from China and Japan, I find that revocation of the orders would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. In the reviews of the antidumping duty orders on subject imports from Brazil, Taiwan, and Thailand, I find that revocation of the orders would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.

I join my colleagues in their discussion regarding the domestic like product but dissent, as noted, in their discussion of the domestic industry. I join in their explanation of the relevant legal standard and in their discussion of the relevant conditions of competition. However, I add further observations regarding such conditions of competition and do not cumulate subject imports from the different countries. A full discussion of my views on these issues is provided below.

I. CUMULATION

A. General

My approach to cumulation differs from the approach outlined in the majority opinion. The following discussion serves as a framework for an analysis under my reading of the statute.

Under the statute, cumulation is discretionary in five-year reviews, even if the reviews are initiated on the same day. In my view, the statutory framework presents four distinct, sequential analyses that are required to determine whether to cumulate subject imports from different countries, in addition to the requirement that the reviews be initiated on the same day.

First, the subject imports must be eligible for cumulation. The scopes of the orders under review must be the same for all subject imports to be eligible for cumulation.¹¹⁹

Second, the statute precludes cumulation if the Commission determines that subject imports from a country “are likely to have no discernible adverse impact on the domestic industry.”¹²⁰ My analysis of this requirement is focused on the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.

Next, we must find that the subject imports “would be likely to compete with each other and with domestic like products in the United States market.”¹²¹ Finally, the statute provides that we may exercise the discretion to cumulate.¹²² However, the statute does not require cumulation under any enumerated circumstances, even if the competition requirement is met. Therefore, although competition is a condition precedent to cumulation, it is not necessarily a sufficient reason or the only factor to consider in deciding whether to exercise the discretion to cumulate. Furthermore, because cumulation is not required under any statutorily enumerated circumstances, in my view there is no statutory or analytical presumption of cumulation.

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

¹¹⁹ See *Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada*, Invs. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238, September 1999, at 43.

¹²⁰ 19 U.S.C. § 1675a(a)(7).

¹²¹ *Id.*

¹²² *Id.* The statute simply states that the Commission *may* cumulate if the competition requirement is met.

In these reviews, the scopes of the orders are the same, although not precisely identical, for all subject countries,¹²³ and thus the imports are eligible for cumulation. I have determined that imports from Brazil and Thailand are likely to have no discernible adverse impact on the domestic industry if the orders are revoked, and thus that the statute precludes cumulation of these subject imports with imports from any other country. Only the subject imports from China, Japan, and Taiwan remain eligible for cumulation, and each satisfies the basic requirement that they compete with each other and with the domestic like product. However, based upon the significant changes in the U.S. market and marketplace conditions, I decline to exercise my discretion to cumulate the subject imports from China, Japan, and Taiwan.

B. Carbon Steel Butt-Weld Pipe Fittings from Brazil

The industry producing carbon steel butt-weld pipe fittings in Brazil consists of one firm, Conforja, S.A.¹²⁴ During the period examined by the Commission in its original investigation, Brazil's single-company industry was *** and, despite exporting *** of its production, sold a significant volume of carbon steel butt-weld pipe fittings within Brazil.¹²⁵ The Brazilian industry was the smallest of any of the subject countries, and its shipments of carbon steel butt-weld pipe fittings consistently accounted for the smallest volume of subject imports.¹²⁶ For more than a decade, Brazilian carbon steel butt-weld pipe fittings have been practically absent from the U.S. market,¹²⁷ and there is no basis to conclude that exports to the United States will increase in the future. Brazil *** to the United States in 1998. Indeed, the entire volume of Brazilian exports in this broad category amounted to only *** pounds.¹²⁸ I therefore conclude that revocation of the order on Brazil likely would have no discernible adverse impact on the domestic industry.

¹²³ The products covered by the orders on Brazil, Taiwan, and Japan are carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in diameter, whether (in) finished or unfinished form, that have been formed in the shape of elbows, tees, reducer, caps, *etc.*, and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting.

The products covered by the orders on Thailand and China are carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join section(s) in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). 64 Fed. Reg. 67847 (December 3, 1999).

The two sets of orders differ slightly. The earlier orders exclude couplings, while the later orders distinguish subject fittings from threaded, grooved, or bolted fittings. However, couplings appear to be a primary example of "other" fittings. Likewise, the earlier orders state that forged fittings must be advanced beyond forging. However, this appears to be a basic requirement met by virtually all imported forged fittings. Therefore, I characterize the imports in these five orders as the same subject merchandise.

¹²⁴ *Confidential Report* ("CR") at I-28, *Public Report* ("PR") at I-22.

¹²⁵ Table I-5, CR at I-30, PR at I-23.

¹²⁶ Table I-5, CR at I-30-33, PR at I-23-36 (foreign industry capacity and production (total shipments for Taiwan)); Table I-3, CR at I-22-23, PR at I-17-18 (U.S. imports).

¹²⁷ Figure I-1, CR at I-21, PR at I-15.

¹²⁸ Table I-5, CR at I-30, PR at I-23.

C. Carbon Steel Butt-Weld Pipe Fittings from Thailand

The industry producing subject fittings in Thailand consists of two companies, Thai Benkan Co. and TTU Industrial Corp.¹²⁹ A third Thai company, Awaji Sangyo (Thailand) Co., or AST, was found by Commerce to have *de minimis* dumping margins. During the period examined by the Commission in its original investigation, Thailand's two manufacturers of the subject merchandise operated at high levels of capacity utilization and noticeably redirected their exports of carbon steel butt-weld pipe fittings from the United States to other markets.¹³⁰ Furthermore, subject imports of fittings from Thailand declined throughout the period 1989-91, decreasing by *** percent.¹³¹ Between January 1992 and September 1994, there were virtually no imports of subject fittings from Thailand. Instead, imports of carbon steel butt-weld pipe fittings manufactured by AST increased substantially.¹³² Thus, subject imports of fittings from Thailand were replaced in the U.S. market by nonsubject fittings from Thailand. Imports of carbon steel butt-weld pipe fittings manufactured in Thailand by AST now constitute one of the two primary sources of nonsubject imports, along with imports from Mexico.¹³³ Accordingly, to the limited extent that Thai Benkan Co. and TTU Industrial Corp. might resume exports of carbon steel butt-weld pipe fittings to the United States, the high degree of substitutability between subject and nonsubject fittings produced in Thailand by different manufacturers indicates that subject imports will compete with nonsubject imports rather than the domestic like product. I therefore conclude that revocation of the order on Thailand likely would have no discernible adverse impact on the domestic industry.

D. Carbon Steel Butt-Weld Pipe Fittings from China, Japan, and Taiwan

I do not find that revocation of the orders covering subject imports from these three countries likely would have no discernible adverse impact on the domestic industry. In light of the conditions of competition discussed in the views of my colleagues and the additional conditions of competition discussed below, I conclude that the subject imports from China, Japan, and Taiwan each satisfies the basic requirement that they compete with each other and with the domestic like product. However, because of significant changes in the U.S. market and marketplace conditions, most notably the consolidation of the U.S. industry, the marked shift toward integrated production, and the related decline in the need for unfinished fittings, I decline to exercise my discretion to cumulate the subject imports from China, Japan, and Taiwan.

¹²⁹ CR at I-29, PR at I-22.

¹³⁰ Table I-5, CR at I-32, PR at I-25.

¹³¹ Table I-3, CR at I-22-23, PR at I-17-18. However, as noted in the original staff report, the volume of imports of subject merchandise from Thailand was overstated because the largest importer of carbon steel butt-weld pipe fittings from Thailand was unable to identify separately its imports from AST. *Staff Report of June 9, 1992* at I-64. Subsequent investigations by the Commission established that the actual volume of Thai imports other than those exported by AST amounted to less than 5 million pounds in 1991. *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela*, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. 2870, April 1995, Table 20 at II-43.

¹³² *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela*, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. 2870, April 1995, Table 20 at II-43.

¹³³ Table I-3, CR at I-22-23 n.2-3, PR at I-17-18 n.2-3.

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.

A. Supply Considerations

While no current data are available, the domestic industry historically has had low capacity utilization (typically below 60 percent), indicating it could increase production. Moreover, most firms produce articles other than carbon steel butt-weld pipe fittings on the same equipment and with the same workers. While U.S. producers have never reported large volumes of exports (under 5 percent), inventories have tended to be substantial (over 20 percent). Thus, as I found in 1995, it is reasonable to conclude that domestic supply is elastic.¹³⁴

There is little information concerning supply considerations involving the subject imports. Brazil no longer appears to have a fittings industry capable of, or inclined to, export. China, Japan, Taiwan, and Thailand still have active industries. Taiwan continues to export subject fittings to the United States, while Thailand exports mostly nonsubject (AST) fittings. Exports of the subject merchandise from China and Japan appear to have been minimal since the imposition of the respective antidumping duty orders.¹³⁵

During the period examined by the Commission in its original investigation, Brazil's industry had a maximum annual capacity of *** pounds, of which *** percent was in use in 1985. Brazil *** in 1998, and its total exports in this broad category amounted to only *** pounds.¹³⁶ Based on the limited information available, I conclude that the elasticity of supply is relatively low for Conforja S.A., the only Brazilian producer of carbon steel butt-weld pipe fittings.

During the period examined by the Commission in its original investigation, China's industry increased its reported annual capacity from less than *** pounds to nearly *** pounds, of which only *** percent was in use in 1991. China's industry was highly export-dependent, and continues to export large volumes of fittings to markets other than the United States.¹³⁷ Based on the limited information available, I conclude that the elasticity of supply is relatively high for the Chinese industry producing carbon steel butt-weld pipe fittings.

During the period examined by the Commission in its original investigation, Japan's industry had a maximum annual capacity of over *** pounds, of which *** percent was in use in 1991. Japan's home market accounted for *** percent of the Japanese industry's total shipments. However, the Japanese industry did and continues to export large volumes of fittings to markets other than the United States.¹³⁸ Based on the limited information available, I conclude that the elasticity of supply is relatively high for the Japanese industry producing carbon steel butt-weld pipe fittings.

During the period examined by the Commission in its original investigation, the industry in Taiwan reported total shipments of *** pounds, a figure that is understated. The industry's reported capacity utilization was *** percent in 1985. The Taiwanese home market accounted for only *** percent of the industry's total shipments. However, the most current data (again, understated) indicate that exports of pipe fittings from Taiwan are limited and that the United States already accounts for a large share of such

¹³⁴ *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela*, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. 2870, April 1995, at I-19 n.101 (discussing certain supply factors), II-23 (discussing the production of non-subject merchandise) and A-3-5 (providing inventory and capacity data).

¹³⁵ Table I-5, CR at I-30-33, PR at I-23-26, and Table I-3, CR at I-22-23, PR at I-17-18.

¹³⁶ Table I-5, CR at I-30, PR at I-23.

¹³⁷ Table I-5, CR at I-31, PR at I-24.

¹³⁸ Table I-5, CR at I-30, PR at I-23.

exports.¹³⁹ Based on the limited information available, I conclude that the elasticity of supply is moderate for the Taiwanese industry producing carbon steel butt-weld pipe fittings.

During the period examined by the Commission in its original investigation, subject Thai manufacturers' maximum annual capacity was *** pounds, of which *** percent was in use in 1991. Thailand's industry was highly export-dependent, and continues to export large volumes of fittings to markets other than the United States.¹⁴⁰ Based on the limited information available, I conclude that the elasticity of supply is relatively high for the subject Thai manufacturers producing carbon steel butt-weld pipe fittings.

B. Demand Considerations

Overall demand for carbon steel butt-weld pipe fittings is derived from the demand for piping systems (either for liquid or gas flowline purposes or for support members). As noted earlier, apparent U.S. consumption of carbon steel butt-weld pipe fittings has increased markedly since the 1980s and the early 1990s.¹⁴¹ Because carbon steel butt-weld pipe fittings account for a small portion of the value of piping systems, and because there do not appear to be any commercially-viable alternative products, I continue to find that the market for carbon steel butt-weld pipe fittings is characterized by relatively low elasticity of demand.¹⁴²

C. Substitutability

Domestic producers assert that this is a commodity product, pointing out that all carbon steel butt-weld pipe fittings must meet ASTM and ANSI specifications. However, the record suggests that several factors reduce the substitutability between domestic and imported carbon steel butt-weld pipe fittings.

Product Differentiation: U.S. and imported carbon steel butt-weld pipe fittings are functionally interchangeable. However, the U.S. industry has never sold large volumes of unfinished carbon steel butt-weld pipe fittings. In contrast, a large volume of Chinese and Japanese imports of carbon steel butt-weld pipe fittings were unfinished.¹⁴³ Because the only application for unfinished carbon steel butt-weld pipe fittings is finishing by U.S. producers, these subject imports complement rather than compete with the domestic like product.

Non-Product Considerations: End users in the petroleum, nuclear energy, and power generation industries (the so-called "approved sector") maintain lists of approved suppliers for carbon steel butt-weld pipe fittings used in critical applications that constitute about one-half of the market. While all U.S. producers have qualified to be on such lists, not all importers have. No Chinese suppliers were on

¹³⁹ Table I-5, CR at I-31, PR at I-24.

¹⁴⁰ Table I-5, CR at I-32, PR at I-25.

¹⁴¹ Domestic producers suggest that this trend reflects inconsistent reporting methodologies rather than increased demand in the underlying industries. *Domestic Group Comments* at 7-8. The U.S. producers note that the domestic industry is mature, and comment upon the decline of the shipbuilding industry and the recent difficulties of the oil industry. *Id.*

¹⁴² *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela*, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. 2870, April 1995, at I-26 n.146.

¹⁴³ *Compare* Table I-3, CR at I-22-23, PR at I-17-18, with Table I-4, CR at I-25-26, PR at I-20-21.

approved lists. Similarly, one market completely closed to carbon steel butt-weld pipe fittings from Brazil, Japan, and Taiwan was the nuclear power industry.¹⁴⁴

In addition, as the Commission noted in its 1995 investigation, minimum order size, gaps in the importers' product lines, longer lead times, and inferior follow-up services for end users all reduce the substitutability of imported carbon steel butt-weld pipe fittings as compared with the domestic like product.¹⁴⁵

Internal Transfers: Internal transfer were minimal in the early 1980s, and ceased altogether according to the later staff reports.

In light of the factors presented above, I find the domestic like product and the subject merchandise to be moderately substitutable.

III. GENERAL CONSIDERATIONS

The statute directs us to take into account a number of general considerations. 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.¹⁴⁶ Commerce has not issued a duty absorption finding, therefore it is not an issue in these reviews. I shall briefly discuss the other general considerations below.

A. Original Determinations

In its affirmative determinations regarding LTFV imports of fittings from Brazil, Taiwan, and Japan, the Commission concluded that the cumulated volume and market share of fittings from the three subject countries, together with evidence of underselling and a generally-declining price trend for the domestic like product, established material injury by reason of the dumped imports. The Commission observed that the domestic industry posted substantial operating losses throughout the period examined, suffered multiple facility closures, and retreated from integrated production to conversion as a "survival strategy." However, the Commission also noted that observed price declines appeared to be at least in part due to a decrease in the demand for fittings in energy-related sectors and a "price war" between domestic producers.¹⁴⁷

In its affirmative threat determinations regarding LTFV imports of fittings from China and Thailand, the Commission observed that U.S. production, shipments, sales, and market share were increasing, and that the domestic industry appeared to be moving towards increasing integration. The domestic industry was profitable throughout the period examined, but less so over time. The domestic industry remained plagued with low capacity utilization, and domestic prices declined during the period examined. The Commission cited substantial and increasing available capacity and inventory (especially Chinese, despite low coverage of the Chinese industry), the importance of the U.S. market to Chinese and

¹⁴⁴ CR at I-11 and n.21, PR at I-9-10 and n.21.

¹⁴⁵ *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela*, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. 2870, April 1995, at I-24.

¹⁴⁶ 19 U.S.C. § 1675a(a)(1).

¹⁴⁷ *Butt-Weld Pipe Fittings from Brazil and Taiwan*, Invs. Nos. 731-TA-308 and 310 (Final), USITC Pub. 1918, December 1986, at 10-20.

Thai producers, high market share (especially Chinese), and a degree of price sensitivity at the lower end of the U.S. market.¹⁴⁸

B. Improvements Since the Original Orders

U.S. apparent consumption of finished fittings has increased markedly since 1985. Through 1991, consumption of both domestic and imported fittings grew, with the domestic industry retaining approximately *** percent of the U.S. market. Data for 1998 suggest that apparent U.S. consumption has increased further since the early 1990s, reflecting stable import levels, increased domestic shipments, and increased market share for the domestic industry.¹⁴⁹ However, the three domestic producers that reported financial results for 1996-98 indicated that their net income had decreased from *** in 1996 to *** in 1998, reflecting a decline in the volume of their sales.¹⁵⁰

C. Vulnerability

The U.S. industry has increased its share of the U.S. market by nearly *** percentage points since the periods examined in the original investigations.¹⁵¹ The domestic industry has also become increasingly consolidated and is more integrated now than during 1983-85 or 1989-91.¹⁵² U.S. producers that reported financial performance for 1996-98 were profitable in 1996 and 1997. In 1998, an apparent sharp decline in demand for the products of these firms reduced output, revenues, and profit substantially, but did not have a marked effect on prices.¹⁵³

Based on the record in these reviews, I find that this industry is relatively less vulnerable to the continuation or recurrence of material injury by reason of the subject imports. This is consistent with the most recent findings of the Commission in 1995, which noted that the U.S. market for carbon steel butt-weld pipe fittings was not particularly price sensitive.¹⁵⁴

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON SUBJECT IMPORTS FROM BRAZIL AND THAILAND 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, if the orders are revoked, the subject imports of carbon steel butt-weld pipe fittings from Brazil and Thailand are likely to have no discernible adverse impact on the domestic industry producing carbon steel butt-weld pipe fittings. Therefore, it follows that there likely

¹⁴⁸ *Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand*, Invs. Nos. 731-TA-520-521 (Final), USITC Pub. 2528, June 1992, at 17-32. Commissioner Rohr, who exercised his discretion not to cumulate for threat purposes, made a negative determination with respect to Thailand. *Id.* at 47-48.

¹⁴⁹ Table I-4, CR at I-25-26, PR at I-20-21.

¹⁵⁰ Table I-2, CR at I-18, PR at I-14.

¹⁵¹ Table I-4, CR at I-25-26, PR at I-20-21.

¹⁵² Weldbend, formerly one of the largest converters of imported unfinished fittings, states that it has made “major strides in the 1990s to become an integrated producer” of fittings. *Weldbend Response to the Commission’s Notice of Institution* at 6.

¹⁵³ Table I-2, CR at I-18, PR at I-14.

¹⁵⁴ *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela*, Invs. Nos. 701-TA-360-361 (Final) and 731-TA-688-695 (Final), USITC Pub. No. 2870, April 1995, at I-19 and n.101.

would be no continuation or recurrence of material injury within a reasonably foreseeable time if these orders are revoked.

V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM TAIWAN IS NOT 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 carbon steel butt-weld pipe fittings from Taiwan increased from *** pounds in 1983 to *** pounds in 1985.¹⁵⁵ In terms of U.S. market share, imports of finished carbon steel butt-weld pipe fittings from Taiwan rose from *** percent by quantity in 1983 to *** percent by quantity in 1985.¹⁵⁶ Similarly, reported capacity in Taiwan grew between 1983 and 1985. However, in the second half of 1986, Gei Bey Corp., which accounted for *** percent of shipments reported by the industry in Taiwan in 1995, went bankrupt, resulting in the *** of its productive facilities.¹⁵⁷

The remnant of the industry in Taiwan has continued to export carbon steel butt-weld pipe fittings to the United States. Notwithstanding the antidumping duty order,¹⁵⁸ carbon steel butt-weld pipe fittings from Taiwan have remained a fixture in the U.S. market, accounting for 5.9 million out of 37.3 million pounds (15.9 percent) of total imports in 1998. Of course, because of the growth of the U.S. market discussed earlier, subject imports from Taiwan now account for less than *** percent of the U.S. market.¹⁵⁹

Thus, it is likely that any additional volume of subject imports from Taiwan 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

As previously discussed, demand for carbon steel butt-weld pipe fittings 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. Because the domestic like product and the subject imports are only moderate 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, to the extent there would be any shift in demand, it is likely that demand will shift away from Taiwanese imports already in the U.S. market, which currently hold a market share of *** percent, or from nonsubject imports, which currently hold a market share of *** percent.¹⁶⁰ Absent a significant shift in demand away from the domestic like product, revocation of the order is not likely to have a significant 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.

¹⁵⁵ Table I-3, CR at I-22-23, PR at I-17-18.

¹⁵⁶ Table I-4, CR at I-25-26, PR at I-20-21.

¹⁵⁷ *Staff Report of November 20, 1986* at A-44-45.

¹⁵⁸ Margins for two of the manufacturers (Rigid and C.M.) have declined over time from 7-9 percent in the original investigations to 4-6 percent. The margin of the third remaining manufacturer (Chup Hsin), as well as the margin still in place for Gei Bey, has remained at 87.3 percent. CR at I-6 n.11, PR at I-5 n.11.

¹⁵⁹ Table I-3, CR at I-22-23, PR at I-17-18, and Table I-4, CR at I-25-26, PR at I-20-21.

¹⁶⁰ See Table I-4, CR at I-25-26, PR at I-20-21.

C. Likely Impact of Subject Imports

In my analysis, I have considered all of the statutory factors that the Commission is directed to take into account.¹⁶¹ As discussed above, revocation of the order is not likely to lead to a significant shift in demand away from the domestic like product. Therefore, it is likely that the domestic industry's prices, 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.

D. Conclusion

Subject imports of carbon steel butt-weld pipe fittings from Taiwan likely would not 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 not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked.

VI. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM CHINA 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 carbon steel butt-weld pipe fittings from China increased from 25.1 million pounds in 1989 to 29.8 million pounds in 1991, after peaking at 34.5 million pounds in 1990.¹⁶² At the beginning of the period examined, Chinese carbon steel butt-weld pipe fittings were largely unfinished products used as raw material by domestic producers. However, over the period examined in the original investigation, imports of finished carbon steel butt-weld pipe fittings from China grew from *** pounds in 1989 to *** pounds in 1990 and *** pounds in 1991. In terms of U.S. market share, such imports increased from *** percent by quantity in 1989 to *** percent by quantity in 1991.¹⁶³

Carbon steel butt-weld pipe fittings from China have been effectively excluded from the U.S. market since the imposition of the antidumping duty order. However, the Chinese industry has continued to ship substantial volumes of pipe fittings to export markets around the world. In 1998, Chinese pipe fitting exports amounted to *** pounds, virtually all of which were shipped to markets other than the United States.¹⁶⁴

Therefore, the data indicate that the volume of the subject imports from China likely would be large if the order is revoked, and likely would be significant in light of its price effects and impact. In light of the likely 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.

¹⁶¹ 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 were revoked for the remaining Taiwanese manufacturers are as follow: Rigid, 6.84 percent; C.M., 8.57 percent; Chup Hsin, 87.30 percent; and 49.46 percent for all other Taiwanese manufacturers. 64 Fed. Reg. 67847, 67851 (December 3, 1999).

¹⁶² Table I-3, CR at I-22-23, PR at I-17-18.

¹⁶³ Table I-4, CR at I-25-26, PR at I-20-21.

¹⁶⁴ Compare Table I-5, CR at I-31, PR at I-24, with Figure I-1, CR at I-21, PR at I-15.

B. Likely Price Effects of Subject Imports

As previously discussed, demand for carbon steel butt-weld pipe fittings 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 from China is likely to be large if the order is revoked. It is likely that the increase in demand for the subject imports from China will be large enough to be significant if the order is revoked. Although carbon steel butt-weld pipe fittings from China are moderate substitutes at best for the domestic like product, a shift in demand towards the subject imports likely would result in a shift in demand away from the substitutable portion of the domestic like product.

Nonsubject and Taiwanese imports are a significant presence in the market, with a current combined market share of *** percent,¹⁶⁵ and thus one would expect that the likely shift in demand toward Chinese carbon steel butt-weld pipe fittings would come partially at the expense of these other sources of carbon steel butt-weld pipe fittings. Chinese carbon steel butt-weld pipe fittings do not have access to roughly one-half of the U.S. market that requires certification on approved manufacturers lists. However, subject Chinese fittings are moderately substitutable with the domestic like product sold for use in the “non-approved” sector of the market. Therefore, I find that a significant portion of the increase in demand for the subject Chinese imports likely would result in a corresponding decrease in demand for the domestic like product.

While the decrease in demand for the domestic like product likely would have negative effects on domestic prices, I do not find that the effects are likely to be significant. Demand for carbon steel butt-weld pipe fittings fell noticeably in 1998, while prices remained stable.¹⁶⁶ As noted earlier, the domestic industry typically has maintained abundant available capacity and inventories. Therefore, the domestic industry likely would attempt to maintain its prices in response to the decrease in demand for its product resulting from a large volume of carbon steel butt-weld pipe fittings from China. Consequently, I find that even a large increase in the volume of subject Chinese merchandise likely would not have significant effects on domestic prices if the order is revoked.

C. Likely Impact of Subject Imports

In my analysis, I have considered all of the statutory factors that the Commission is directed to take into account.¹⁶⁷ As discussed above, revocation of the order is likely to lead to a significant shift in demand away from the domestic like product. However, the domestic industry likely would not lower its prices significantly in the face of decreased demand. Therefore, any impact on the domestic industry likely would be on the domestic industry’s output and sales. Because the likely volume of the subject imports is sufficiently large, I find that there likely would be a significant impact on the domestic industry if the order is revoked.

D. Conclusion

Subject imports of carbon steel butt-weld pipe fittings from China likely would have a significant effect on the domestic industry’s output and sales, and therefore its revenues, if the existing order is

¹⁶⁵ See Table I-4, CR at I-25-25, PR at I-20-21.

¹⁶⁶ Table I-2, CR at I-18, PR at I-14.

¹⁶⁷ 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 were revoked range from 35.06 percent to 182.90 percent. 64 Fed. Reg. 67847, 67851 (December 3, 1999).

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.

VII. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM JAPAN 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 carbon steel butt-weld pipe fittings from Japan increased from 25.5 million pounds in 1983 to 34.3 million pounds in 1985, after peaking at 43.4 million pounds in 1984.¹⁶⁸ Throughout the period examined, imports of Japanese carbon steel butt-weld pipe fittings were evenly divided between unfinished products used as raw material by domestic producers and finished fittings. However, over the period examined in the original investigation, imports of finished carbon steel butt-weld pipe fittings from Japan were substantial: *** pounds in 1983, *** pounds in 1984, and *** pounds in 1985. In terms of U.S. market share, such imports fluctuated from *** percent by quantity in 1983 to *** percent in 1984 and *** percent in 1985.¹⁶⁹

Carbon steel butt-weld pipe fittings from Japan have been effectively excluded from the U.S. market since the imposition of the antidumping duty order. However, the Japanese industry has continued to ship substantial volumes of pipe fittings to export markets around the world. In 1998, Japanese pipe fitting exports amounted to *** pounds, virtually all of which were shipped to markets other than the United States.¹⁷⁰

Therefore, the data indicate that the volume of the subject imports from Japan likely would be large if the order is revoked, and likely would be significant in light of its price effects and impact. In light of the likely 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 carbon steel butt-weld pipe fittings 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 from Japan is likely to be large if the order is revoked. It is likely that the increase in demand for the subject imports from Japan will be large enough to be significant if the order is revoked.

Nonsubject and Taiwanese imports are a significant presence in the market, with a current combined market share of *** percent,¹⁷¹ and thus one would expect that the likely shift in demand toward Japanese carbon steel butt-weld pipe fittings likely would come partially at the expense of these other sources of carbon steel butt-weld pipe fittings. However, because there is moderate substitutability between the domestic like product and the subject merchandise from Japan, I find that a significant portion of the increase in demand for the subject imports likely would result in a corresponding decrease in demand for the domestic like product.

While the decrease in demand for the domestic like product likely would have negative effects on domestic prices, I do not find that the effects are likely to be significant. Demand for carbon steel butt-

¹⁶⁸ Table I-3, CR at I-22-23, PR at I-17-18.

¹⁶⁹ Table I-4, CR at I-25-26, PR at I-20-21.

¹⁷⁰ Compare Table I-5, CR at I-30 PR at I-23, with Figure I-1, CR at I-21, PR at I-15.

¹⁷¹ See Table I-4, CR at I-25-26, PR at I-20-21.

weld pipe fittings fell noticeably in 1998, while prices remained stable.¹⁷² As noted earlier, the domestic industry has typically maintained abundant available capacity and inventories. Therefore, the domestic industry likely would attempt to maintain its prices in response to the decrease in demand for its product resulting from a large volume of carbon steel butt-weld pipe fittings from Japan. Consequently, I find that even a large increase in the volume of subject Japanese merchandise likely would not have significant effects on domestic prices if the order is revoked.

C. Likely Impact of Subject Imports

In my analysis, I have considered all of the statutory factors that the Commission is directed to take into account.¹⁷³ As discussed above, revocation of the order is likely to lead to a significant shift in demand away from the domestic like product. However, the domestic industry likely would not lower its prices significantly in the face of decreased demand. Therefore, any impact on the domestic industry likely would be on the domestic industry's output and sales. Because the likely volume of the subject imports is sufficiently large, I find that there likely would be a significant impact on the domestic industry if the order is revoked.

D. Conclusion

Subject imports of carbon steel butt-weld pipe fittings from Japan likely would have a significant effect on the domestic industry's 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.

¹⁷² Table I-2, CR at I-18, PR at I-14.

¹⁷³ 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 Japan were revoked range from 30.83 percent to 65.81 percent. 64 Fed. Reg. 67847, 67851 (December 3, 1999).