

UNITED STATES INTERNATIONAL TRADE COMMISSION

FORGED STAINLESS STEEL FLANGES FROM INDIA AND TAIWAN

Investigations Nos. 731-TA-639 and 640 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3329, July 2000)

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FORGED STAINLESS STEEL FLANGES FROM INDIA AND TAIWAN

DETERMINATION

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 forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on December 1, 1999 (64 F.R. 67313, December 1, 1999) and determined on March 3, 2000 that it would conduct expedited reviews (65 F.R. 15009, March 20, 2000). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 26, 2000. The views of the Commission are contained in USITC Publication 3329 (July 2000), entitled *Forged Stainless Steel Flanges from India and Taiwan: Investigations Nos. 731-TA-639 and 640 (Review)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.2(f)).

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 stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In February 1994, the Commission determined that an industry in the United States was threatened with material injury by reason of imports of stainless steel flanges from India and Taiwan that the Department of Commerce had determined to be sold in the United States at less than fair value.¹ In February 1994, Commerce issued antidumping duty orders on stainless steel flanges from India and Taiwan. On December 1, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping duty orders on stainless steel flanges likely would lead to continuation or recurrence of material injury.²

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 to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.³ 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.

In these reviews, the Commission received a joint response, containing company-specific data, to the notice of institution from Gerlin Inc. (“Gerlin”), Ideal Forging Corporation (“Ideal”), Maass Flange Corporation (“Maass”), and Westbrook Flange (“Westbrook”). Gerlin, Ideal, Maas, and Westbrook (collectively “the domestic producers”), are domestic producers of stainless steel flanges.⁴ The Commission received no responses to the notice of institution from any producer, exporter, importer, or other respondent interested party from India or Taiwan. On March 3, 2000, the Commission voted to conduct expedited reviews. In this regard, the Commission determined that the domestic interested party group response was adequate. Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was

¹ Stainless Steel Flanges From India and Taiwan, Invs. Nos. 731-TA-639 and 640 (Final), USITC Publication 2724 (February 1994) (“Original Determination”) at p. I-3. The Commission further determined that it would not have found material injury but for the suspension of liquidation of entries of the subject merchandise. *Id.*

² 64 Fed. Reg. 67313 (December 1, 1999).

³ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁴ Domestic Producers’ Joint Response to the Notice of Institution (“Domestic Producers’ Response”).

inadequate. The Commission did not find any circumstances that would warrant conducting full reviews.⁵ On June 27, 2000, Gerlin, Ideal, Maass, and Westbrook filed joint comments pursuant to 19 C.F.R. § 207.62(d) arguing, as they had in their response to the notice of institution, that revocation of the antidumping duty orders on stainless steel flanges from India and Taiwan would likely lead to a recurrence of material injury to the domestic industry within a reasonably foreseeable time.

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.”⁶ 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.”⁷

In its final five-year review determination, Commerce defined the subject merchandise as follows:

Certain forged stainless steel flanges, both finished and unfinished, are generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld used to fit pipe into a machine recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of these orders are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351.⁸

Stainless steel flanges are used to connect stainless steel pipe sections and piping components (such as pumps, valves, tanks, gauges, etc.) at points in “process” piping systems where conditions require a connect and disconnect capability. Stainless steel flanges are manufactured in several types and sizes for various pressure and temperature applications.⁹

In the original investigations, the Commission defined the domestic like product as stainless steel flanges corresponding to Commerce’s scope of the subject merchandise.¹⁰ None of the parties to the instant reviews objects to the original domestic like product definition and no new information has been obtained during these reviews that suggests the Commission should change its definition of the domestic like

⁵ 65 Fed. Reg. 15009 (March 20, 2000).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

⁸ 65 Fed. Reg. 18058 (April 6, 2000).

⁹ Confidential Staff Report at (“CR”) at I-6-7; Public Staff Report (“PR”) at I-6.

¹⁰ Original Determination at I-6.

product. We therefore find that the appropriate definition of the domestic like product in these reviews is stainless steel flanges, co-extensive with Commerce's scope.

B. Domestic Industry

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.”¹¹ We define the domestic industry, as the Commission did in the original investigations, to include all domestic producers of stainless steel flanges.¹²

III. CUMULATION

A. Framework¹³

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.¹⁴

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.¹⁵ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific

¹¹ 19 U.S.C. § 1677(4)(A).

¹² During the original investigations, the domestic manufacturing sector consisted of both integrated producers (forgers/finishers) and converters. CR at I-10. As the Commission observed in the Original Determination, forgers/finishers begin with stainless steel bar as their raw material and perform forging, machining, and finishing operations. Converters purchase flange forgings and perform machining and finishing operations. Original Determination at 8. As at the time of the original investigations, the domestic industry currently consists of both integrated producers and converters. CR at I-16.

¹³ Commissioner Bragg does not join section III.A. of the opinion. For a complete statement of Commissioner 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 Publication 3245 (October 1999). In particular, Commissioner 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.

¹⁴ 19 U.S.C. § 1675a(a)(7).

¹⁵ *Id.*

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.¹⁶ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.^{17 18}

The Commission generally has 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.^{19 20} Only a “reasonable overlap” of competition is required.²¹ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.²²

In these reviews, the statutory requirement that all the stainless steel flanges reviews be initiated on the same day is satisfied. We do not find that subject imports from either of the subject countries are likely

¹⁶ SAA, H.R. Rep. No. 103-316, Vol. I (1994).

¹⁷ For a discussion of Chairman Koplan’s and Commissioners Miller and Hillman’s analytical framework regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Chairman Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephan Koplan Regarding Cumulation).

¹⁸ Commissioner Askey notes that the Act clearly states that the Commission is *precluded* from exercising its discretion to cumulate 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, the Commission must focus on whether the imports will impact the condition of the industry discernibly 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. For a full discussion of her views on this issue, see Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Publication 3245 (October 1999).

¹⁹ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; 2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; 3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and 4) whether the imports are simultaneously present in the market.

²⁰ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

²¹ 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).

²² See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

to have no discernible adverse impact on the domestic industry if the orders are revoked in light of substantial capacity in each of the subject countries, and the export orientation of those foreign industries.²³

B. Reasonable Overlap of Competition²⁴

The record indicates that domestically produced and imported stainless steel flanges are fungible products, although there are some perceived quality differences among forgings and among finished flanges. Generally, stainless steel flanges must meet the standards set by the ASTM and ANSI, and can be used interchangeably.²⁵ As was true at the time of the original investigations, stainless steel flanges are produced and sold in the United States in two forms, finished and unfinished. Similarly, subject imports are sold in both finished and unfinished forms.²⁶

The record also indicates that the primary channel of distribution for stainless steel flanges continues to be through distributors, who in turn sell directly to the end user or master distributors.²⁷ Thus, the channels of distribution for domestic and imported flanges likely would be similar. The subject and domestic merchandise have been and likely would be sold in the same or similar markets if the orders were revoked.

The record shows that the subject imports from India and Taiwan have been simultaneously present in the U.S. market in 1998 and 1999.²⁸ The other factor, presence in the same geographical markets, is more difficult to analyze, since the volume of subject imports has decreased since the imposition of the antidumping duty orders. However, in the original investigations, the Commission determined that subject imports from India and Taiwan and the domestic like product competed in the same geographical markets.²⁹ We find that absent the orders, it is likely that competition will resume in the same geographical markets, among and between the subject imports, and the domestic like product.

Overall, we find that there likely would be a reasonable overlap of competition among subject imports from India, subject imports from Taiwan, and the domestic like product, if the antidumping duty orders covering stainless steel flanges from India and Taiwan were revoked.

C. Other Considerations³⁰

²³ CR at I-26-31, Table I-5; PR at I-22-24.

²⁴ Commissioner Bragg joins in the Commission's analysis and finding of a likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product.

²⁵ CR at Table I-2; PR at Table I-2.

²⁶ CR at I-6-8; PR at I-6-7.

²⁷ CR at I-9; PR at I-8.

²⁸ CR at Table I-2, PR at Table I-2.

²⁹ Original Determination at I-15.

³⁰ Commissioner Bragg does not join section III.C. of this opinion. Having found a reasonable overlap of competition, Commissioner Bragg turns to the issue of no discernible adverse impact. Commissioner Bragg assesses significant conditions of competition, such as the substantial capacity in the subject countries, the export orientation of the foreign industries evident in these reviews, and the demonstrated ability of those exporters to shift sales from one market to another, in her analysis of the likelihood of no discernible adverse impact if each of the orders under review is revoked. Commissioner Bragg finds that revocation of each of the orders under review

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As discussed above, we have also taken into account other significant conditions of competition that are likely to prevail if the orders under review were revoked in evaluating whether to cumulate subject imports. The limited record indicates that, if the orders are revoked, subject imports would likely compete in the U.S. market under similar conditions of competition. In this regard, we have considered the substantial capacity in each of the subject countries, and the substantial exports of those foreign industries in recent years.³¹ For these reasons, we conclude that it is appropriate to exercise our discretion to cumulate subject imports from India and Taiwan in these reviews.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON STAINLESS STEEL FLANGES FROM INDIA AND TAIWAN WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³² 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.”³³ Thus, the likelihood standard is prospective in nature.³⁴ 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.”³⁵ 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].”^{36 37}

³⁰ (...continued)

will likely result in a discernible adverse impact. Accordingly, Commissioner Bragg cumulates all subject imports.

³¹ CR at I-26-31, Table I-5, PR at I-22-24.

³² 19 U.S.C. § 1675a(a).

³³ 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.

³⁴ 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.

³⁵ 19 U.S.C. § 1675a(a)(5).

³⁶ 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,

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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.”³⁸ 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.^{39 40}

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.”⁴¹ We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the

³⁶ (...continued)

such as planned investment and the shifting of production facilities.” *Id.*

³⁷ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³⁸ 19 U.S.C. § 1675a(a)(1).

³⁹ *Id.* 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.

⁴⁰ 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. 73013 (December 29, 1999).

⁴¹ 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.*

domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁴² 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 primarily of the record in the Commission’s original investigations on stainless steel flanges, limited information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers.

For the reasons stated below, we determine that revocation of the antidumping duty orders on stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the Commission is directed to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴³ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for stainless steel flanges.

Stainless steel flanges are produced and sold in two forms in the United States, finished and unfinished.⁴⁴ The primary use for unfinished flanges is the production of finished flanges.⁴⁵ The primary uses for finished flanges are in “process” operations such as those in chemical plants, petrochemical plants, pharmaceutical plants, food processing facilities, breweries, cryogenic plants, waste-treatment facilities, pulp and paper production facilities, gas-processing (gas-separation) facilities, and commercial nuclear power plants and nuclear Navy applications.⁴⁶ Stainless steel flanges are relatively simple to manufacture. As a result, there are low barriers to entry into the industry.⁴⁷

U.S. and imported flanges generally are produced on the same type of equipment and in accordance with a common ASTM specification (A-182). The domestic and imported products generally are employed for the same end uses and are considered to be “essentially fungible.” U.S. producers and importers typically sell through distributors that tend to stock commodity type product, although a minority of importers reported “special order” sales in 1992. At the time of the original investigations, Indian product was somewhat uneven in its “cosmetic” quality, but import data imply substantial acceptance of the product in the United States.⁴⁸

The demand for stainless steel flanges is tied closely to the level of industrial spending for new construction and for modernization and retrofitting of existing facilities.⁴⁹ The overall demand for stainless steel flanges is fairly unresponsive to price changes.⁵⁰ Based on the limited information in the record,

⁴² SAA at 869.

⁴³ 19 U.S.C. § 1675a(a)(4).

⁴⁴ CR at I-6; PR at I-6.

⁴⁵ CR at I-7, n.18; PR at I-6, n.18.

⁴⁶ CR at I-7, n.18; PR at I-6, n.18.

⁴⁷ Original Determination at I-20.

⁴⁸ CR at I-8 and I-9; PR at I-6-7.

⁴⁹ Original Determination at 16.

⁵⁰ *Id.*

demand for stainless steel flanges has risen since the time of the original investigations.⁵¹ The domestic producers forecast stable demand through 2000 because the main end-users of stainless steel flanges, the chemical and petrochemical sectors, are mature industries, with no major expansion projects expected in the near future.⁵²

During the original investigations, the domestic industry consisted of both integrated producers (forgers--finishers) and converters.⁵³ At the time of the original investigations, there were six domestic forger finishers and three converters.⁵⁴ The domestic industry has undergone some restructuring since the period examined in the original investigations. Although the industry still consists of both integrated producers and converters, the domestic interested parties have identified eight U.S. firms that currently manufacture the domestic like product.⁵⁵

U.S. flange production has increased since the early 1990s, and the domestic industry asserts that there now is "ample" U.S. supply of flanges, citing capital improvements and increased domestic capacity. The parent company of the largest reporting U.S. producer (Maass) opened a manufacturing facility in Mexico, a country that, since 1996, has become the second largest supplier of finished flanges.⁵⁶ Moreover, even though subject import volume has decreased, overall U.S. imports of both forgings and finished flanges are substantially higher than in the early 1990s, due to an increase in non-subject imports.⁵⁷ Specifically, the record shows that in 1990, non-subject imports held a *** percent share of the U.S. market, which fell to *** percent in 1992.⁵⁸ In 1998, non-subject imports held a *** percent market share.⁵⁹

Based on the record evidence, we find that these conditions of competition in the domestic stainless steel flanges market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we have taken these conditions of competition into account in assessing 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 the 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.⁶⁰ In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in capacity or existing unused capacity in the exporting country; (2) existing inventories of

⁵¹ According to the record, demand rose from *** pounds in 1990 to *** pounds in 1998. CR at I-22, Table I-3; PR at I-18, Table I-3.

⁵² CR at I-25; PR at I-18.

⁵³ CR at I-16; PR at I-18.

⁵⁴ CR at I-16; PR at I-18-19.

⁵⁵ CR at I-16-17; PR at I-18-19.

⁵⁶ Compare Domestic Response to Notice of Institution at 16 with Table I-1, CR at I-13. See also CR at I-26 n.65; PR at I-21 n.65.

⁵⁷ CR at Table I-2; PR at Table I-2.

⁵⁸ CR at Table I-3; PR at Table I-3.

⁵⁹ *Id.*

⁶⁰ 19 U.S.C. § 1675a(a)(2).

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.⁶¹

During the original period of investigation, there was a rapid increase in the United States market penetration by subject imports. Subject imports of stainless steel flanges (both finished and forgings) increased from 1.8 million pounds in 1990 to 6.4 million pounds in 1992, an increase of 254 percent.⁶² The share of the U.S. market held by the cumulated volume of subject imports increased from 12.6 percent in 1990 to 37.1 percent in 1992.⁶³

Immediately after the issuance of the antidumping duty orders in February 1994, subject imports declined to much lower levels.⁶⁴ Indeed, no forgings (unfinished flanges) were imported from India in 1995. Subject imports from Taiwan remain well below their peak level of 1.3 million pounds in 1992, the last year examined in the original investigation. Specifically, in 1998 and 1999, subject imports from Taiwan were only 430,000 pounds and 293,000 pounds, respectively. Subject imports from India have increased in the last several years, but remain well below the 1992 level of 5.0 million pounds. As such, we find that the reduced presence of subject imports in the United States is the result of the antidumping duty orders.

There is limited information in the record concerning production capacity in India and Taiwan. In the original investigations, the Commission only received partial information from two Indian producers and one Taiwan producer. However, the combined capacity of the three producers must have been at least equal to the *** pounds they exported to the United States in 1991.⁶⁵ Moreover, at the time of original investigations, the Taiwan industry was characterized as having become relatively modernized and capital intensive, using technology and equipment developed in Japan.⁶⁶ Indeed, Enlin, the only reporting Taiwan producer *** its production capacity from 1990 to 1991 due to ***.⁶⁷

While current capacity data for the subject countries are not available, data on the record show high worldwide export levels for India and Taiwan in the past two years. Available United Nations data show that Indian exports of the subject product to all countries were *** pounds in 1996 and *** pounds in 1997, indicating that the Indian industry continues to produce and export substantial quantities of stainless steel flanges.⁶⁸ Similarly, the World Trade Atlas data also show that Taiwan exports to all sources were 6.2 million pounds in 1996, 4.7 million pounds in 1997, and 4.8 million pounds in 1998, likewise indicating substantial continued production and exportation of the subject merchandise.⁶⁹ Accordingly, there remain substantial quantities of subject stainless steel flanges exports from these countries that likely would be directed to the United States should the orders be revoked.

⁶¹ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁶² Original Determination at I-18.

⁶³ *Id.*

⁶⁴ CR at Table I-5; PR at Table I-5.

⁶⁵ CR at Table I-2 and Table I-5; PR at Table I-2 and Table I-5.

⁶⁶ CR at I-29; PR at I-22.

⁶⁷ *Id.*

⁶⁸ CR at I-31; PR at I-24.

⁶⁹ *Id.*

The subject producers' export orientation, their substantial exports, the rapid increase in exports to the United States in the original investigations and their apparent substantial capacity, indicate that they are likely to increase exports to the United States significantly upon revocation of the antidumping duty orders.⁷⁰ Consequently, based on the record in these reviews, we conclude that the volume of cumulated subject imports likely would increase to a significant level and regain significant U.S. market share if the orders were revoked.

D. Likely Price Effects of Subject Imports

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.⁷¹

The record in these reviews contains limited pricing data for the U.S. market. During the original investigations, the Commission found that the domestic product and subject imports were highly fungible. Moreover, the Commission determined that because demand for stainless steel flanges was relatively inelastic, "even small volumes of LTFV imports will not increase consumption, but will displace domestic stainless steel flanges and have a depressing or suppressing effect on domestic prices."⁷² In the context of these competitive conditions, the Commission found significant price effects due to the subject imports. As the Commission observed, subject import prices declined over the period of investigation as subject import volumes increased. Additionally, the subject imports undersold domestically-produced stainless steel flanges in the vast majority of pricing comparisons.⁷³

Based on the limited facts available, we find it likely that, absent the antidumping duty orders, competitive conditions would return to those prevailing prior to the imposition of the orders. Moreover, given the fungibility between the domestic and subject stainless steel flanges, the producers in India and Taiwan have further incentive to lower their prices to recapture their U.S. market share. Thus, increased sales of subject imports likely would be achieved by means of aggressive pricing. Based upon our previous findings that a reduction in prices will not stimulate demand for the product, the fungible nature of the product, and the past history of underselling, we find it likely that subject imports from India and Taiwan would enter the United States at prices that would significantly depress or suppress U.S. prices if the orders are revoked.^{74 75}

⁷⁰ Commissioner 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, Commissioner Bragg finds that the historical emphasis will likely result in significant volumes of subject imports into the United States if the orders are revoked.

⁷¹ 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.

⁷² Original Determination at I-19.

⁷³ *Id.*

⁷⁴ Although the Commission has relied on average unit values to determine likely price effects of subject imports in the past, we have declined to do so here due to at best sparse information on product mixes and current
(continued...)

For the foregoing reasons, we find that revocation of the antidumping duty orders would be likely to lead to significant underselling by the cumulated subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Cumulated Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders were 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.⁷⁶ 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.⁷⁷ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.⁷⁸

In the original investigations, the Commission found that the domestic industry's market share, production, capacity utilization, employment, and financial performance began to deteriorate during the final year of the investigation. It concluded that increased volumes of subject imports would prevent domestic producers from recovering cost increases and would exacerbate the domestic industry's declining financial performance.⁷⁹

The imposition of the antidumping duty orders had a positive effect on the domestic industry's performance. Since the imposition of the antidumping duty orders, domestic production of stainless steel

⁷⁴ (...continued)
average unit values in the record.

⁷⁵ Commissioner 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.

⁷⁶ 19 U.S.C. § 1675a(a)(4).

⁷⁷ *Id.* 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 determinations, Commerce found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the following margins: India-- Mukand, Sunstar, Bombay Forgings, Dynaforge 210.00 percent; Akai Impex 18.56 percent; and All Others 162.14 percent; Taiwan-- all manufacturers and exporters 48.00 percent. 65 Fed. Reg. 18058 (April 6, 2000).

⁷⁸ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁷⁹ Original Determination at I-19-20.

flanges appears to have risen. In 1998, the domestic industry produced *** pounds of finished flanges, a *** percent increase over the 1992 level of *** pounds.⁸⁰ Likewise, U.S. shipments, in terms of quantity, rose by *** percent from 1992 to 1998.⁸¹ The responding domestic producers reported that during the post-order period the domestic industry has invested in its production facilities to improve productivity and increase employment and that, as a consequence, financial performance improved.^{82 83} However, although the financial condition of the industry has shown some improvement since the imposition of the orders, we note that the performance of the domestic industry, particularly its recent financial performance, fluctuated noticeably between calendar year 1998 and the first nine months of 1999.^{84 85 86} As discussed above, revocation of the antidumping duty orders likely would lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic like product and significantly depress U.S. prices. In addition, the volume and price effects of the cumulated subject imports likely would cause the domestic industry to lose market share, with a significant adverse impact on the domestic industry's production, shipments, sales, and revenue levels.

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.⁸⁷ In addition, we find it likely that revocation of the orders will result in commensurate employment declines for domestic firms.

Accordingly, based on the limited record in these reviews, we conclude that, if the antidumping duty orders are revoked, subject imports from India and Taiwan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

⁸⁰ CR at Table I-1; PR at Table I-1.

⁸¹ CR at I-15; PR at I-10.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Chairman Koplan, Vice Chairman Okun, and Commissioner Askey find the domestic industry not to be currently vulnerable in light of its substantial capital investments and overall sound operating performance.

⁸⁵ Commissioners Bragg, Miller, and Hillman find that the domestic industry is currently vulnerable to material injury if the antidumping duty orders are revoked. In 1998, the reported average unit value of domestically-produced flanges was \$***, which was *** less than the average unit value of \$*** in 1992. Further, the unit value for domestically-produced flanges in January-September 1999 was *** less than the unit value for 1998. In addition to the reported softening global demand and the increase of non-subject imports, prices for raw materials, particularly nickel used in the production of stainless steel flanges, are increasing. According to the domestic producers, the combination of rising raw material costs and declining prices is devastating to the domestic industry. Indeed, the ratio of operating income to net sales for the four responding domestic producers dropped from *** percent in 1998 to *** percent in interim 1999. Total COGS as a percentage of net sales value rose from *** percent in 1998 to *** percent in January-September 1999. Based on the foregoing, we conclude that the domestic industry is in a "weakened state" as contemplated by the statute's vulnerability criterion. CR at I-15; PR at I-10-11; and Domestic Producers' Response at Exhibit 1.

⁸⁶ 19 U.S.C. § 1675a(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 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.").

⁸⁷ Commissioner Bragg notes that the ability of the industry to make capital improvements was key to its improved productivity, employment, and financial performance since the orders were imposed. *See* p. 19 *infra*.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury to the domestic stainless steel flanges industry within a reasonably foreseeable time.