

U.S. International Trade Commission

Washington, DC 20436

Oil Country Tubular Goods from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela

Investigations Nos. 701-TA-428 and
731-TA-992-994 and 996-1005 (Preliminary)



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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701-TA-428 and 731-TA-992-994 and 996-1005 (Preliminary)

OIL COUNTRY TUBULAR GOODS FROM AUSTRIA, BRAZIL, CHINA, FRANCE, GERMANY, INDIA, INDONESIA, ROMANIA, SOUTH AFRICA, SPAIN, TURKEY, UKRAINE, AND VENEZUELA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 19 U.S.C. § 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of oil country tubular goods, provided for in subheadings 7304.21.30, 7301.21.60, 7304.29.10, 7304.29.20, 7304.29.30, 7304.29.40, 7304.29.50, 7304.29.60, 7305.20.20, 7305.20.40, 7305.20.60, 7305.20.80, 7306.20.10, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, and 7306.20.80 of the Harmonized Tariff Schedule of the United States, from Austria that are alleged to be subsidized by the Government of Austria and from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela that are alleged to be sold at less than fair value (LTFV).²

BACKGROUND

On March 29, 2002, petitions were filed with the Commission and the Department of Commerce (Commerce) on behalf of IPSCO Tubulars, Inc., Camanche, IA; Koppel Steel Corp., Ambridge, PA; Lone Star Steel Co., Dallas, TX; Maverick Tube Corp., Chesterfield, MO; Newport Steel Corp., Newport, KY; and United States Steel Corp., Pittsburgh, PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of oil country tubular goods from Austria and by reason of LTFV imports of the same product from Austria, Brazil, China, Colombia, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela.³ Accordingly, effective March 29, 2002, the Commission instituted the subject investigations. Petitioners withdrew their petition against Colombia on April 11, 2002, and Commerce did not initiate an investigation on this country. Accordingly, the Commission terminated its investigation concerning Colombia (Inv. No. 731-TA-995 (Preliminary)) on April 29, 2002 (*Federal Register* of May 8, 2002 (67 FR 30964)).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 5, 2002 (67 FR 16437). The conference was held in Washington, DC, on April 19, 2002, and all

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 Lynn M. Bragg dissenting.

³ Lone Star does not join the petition with respect to Romania.

persons who requested the opportunity were permitted to appear in person or by counsel.

IEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of oil country tubular goods (“OCTG”) from Austria that are allegedly subsidized and by reason of imports of OCTG from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela that are allegedly sold in the United States at less than fair value (“LTFV”).^{1 2}

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.³ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”⁴

The Court of Appeals for the Federal Circuit has stated that the purpose of preliminary investigations is to avoid the cost and disruption to trade caused by unnecessary investigations and that the “reasonable indication” standard requires more than a finding that there is a “possibility” of material injury.⁵ It also noted that, in a preliminary investigation, the “[t]he statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry.”⁶ Moreover, the Court of International Trade has reaffirmed that in applying the reasonable indication “standard for making a preliminary determination regarding material injury or threat of material injury, the Commission may weigh all evidence before it and resolve conflicts in the evidence.”⁷

¹ Commissioner Lynn M. Bragg finds that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of subject imports of OCTG from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela.

² Whether the establishment of an industry is being materially retarded is not an issue in these investigations.

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

⁴ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁵ American Lamb, 785 F.2d at 1004.

⁶ Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁷ R-Calf, 74 F. Supp. 2d at 1368 (Ct. Int’l Trade 1999).

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁸ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁹ In turn, 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”¹⁰

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.¹¹ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹² The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹³ The Commission must base its domestic like product determination on the record in these investigations and it is not bound by prior determinations pertaining to the same imported products.¹⁴ Although the Commission must accept the determination of the Department of Commerce

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 19 U.S.C. § 1677(10).

¹¹ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹² See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹³ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁴ Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, n. 5 (Ct. Int’l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

(“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁵

B. Domestic Like Product

In its notices of initiation, Commerce defined the imported merchandise within the scope of the investigations as follows:

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). The scope of these investigations does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium, or finished drill pipe with tool joint attached.¹⁶

OCTG consists of circular pipes of carbon or alloy steel and seamless or welded construction that can be plain end, threaded at one or both ends, or threaded and coupled. OCTG is used inside oil and gas wells and is normally produced to API specifications. OCTG other than drill pipe (casing and tubing) may be produced by either the welded or seamless process.¹⁷ Drill pipe that meets API specifications is always produced from seamless tubing. Although the scope includes both finished and unfinished casing and tubing, it does not include finished drill pipe with the tool joint attached.

Although casing, tubing, and drill pipe are used in the extraction of oil or natural gas, they are individually designed to perform distinct functions. Casing lines the interior of the well hole to prevent the

¹⁵ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁶ 67 Fed. Reg. 20730 (April 26, 2002). These products, along with similar products of stainless steel, are currently provided for by the following subheadings of the Harmonized Tariff Schedule of the United States (“HTS”) are: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Id.

¹⁷ Welded casing and tubing are formed by passing slit steel through a series of rollers and joining the edges. Seamless casing and tubing are formed by drilling a central cavity in a solid billet. Confidential Report (“CR”) at I-6; Public Report (“PR”) at I-4.

walls of the well from caving in while drilling and extracting the oil and gas, whereas tubing is installed within the casing to conduct the oil or gas to the surface. Drill pipe is used to transmit power to a rotary drilling tool (commonly referred to as a drill bit) in an oil or gas well.¹⁸

C. Domestic Like Product Issues

Parties disagree on the definition of the domestic like product. Petitioner U.S. Steel advocates one domestic like product consisting of all OCTG, coextensive with the scope. Unlike U.S. Steel, IPSCO Petitioners¹⁹ urge the Commission to find two domestic like products: (1) casing/tubing; and (2) drill pipe. Respondents advance two possible variations of the domestic like product definition: (1) casing/tubing and drill pipe as separate like products and (2) welded OCTG and seamless OCTG as separate like products. In the following sections, we consider two like product issues: (1) whether welded and seamless OCTG should be defined as separate domestic like products; and (2) whether all OCTG other than drill pipe and drill pipe should be considered separate domestic like products.

1. Welded versus Seamless OCTG

V&M respondents²⁰ claim that welded OCTG cannot be used for drill pipe and in more demanding oil and gas exploration environments, and assert that drilling in seamless-only environments is growing as a share of the overall market. They assert that the capital investment to manufacture seamless OCTG is ten to twenty times the investment to manufacture welded OCTG, and that virtually all OCTG producers make either seamless or welded OCTG, but not both. They assert that the average unit value of subject imported seamless OCTG greatly exceeds the average unit value of subject imported welded OCTG.²¹

By contrast, the IPSCO petitioners emphasize the Commission's prior conclusions in title VII and section 201 investigations that welded and seamless OCTG constitute a single like product. They assert that the two types of OCTG are interchangeable under API specifications for most grades of casing and tubing, compete directly in the market, follow the same performance trends, and are separated by only a modest price difference.²²

Welded OCTG has physical characteristics similar to that of seamless OCTG, as it was engineered as a substitute for the seamless product. Both welded and seamless OCTG are used in the extraction of oil and natural gas. Although welded OCTG cannot be used for certain demanding applications, API specifications for most grades of casing and tubing stipulate that either welded or seamless construction is acceptable for end-use applications. Welded and seamless OCTG are sold through similar channels of distribution, as most are sold to distributors. While the initial stages of the

¹⁸ CR at I-4-5; PR at I-3-4.

¹⁹ IPSCO Petitioners consist of IPSCO Tubulars, Inc.; Koppel Steel Corp.; Lone Star Steel Co.; Maverick Tube Corp.; and Newport Steel Corp.

²⁰ V&M Respondents consist of Vallourec & Mannesmann Tubes & affiliates.

²¹ V&M Respondents' Br. at 6-13.

²² IPSCO Petitioners' Br. at 6-12.

production process are different, the finishing stages for seamless and welded OCTG are similar. Seamless and welded OCTG may be subject to heat treating, upsetting, threading and coupling, hydrostatic testing, and cutting to length. The same processor may finish both seamless and welded OCTG in the same facility. Moreover, the record suggests that the price difference between welded and seamless OCTG is not significant in light of performance characteristics.²³ On balance, we find that welded OCTG and seamless OCTG constitute a single domestic like product.

2. OCTG other than drill pipe (casing/tubing) versus drill pipe

The scope of these investigations, noted above, includes both finished and unfinished casing and tubing, but excludes finished drill pipe to which the tool joint has been attached. It includes, however, drill pipe that has been upset and heat-treated, even though virtually all subject imports of drill pipe are at the green tube stage.²⁴ In arguing for one domestic like product consisting of all OCTG, U.S. Steel emphasizes the similarities and interchangeability at the green tube stage of casing, tubing, and drill pipe. On the other hand, IPSCO petitioners and respondents focus on the post-green-tube stage when certain finishing processes have taken place and argue for two domestic like products: OCTG other than drill pipe and drill pipe.

Physical Characteristics and Uses -- For the most part, green tube, *i.e.*, OCTG prior to its finishing operations, is a commodity product and is traded as such throughout the world.²⁵ Drill pipe and casing/tubing at the “green” stage share similar chemical compositions and overlap in terms of API minimum requirements for diameter and wall thicknesses. Although they generally differ in length and weight per foot, the tolerances on dimensions and weights are largely identical comparing green drill pipes having sizes from 2-3/8 to 4-1/2 inches in outside diameter with tubing, and comparing green drill pipes of sizes from 5 to 5-1/2 inches in outside diameter with casing. The mechanical strength requirements for drill pipe, including yield and tensile strength, also overlap with those for casing and tubing. However, at the upper end of the product spectrum, API mechanical strengths for high-end drill pipe are significantly more stringent than those for casing and tubing.²⁶

Drill pipe and casing/tubing that have undergone some finishing (*i.e.* heat-treated and upset forms) generally differ in thickness, length, tensile strength, and ability to withstand fatigue.²⁷ Many of these different characteristics are imparted by the finishing processes which include heat-treating to the desired chemistry, cutting the pipe to length, thickening or upsetting the pipe ends if the pipe needs additional strength, threading to receive a coupling joint (for casing and tubing only), and/or joining the coupling piece

²³ Price data gathered in these investigations do not cover comparable welded and seamless products. The AUV of domestic shipments of welded and seamless OCTG (excluding drill pipe) over the period examined differed by approximately 1 to 15 percent, depending on the year. *See* CR and PR at Tables C-3; Memorandum INV-Z-063 (May 7, 2002) at Tables C-4, C-5.

²⁴ Seamless casing/tubing and drill pipe are all known as green tubes or pipe prior to any finishing operations. CR at I-6; PR at I-5.

²⁵ CR at I-7; PR at I-6.

²⁶ CR at I-9; PR at I-6.

²⁷ Grant Prideco Br. at 8-9.

to the pipe (threading for casing and tubing, heat welding for drill pipe).²⁸

Casing, tubing, and drill pipe are used for the same general purpose, the extraction of oil or natural gas, although they are individually designed to perform distinct functions. Casing lines the interior of the well hole to prevent the walls of the well from caving in during drilling and extraction, whereas tubing is installed within the casing to conduct the produced fluids to the surface. Drill pipe is used to transmit power to a rotary drilling tool (commonly referred to as a drill bit) in an oil or gas well.²⁹

Interchangeability -- There is conflicting evidence as to whether casing/tubing and drill pipe at the “green ” stage are interchangeable. Testimony at the conference indicated that in green tube form, casing and tubing could be used interchangeably.³⁰ On the other hand, Grant Prideco states that green drill pipe is manufactured with heavier walls and differs in length from casing and tubing.³¹ However, as U.S. Steel has indicated, Grant Prideco³² uses *** for use in casing, tubing and drill pipe.³³

Generally, casing, tubing, and drill pipe at the finished stage (after heat-treatment or upsetting) are not directly interchangeable as each has separate end-use applications and engineering requirements. Casing, tubing, and drill pipe are each produced in specific sizes and wall thicknesses, and each has its own method of joining. While there is some specification overlap, casing and tubing and drill pipe generally differ in length and weight per foot; drill pipe tends to be heavier and shorter.

Channels of Distribution -- Green tubes for casing and tubing are either sold to processors or finished by the mills.³⁴ Green tube for unfinished drill pipe is generally sold to processors, some of which process casing and tubing.³⁵ Finished casing and tubing are generally sold to distributors. Fully-finished drill pipe (which is not within the scope) is generally sold to end-users.

Common Manufacturing Facilities, Employees, and Methods -- There is some disagreement among the parties as to whether casing and tubing and drill pipe can be produced on the same equipment. U.S. Steel maintains that green tube for all OCTG is made on the same mills by the same employees and

²⁸ CR at I-7.

²⁹ CR at I-4.

³⁰ A senior specification specialist with U.S. Steel testified that “in the green tube form before we’ve done any upsetting, before any heat treating has been done, if you have a tube, for instance, that’s a 4-½ diameter 337 wall, .337 inch thickness wall, you can interchange them and use them interchangeably as tubing or casing or drill pipe if the specification either 5CT or 5D within API allows that size of wall to be entered . . . If I were going to use green tubes and I wanted the most flexibility for those green tubes, I would produce them to a length in which I could use them for all three applications if possible.” Conference Transcript (“TR”) at 46-47.

³¹ Grant Prideco Br. at 9.

³² Grant Prideco is the largest U.S. producer (and processor) of drill pipe. It imports green pipe from its Austrian affiliate, Voest-Alpine, for its drill pipe production.

³³ U.S. Steel Br. Ex. 1 at 17-20, see also, OMSCO letter of May 5, 2001.

³⁴ Producer & Importer Questionnaire Responses.

³⁵ Grant Prideco Br. at 10.

the same production process.³⁶ In contrast, the IPSCO Petitioners assert that drill pipe is generally produced in separate manufacturing facilities from casing and tubing since welded casing/tubing producers cannot make seamless drill pipe. Grant Prideco effectively concedes that some of the same steel manufacturers produce green tubes for casing, tubing, and drill pipe, but emphasizes that finished drill pipe manufacturers typically make the finished drill pipe for themselves.³⁷

Processors tend to produce unfinished drill pipe in facilities with employees dedicated to that purpose, while the mills produce drill pipe on the same equipment as casing and tubing.³⁸ Thus, green tubes for casing/tubing and drill pipe can be produced on the same equipment, but the finishing operations for the products differ significantly.³⁹

Producer and Customer Perceptions -- U.S. Steel emphasizes that as one of the *** American producers of green tubes for drill pipe, it presented extensive testimony concerning the overlap between this product and other OCTG.⁴⁰ IPSCO Petitioners and Grant Prideco emphasize that the Commission has previously found that customers and producers reported that they perceive drill pipe and other OCTG to be distinct products.⁴¹ According to questionnaire responses, a majority of importers and producers perceive drill pipe and casing/tubing to be distinct products.⁴² These perceptions, however, appear to relate to drill pipe, at the finished stage, not at the green tube stage.

Price -- U.S. Steel asserts that there is no significant difference in price between unfinished drill pipe and other OCTG. In contrast, IPSCO Petitioners and Grant Prideco contend that there is no relationship in pricing between drill pipe whether finished or unfinished, and casing and tubing.⁴³ Grant Prideco maintains that drill pipe generally commands a higher price or premium than a joint of casing or tubing.⁴⁴ Our price data show drill pipe to be priced higher than some casing and tubing products and priced lower than others.⁴⁵ The average unit value (“AUV”) of unfinished drill pipe reported by mills is comparable to the AUV of casing and tubing, whereas the AUV of processed drill pipe reported by *** far exceeds the AUV of casing and tubing.⁴⁶

Conclusion

Although there is some merit to IPSCO Petitioners’ and Respondents’ arguments concerning the

³⁶ U.S. Steel Br. Ex. 1 at 17-19.

³⁷ Grant Prideco Br. at 11.

³⁸ CR at I-9.

³⁹ But see, Letter from Texas Steel Conversion (“TSC”), indicating that it is licensed to process casing, tubing, and drill pipe. Bentler Br. at Ex. B.

⁴⁰ U.S. Steel Br. Ex. 1 at 21.

⁴¹ IPSCO Petitioners’ Br. at 24; Grant Prideco Br. at 11.

⁴² Questionnaire Responses.

⁴³ IPSCO Petitioners’ Br. at 12; Grant Prideco Br. at 12

⁴⁴ Grant Prideco Br. at 12.

⁴⁵ Compare CR at Table V-5 with Tables V-1-4, V-6-8.

⁴⁶ ***.

definition of the domestic like product,⁴⁷ we find that the similarities between casing/tubing and drill pipe outweigh the differences. There are substantial similarities between casing, tubing, and drill pipe at the green tube stage. Casing/tubing and drill pipe green tubes are often interchangeable and may be made on the same equipment. Green tube, *i.e.*, OCTG prior to its finishing operations, is generally considered a commodity product.⁴⁸ Drill pipe and casing/tubing at the green tube stage share similar chemical compositions and overlap in terms of API minimum requirements for diameter and wall thicknesses. There is some overlap in distribution in that green tube for casing, tubing, and drill pipe is often sold to processors, although the channels for the finished product differ. After undergoing finishing operations, greater differences between casing/tubing and drill pipe emerge and the products are generally not interchangeable. Nevertheless, the mechanical strength requirements (including yield and tensile strength) for drill pipe other than high-end drill pipe also overlap with those for casing and tubing.⁴⁹ There are conflicting data regarding differences in price for casing/tubing and drill pipe. On balance, we find one domestic like product consisting of all OCTG corresponding to Commerce's scope in these investigations.

D. Domestic Industry and Related Parties

Section 771(4) of the Act defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product.”⁵⁰ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.⁵¹ Because

⁴⁷ IPSCO Petitioners and Respondents suggest that their argument for two like products is supported by the Commission's prior determinations in other OCTG investigations. In those cases, the Commission found two like products, OCTG other than drill pipe and drill pipe. See e.g. Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-253 (Review) and Invs. Nos. 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review) at 16. Oil Tubular Goods From Argentina, Austria, Italy, Japan, Korea, Mexico and Spain, Invs. Nos. 701-TA-363 and 364 and Invs. Nos. 731-TA-71-717 (Final) USITC Pub. 2911 (Aug. 1995) at I-8. These cases, however, provide limited guidance in our determination here. In previous investigations, the Commission relied heavily on what it considered a fundamental physical characteristic that distinguished drill pipe from casing and tubing -- the addition of a tool joint to finished drill pipe which is welded onto the drill pipe during finishing operations. Drill pipe with the attached tool joint is not part of the scope in these investigations. We further note that the Commission is not bound by prior determinations concerning similar like products. Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 11169, n. 5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

⁴⁸ CR at I-7; PR at I-6.

⁴⁹ CR at I-9. At the upper end of the product spectrum, API mechanical strengths for high-end drill pipe are more stringent than those for casing and tubing. CR at I-9; PR at I-6.

⁵⁰ 19 U.S.C. § 1677(4)(A).

⁵¹ See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan,

we have found that the domestic like product consists of all OCTG coextensive with

Commerce's scope, we also find that the domestic industry consists of all domestic producers of OCTG as defined in the scope.

1. Whether processors and threaders should be included in the domestic industry

We consider whether the domestic industry producing OCTG includes either processors or threaders of OCTG in addition to pipe manufacturers (mills). Processors of OCTG operate facilities that are capable of heat-treating and upsetting ends. Threaders are capable of threading and coupling, hydrostatic testing, and measuring the length of OCTG products. Most processors are also threaders, but there are many threaders that are not processors.⁵² Petitioners and Respondents agree that significant processors are part of the domestic industry, but urge that those engaged in just threading and coupling are not.⁵³ In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States; production-related activity at minimum levels could be insufficient to constitute domestic production.⁵⁴

In the 2000-01 five-year reviews of outstanding orders on OCTG, the same issue arose with

Inv. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 and n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); *see, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG")*, Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911, at I-15 (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

⁵² CR at I-8.

⁵³ U.S. Steel Br. Ex. 1 at 27; Grant Prideco Br. at 29.

⁵⁴ The Commission generally considers six factors:

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. *See Citric Acid and Sodium Citrate from China*, Inv. No. 731-TA-863 (Preliminary), USITC Pub. 3277 at 8 (Feb. 2000); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Invs. Nos. 701-TA-387-391, 731-TA-816-821 (Final), USITC Pub. 3273 at 9 (Jan. 2000). *See also Large Newspaper Printing Presses from Germany and Japan*, Invs. Nos. 731-TA-736-737 (Final) USITC Pub. 2988 at 8-9 (Aug. 1996).

respect to processors and threaders. In those reviews, the Commission found that processors of OCTG, whose operations included heat-treating and upsetting ends, were part of the domestic industry because their operations involved sufficient production-related activity in the United States to constitute domestic production of the like product. Specifically, it found that processors of OCTG perform heat-treating operations and upset pipe ends, requiring significant levels of capital investment, technical expertise, and added value. On the other hand, it found that threaders' operations were less complex than those conducted by processors. It therefore declined to include threaders within the domestic industry producing OCTG because the level of technical expertise and the added value required to perform coupling and threading was considerably less than that of either mills or processors.⁵⁵

Nothing in the record before us in these investigations suggests that we should alter our analysis, nor has any party urged us to do so. We therefore determine that processors of OCTG should be included in the domestic industry producing OCTG but that threaders should not be included.

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁵⁶ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁵⁷

We first consider whether any of the domestic producers meet the definition of a related party. Grant Prideco is a domestic producer of OCTG and a related party by virtue of its relationship to an

⁵⁵ Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico, Invs. Nos. 701-TA-364 (Review), and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 at 5; Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review) at 17.

⁵⁶ 19 U.S.C. § 1677(4)(B).

⁵⁷ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

Austrian subject producer and to an importer of the Austrian subject product, as well as its own importation of the Austrian subject product. Specifically, Grant Prideco is *** of the parent of an Austrian producer, Voest-Alpine Tubulars GmbH, and importer Voest-Alpine Tubular Corp., Houston, Texas. Additionally, Grant Prideco imported OCTG from its Austrian affiliate over the period examined.⁵⁸ Consequently, we consider whether “appropriate circumstances” exist to exclude Grant Prideco from the domestic industry.

Grant Prideco imported *** short tons of subject merchandise from its Austrian affiliate and other subject countries during the period examined. Its domestic production of OCTG totaled *** short tons during the period 1999-2001, for a ratio of imports to total OCTG production of *** percent.⁵⁹

Although it does not support the petition, Grant Prideco’s interest appears to be primarily that of a domestic producer. Grant Prideco maintains that its imports are the result of its need as an integrated producer to control the manufacture of the green tubes it utilizes in manufacturing drill pipe.⁶⁰ While Grant Prideco imports *** its green tube from its Austrian affiliate for its drill pipe production, *** of Grant Prideco’s OCTG production is casing and tubing, for which it utilizes only domestically produced green pipe.⁶¹ Grant Prideco does not sell any of the green tube drill pipe it imports but uses it all to make the domestic like product. In 2001, Grant Prideco accounted for approximately *** percent of U.S. production of OCTG.⁶² While Grant Prideco’s stated reason for importation may suggest that it has received a benefit from its status as an integrated producer of drill pipe, its operating and financial trends are ***.⁶³ Accordingly, inclusion of Grant Prideco does not present a distorted picture of the condition of the domestic industry.

On balance, we do not find that appropriate circumstances exist to exclude Grant Prideco as a

⁵⁸ CR and PR at IV-1.

⁵⁹ ***. The value of Grant Prideco’s reported net sales of unfinished drill pipe over the period examined, which reflects the volume of the company’s domestic processing operations, was *** times the value of its drill pipe imports from Austria. Compare Table VI-2 with Table C-9.

⁶⁰ Grant Prideco Br. at 20.

⁶¹ Grant Prideco Br. at 20, 27.

⁶² CR and PR at Table III-1. This percentage does not include Grant Prideco’s additional production in 2001 of approximately *** tons of casing and tubing made from green tube purchased from two other U.S. producers, which is included only in the production of those two producers to avoid double counting.

⁶³ Financial data included in the Staff Report are limited to its drill pipe operations. ***; CR and PR at Table VI-2.

related party.^{64 65}

III. NEGLIGIBLE IMPORTS

The statute provides that imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.⁶⁶ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.⁶⁷ The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.⁶⁸

The statute further provides, however, that subject imports from a single country which comprise less than 3 percent of such total imports of the product may *not* be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries collectively accounts for more than 7 percent of the volume of all such merchandise imported into the United States.⁶⁹ In all cases, the statute allows the Commission to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of making negligibility determinations.⁷⁰

The petitions in these investigations were filed on March 29, 2002. Official import statistics indicate that from March 2001 through February 2002, subject imports from Austria, China, Germany, and Venezuela were above three percent of total imports. Subject imports from the other nine countries (Brazil, France, India, Indonesia, Romania, South Africa, Spain, Turkey, and Ukraine) were each less than three percent of total U.S. imports of the subject merchandise. However, in the aggregate, imports from those nine countries total 15.9 percent of total imports, well in excess of the seven percent threshold.⁷¹ Consequently, we find that subject imports from none of the countries are negligible.

⁶⁴ We note that even if Grant Prideco's production and financial data were not included in the domestic industry data, there is little difference in the domestic industry's overall operating trends during the period examined. Compare CR and PR at Table C-1 with Memorandum INV-Z-065 (May 7, 2002) at Table C-6 ("Table C-6").

⁶⁵ With respect to other processors, we do not find OMSCO or TSC to be related parties. OMSCO currently sources almost all of its drill pipe green tubes from U.S. mills. OMSCO letter of May 7, 2002. TSC's purchases of green tubes do not constitute control over large volumes of imports. ***.

⁶⁶ 19 U.S.C. § 1677(24)(A)(i)(I).

⁶⁷ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

⁶⁸ 19 U.S.C. § 1677(24)(C); see also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 856 (1994) ("SAA").

⁶⁹ 19 U.S.C. § 1677(24)(A)(ii).

⁷⁰ 19 U.S.C. § 1677(24)(C); see also SAA at 856.

⁷¹ CR at IV-7; PR at IV-6.

IV. CUMULATION

A. In General

Section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.⁷² In assessing whether subject imports compete with each other and with the domestic like product,⁷³ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject 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 geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁷⁴

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁷⁵ Only a “reasonable overlap” of competition is required.⁷⁶

⁷² 19 U.S.C. § 1677(7)(G)(i).

⁷³ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 316, 103d Cong., 2d Sess. at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁷⁴ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁷⁵ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁷⁶ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

None of the four statutory exceptions to the general cumulation rule applies to these investigations.⁷⁷

For purposes of these preliminary determinations, with respect to all investigations, we find that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product.

1. Fungibility

Virtually all OCTG, whether imported or domestically produced, are sold to specification and are essentially commodity products.⁷⁸ With one exception, all U.S. producers reported that OCTG from each subject country and the domestic like product were “always” interchangeable.⁷⁹ U.S. importers reported that U.S. and subject OCTG from each country were “always,” “frequently,” or “sometimes” interchangeable.⁸⁰ While respondents raised issues concerning product mix differences (including both product specialization and product limitations) for imports from certain countries, particularly, Austria, Brazil, France, Germany, Romania, South Africa, and Ukraine, we conclude that the product from each subject country and the domestic product are reasonably fungible.

2. Geographic Overlap

Domestically-produced OCTG is sold nationwide, but its sales are generally concentrated in the Gulf Coast states, the Southwest, or the West Coast. Similarly, subject imports from each country are sold in the entire United States, but are primarily present in the Gulf Coast, the Southwest, and West Coast regions.⁸¹ Moreover, the largest distributors of both domestic and imported OCTG are headquartered in Texas.⁸²

3. Channels of Distribution

The domestic product and subject imports are distributed to similar customers. Generally, finished casing and tubing is sold to distributors, which in turn sell to the operators’ market.⁸³ Domestically-produced unfinished drill pipe and subject unfinished drill pipe from each country are sold to processors.⁸⁴

4. Simultaneous Presence

Domestically produced and subject imports of OCTG from each country were present during the

⁷⁷ 19 U.S.C. § 1677(7)(G)(ii).

⁷⁸ CR and PR at I-4-5.

⁷⁹ *** only to the extent that the domestic like product and Austrian, French, and German OCTG were “frequently” (rather than “always”) interchangeable. CR at II-10; PR at II-6.

⁸⁰ CR at II-10; PR at II-6.

⁸¹ CR and PR at II-2.

⁸² CR and PR at II-2.

⁸³ CR and PR at II-1; ***.

⁸⁴ CR at II-1- II-2; PR at II-2; ***.

period for which data were collected.⁸⁵ The Petitioners calculate presence by quarter. Over the 12 quarters examined (1999-2001), there were no imports from Ukraine and Turkey in 5 quarters, none from Indonesia in 4 quarters, and none from India in 1 quarter. With the exception of Ukraine, however, all of these “empty quarters” occurred in the first half of the period.⁸⁶ Alternatively, Respondents focus on more recent and more calibrated data (monthly, January 2001-February 2002). During this 14-month period, there were no imports from Ukraine in 8 months, none from Romania and Turkey in 6 months, and none from South Africa in 5 months.⁸⁷ Taken as a whole, these data suggest that most subject countries have been simultaneously present in the U.S. market, but that certain countries, especially Ukraine and Turkey, have been more sporadic suppliers. On balance, we find this level of import presence to be sufficient to support our finding of a reasonable overlap of competition.

Conclusion

In sum, we cumulate subject imports of OCTG from each of the thirteen countries for purposes of our material injury analysis. Consideration of the four factors traditionally addressed in cumulation analysis shows that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic product. In terms of fungibility, both producers and importers agree that there is, at least, a fair amount of interchangeability among subject imports and between the subject imports and the domestic like product. In terms of geographic overlap, subject imports from each country and the domestic like product are concentrated in the primary OCTG market, the Gulf states and in particular, Texas. Subject imports and the domestic product move through similar channels of distribution. Subject imports from each country were present in the U.S. market for a large portion of the period examined.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the preliminary phase of antidumping and countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.⁸⁸ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁸⁹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁹⁰ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry

⁸⁵ CR and PR at II-1; Petition Vol. II at Table 27; Joint Respondents’ Br. at Ex. 27.

⁸⁶ Petition (Injury Volume) at Ex. 8.

⁸⁷ Joint Respondents’ Brief at Ex. 27.

⁸⁸ 19 U.S.C. § 1673b(a).

⁸⁹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁹⁰ 19 U.S.C. § 1677(7)(A).

in the United States.⁹¹ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁹²

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations.

Demand for OCTG is directly related to the price of oil and gas, making the market volatile and cyclical. The parties agree that the price of oil and gas affects how many drilling rigs are in operation, which in turn determines the demand for OCTG. Oil and natural gas prices increased substantially between 1999 and the end of 2000. From their peaks in late 2000, oil and gas prices declined significantly through 2001. Rig count data tended to track crude oil and natural gas price data, steadily increasing from April 1999 and peaking in July 2001. From July 2001 through December 2001, monthly U.S. rig counts fell from 1,278 to 901, and continued to decrease to 790 by March 2002.⁹³

Apparent U.S. consumption of OCTG tracked the increase in the rig count between 1999 and mid-2001 and the subsequent decline in the rig count after July 2001. Apparent U.S. consumption increased from *** short tons in 1999 to *** short tons in 2000, and to *** short tons in 2001.⁹⁴ Apparent U.S. consumption was *** short tons in the first half of 2001, but *** short tons in the second half of 2001.⁹⁵

The OCTG end user market can roughly be divided into the drilling contractor market and the operator market. Both drilling contractors and operators purchase OCTG through distributors or directly from processors.⁹⁶ Finished OCTG is distributed through two tiers of distributors—first tier distributors who have sales over \$150 million and sell to major oil and gas production companies and large oil and gas

⁹¹ 19 U.S.C. § 1677(7)(C)(iii).

⁹² Id.

⁹³ CR at II-7, II-9; PR at II-3, II-6; Baker Hughes: Rotary Rigs in Operation, (Energy Information Administration/Monthly Energy Review), January 2002, at 83.

⁹⁴ Energy Information Administration/Monthly Energy Review, March 2002, at 119 and 133.

⁹⁵ Table C-6. Based on our findings with respect to the domestic like product and the domestic industry, except where specifically noted, our discussion of U.S. market data includes all reporting U.S. mills and all reporting U.S. processors. Certain data, however, present analytical challenges. In measuring the size of the U.S. market, for example, we have excluded the quantity of reported shipments by U.S. processors, because the saleable product reported by such processors has already been included as U.S. shipments by U.S. mills or as U.S. imports by U.S. importers. We have calculated market share in a similar fashion. Accordingly, for the following data that could be distorted due to double-counting, we have considered, but excluded or treated separately, U.S. processor data: apparent U.S. consumption; market shares; capacity; production; capacity utilization; shipments; and inventories. The adjusted data for these calculations are drawn from Table C-6. Employment and financial data, however, may be aggregated more reliably. Accordingly, we have relied upon data presented in the CR and PR at appendix C, Table C-1, for our analysis of these items.

⁹⁶ CR at II-2; PR at II-1.

independents, and second-tier distributors who sell to regional operators. Distributors will also sell among themselves as need arises and in response to customer demand. Some distributors are “full service” companies that sell to an operator a complete oilfield supply package for a well, including casing and tubing, downhole pumps, and other equipment. Other distributors only distribute pipe (including OCTG).⁹⁷ The domestic industry consists of both mills and processors. OCTG is produced on the same mill equipment used for the production of standard, line, and pressure pipe, mechanical and pressure tubing, and coupling stock. Most U.S. producers used the majority of their pipe production equipment to produce OCTG.⁹⁸

U.S. production capacity increased from *** short tons in 1999 to *** short tons in 2000, before decreasing slightly to *** short tons in 2001.⁹⁹ In the first half of 2001, U.S. production capacity was *** short tons compared to *** tons in the second half of that year. U.S. producers’ capacity utilization increased from *** percent in 1999 to *** percent in 2000, and to *** percent in 2001. U.S. producers’ capacity utilization rates dropped from *** percent in January-June 2001 to *** percent in July-December 2001.¹⁰⁰

Nonsubject imports increased substantially throughout the period examined, from 57,791 short tons in 1999 to 222,777 short tons in 2000, and to 407,109 short tons in 2001. Nonsubject imports were 250,008 short tons in the first half of 2001 and 157,101 short tons in the second half of 2001.¹⁰¹ Nonsubject imports increased by 286 percent from 1999 to 2000 and by 83 percent from 2000 to 2001 but declined by 37 percent between January-June 2001 and July-December 2001.¹⁰²

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁰³

While subject imports increased markedly between 1999 and 2001, the bulk of the increase occurred between 1999 and 2000 as apparent U.S. consumption grew substantially.¹⁰⁴ Subject imports rose from 105,870 short tons in 1999, to 490,006 short tons in 2000, and to 567,171 short tons in 2001.¹⁰⁵ Subject imports were 322,934 short tons during January-June 2001, then decreased to 244,238 short tons during July-December 2001.¹⁰⁶

⁹⁷ CR and PR at II-1.

⁹⁸ CR at II-4; PR at II-3.

⁹⁹ Table C-6.

¹⁰⁰ Table C-6.

¹⁰¹ Table C-6.

¹⁰² Table C-6.

¹⁰³ 19 U.S.C. § 1677(7)(C)(i).

¹⁰⁴ CR and PR at Table IV-1.

¹⁰⁵ CR and PR at Table IV-1.

¹⁰⁶ CR and PR at Table IV-1.

Subject imports' market share increased from *** percent in 1999 to *** percent in 2000, and to *** percent in 2001.¹⁰⁷ Subject imports' market share was slightly higher in the last half of 2001 (***) percent) when compared to the first half of 2001 (***) percent).¹⁰⁸ The market share of nonsubject imports also increased from *** percent in 1999 to *** percent in 2000, and to *** percent in 2001.¹⁰⁹ Nonsubject imports' market share was slightly lower in the last half of 2001 (***) percent) when compared to the first half of 2001 (***) percent).¹¹⁰ U.S. producers' market share fell from *** percent in 1999 to *** percent in 2000, to *** percent in 2001. U.S. producers' market share was *** percent in the first half of 2001, and *** percent in the second half of 2001.¹¹¹

We find that the volume of subject imports, and the increase in that volume, both in absolute terms and relative to domestic production and consumption, is significant. However, these significant volumes must be viewed in context. First, the increase in subject imports took place during a period of rapidly recovering demand in the U.S. market. Apparent U.S. consumption of OCTG more than doubled, rising by more than 1.7 million short tons between 1999 and 2001.¹¹² Viewed in that light, the 460,000-ton increase in subject imports is less significant, given the 350,000-ton increase in nonsubject imports and the 900,000-ton increase in U.S. mill shipments.¹¹³ Second, although the market share held by OCTG from the subject countries increased during the period examined, nearly all of this increase occurred during 2000, when domestic prices and the performance of the domestic industry were improving markedly. Subject imports declined substantially from the first half to the second half of 2001, the period during which the Petitioners assert that subject imports caused material injury. Nonsubject imports increased as a share of the market by 9.1 percentage points, primarily in 2001.

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹¹⁴

As an initial matter, we note that a wide range of products were sold during the period examined. Subject imports of the same type (drill pipe, casing, and tubing) were generally substitutable for the

¹⁰⁷ Table C-6.

¹⁰⁸ Table C-6.

¹⁰⁹ Table C-6.

¹¹⁰ Table C-6.

¹¹¹ Table C-6.

¹¹² Table C-6.

¹¹³ Table C-6.

¹¹⁴ 19 U.S.C. § 1677(7)(C)(ii).

domestic like product, making price an important factor in purchasing decisions.¹¹⁵ U.S. importers generally reported that differences between U.S. and subject OCTG other than price were “frequently” or “sometimes” a significant factor in purchasing decisions.¹¹⁶ U.S. producers and subject importers reported that OCTG pricing is generally determined by transaction-by-transaction negotiations and contracts.¹¹⁷ We observe, however, that a substantial portion of the increase in subject imports consisted of merchandise that was internally consumed by U.S. processors in the production of downstream products.¹¹⁸ Neither the internally consumed imports nor the downstream products compete on price directly with the casing, tubing, and green drill pipe produced by the domestic industry.

During these investigations, the Commission obtained price comparison data for eight OCTG products, including all those that were recommended by counsel for Petitioners.¹¹⁹ The price comparison data for these eight products indicate that subject imports undersold the domestic merchandise in 49 of 73 possible price comparisons, or 67 percent of comparisons.¹²⁰ However, we find that this underselling by subject imports during the period examined is, on balance, not significant because of the factors we discuss below.

First, the data indicate a mixed pattern of price competition across the spectrum of products: overselling for drill pipe, near-universal underselling for welded casing and tubing, and over- and underselling for seamless casing and tubing.¹²¹ Second, the data do not indicate that the three largest suppliers of subject merchandise consistently undersold the domestic like product by significant margins, especially during the period in which the Petitioners suggest material injury occurred.¹²² Likewise, data for smaller suppliers indicate: no underselling at all by OCTG from France and Indonesia; no underselling

¹¹⁵ CR at II-10; PR at II-6.

¹¹⁶ CR at II-11, PR at II-6.

¹¹⁷ CR at V-11, PR at V-9

¹¹⁸ The record indicates that, of the 461,301-ton increase in subject imports between 1999 and 2001, *** short tons or *** percent was green drill pipe consumed by ***. Compare Tables C-6 and Memorandum INV-Z-065 (May 7, 2002) at C-9.

¹¹⁹ Petition Volume II at 26-27. Petitioners requested the Commission to collect pricing data for end-finished (threaded & coupled) welded tubing, seamless tubing, welded casing, and seamless casing, as well as unfinished drill pipe (green tubes). *Id.* The Commission collected data for these products as well as for their plain end equivalents. CR at V-12, PR at V-10 (products 1-5 correspond to Petitioners’ requested price items, products 1A-4A were added by the Commission).

¹²⁰ CR at V-35, PR at V-15.

¹²¹ For welded product (reflecting imports from Turkey and Venezuela only), subject imports undersold the domestic product in 23 of 26 comparisons. For drill pipe, at the other extreme, subject imports oversold the domestic product in all 3 comparisons. For other seamless products, results were more mixed (26 underselling observations, 18 overselling observations). CR and PR at Tables V-1-8.

¹²² Imports of OCTG from Germany consistently oversold comparable domestic product; in the one contrary instance, the margin of underselling was only *** percent. Imports of OCTG from Austria undersold comparable domestic product in three of five comparisons in 2001 and 2002, but in all instances by less than *** percent. Imports from the third-leading source of subject OCTG, China, undersold comparable domestic product by *** percent in 2001 and by *** percent in 2002; margins of underselling were markedly lower in 2001 than in 2000. CR and PR at Table V-9.

in 2001 and 2002 by OCTG from India and Romania; no sales of any of the common products identified for pricing comparison purposes for OCTG from Brazil, South Africa, Spain, and Ukraine;¹²³ and consistently high levels of underselling only by OCTG from Turkey and Venezuela, which are relatively modest overall suppliers of OCTG to the U.S. market.¹²⁴ Finally, as discussed below, the data do not indicate that the mixed underselling by imports of the subject merchandise contributed importantly to observed price trends for the domestic like product, nor has the underselling precluded the domestic industry from generating substantial operating income during the past two years.¹²⁵

Prices for domestic OCTG fell slightly or remained steady during the first few quarters of 1999, and then increased to a high point at the end of 2000/beginning of 2001. Generally, domestic prices (and import prices, to the extent trends can be discerned from individual import sources), were at very low levels in 1999, increased noticeably in 2000 and into 2001, began to weaken somewhat in mid-to-late 2001, and dropped in the first quarter of 2002 to levels that, with limited exceptions, remained higher than the price levels prevailing during the previous period of depressed demand, 1999.¹²⁶ We find that the domestic industry was able to increase prices rapidly in response to rising demand and, similarly, that price declines correspond closely to declining demand and not to any significant degree to subject import competition.

- C For welded threaded & coupled casing and tubing (products 1 and 3), domestic prices peaked in the fourth quarter of 2000, but remained at stable and high levels through the second quarter of 2001. Prices declined moderately in the second half of 2001 (more noticeably for casing than for tubing), and very steeply in the first quarter of 2002 (to 1999 levels or below). There were, however, no reported sales by importers of either of these products.¹²⁷
- C For welded plain end casing (product 1a) domestic prices peaked in the fourth quarter of 2000 then dipped, but there were no reported prices after the second quarter of 2001. There was Venezuelan competition, but with mixed over- and underselling in a narrow range (and Venezuelan prices *** until the fourth quarter of 2001).¹²⁸
- C For welded plain end tubing (product 3a), domestic prices peaked in the second quarter of 2001, with moderate declines in the second half of the year and a large decline in the first quarter of 2002. Venezuelan and Turkish tubing undersold the U.S. product throughout the period by

¹²³ We discount the lack of price comparisons for OCTG from Ukraine, since the Commission received questionnaire responses from firms accounting for “the bulk of subject imports” from all countries except Ukraine. CR and PR at IV-1.

¹²⁴ CR and PR at Tables V-1-8. We observe that imports of plain end welded tubing OCTG from Venezuela and Turkey undersold comparable domestic product throughout the period examined by margins in excess of *** percent, while plain end welded casing OCTG from Venezuela exhibited mixed over- and underselling by *** margins. Id.

¹²⁵ See CR and PR at Table VI-1 (domestic industry operating income in excess of \$81 million (operating margins of 5.6 percent) in 2000 and \$240 million (operating margins of 14.0 percent) in 2001).

¹²⁶ CR and PR at Tables V-1-8.

¹²⁷ CR and PR at Tables V-1 and V-3. We note that these price items were requested in the petition.

¹²⁸ CR and PR at Table V-6.

margins in excess of *** percent.¹²⁹

- C For seamless casing (both threaded & coupled and plain end) (products 2 and 2a), domestic prices peaked in the second quarter of 2001, then declined moderately for the remainder of the period (most noticeably in the first quarter of 2002) to the price levels prevailing in the third quarter of 2000. Chinese seamless casing, both threaded & coupled and plain end, undersold the U.S. product, while Indonesian (threaded & coupled) and French and German (plain end) seamless casing oversold the domestic product.¹³⁰

- C For seamless threaded & coupled tubing (product 4),¹³¹ domestic prices peaked in the first quarter of 2001, but were overall quite stable for the entire period between the third quarter of 2000 and the fourth quarter of 2001. In the first quarter of 2002 there was a moderate decline to the level of prices prevailing in the first quarter of 2000. Subject import competition came from Austria (mixed) and China, India, and Romania (underselling).¹³²

- C For plain end drill pipe (product 5), the four quarters of reported domestic pricing were generally stable, peaking in the last reported quarter (third quarter 2001). Competition came from German and French drill pipe (3 comparisons, all overselling). German prices exhibited a rising trend.¹³³

These price comparisons do not reveal a correlation between any underselling that occurred and a downward trend in U.S. prices. Simply put, domestic prices tended to decline as demand declined, regardless of whether there was underselling by the subject imports. Our finding of a lack of significant adverse price effects by reason of the subject imports is consistent with the business conditions in which the OCTG industry operates. As we discussed above in the section on conditions of competition, U.S. demand for OCTG is dictated by the level and nature of drilling activity in the United States. Oil and gas drilling activity, in turn, is responsive to the price levels of oil and natural gas.¹³⁴ According to our pricing data, welded OCTG prices peaked earlier than seamless OCTG prices, consistent with drilling trends (oil rigs peaked in March 2001; gas rigs, more often operating in extreme environments, peaked in July 2001).¹³⁵ Our data do not indicate that price competition from subject imports contributed materially to observed price trends. The prices of welded products for which there were no sales by importers of the subject merchandise (products 1 and 3) actually peaked sooner, and/or fell further, than those facing

¹²⁹ CR and PR at Table V-8.

¹³⁰ CR and PR at Tables V-2 and V-7.

¹³¹ There were no price comparisons at all for seamless plain end tubing (product 4a).

¹³² CR and PR at Table V-4.

¹³³ CR and PR at Table V-5.

¹³⁴ CR at II-6, II-9, PR at II-3, II-6.

¹³⁵ Baker Hughes: Rotary Rigs in Operation, (Energy Information Administration/Monthly Energy Review), January 2002, at 83.

moderate (product 1a) or intense (product 3a) import competition.¹³⁶ The prices of seamless products peaked later and declined less dramatically – to year 2000 levels – while facing mixed competition (some underselling, some overselling). Drill pipe data are more sparse, but do not support the conclusion of significant price effects in light of late-period price peaks and import overselling.¹³⁷

We also find that there is no indication that the subject imports have suppressed prices to a significant degree. As noted, domestic prices generally rose during the period examined. In contrast, U.S. producers' unit costs of goods sold (raw materials, direct labor, and other factory costs) decreased markedly over the period examined, while the average unit value of net sales rose, resulting in a higher per-short-ton operating income.¹³⁸ These facts do not indicate that domestic prices have been suppressed relative to costs.

Domestic producers reported 11 lost sales allegations involving *** tons valued at *** and 4 lost revenue allegations valued at *** involving *** tons, of which the Commission was able to confirm 6 lost sales allegations and 3 lost revenue allegations.¹³⁹ More than half of the subject countries (Austria, Brazil (identified but ***), France, Indonesia, Romania, Spain, and Ukraine) were not identified in any confirmed lost sales or lost revenue allegation.¹⁴⁰ Confirmed lost sales amounted to *** short tons in 2000 and *** short tons in 2001, while confirmed instances of lost revenues covered sales of *** short tons in 2000 and *** short tons in 2001.¹⁴¹ Thus, the confirmed lost sales and revenues are minuscule in the context of a

¹³⁶ We have considered the testimony of T. Scott Evans, Vice President /Commercial Operations for welded OCTG producer Maverick Tube, emphasizing the role of plain end tubing awaiting threading by finishers as a competitive factor in setting prices. TR at 68. We note, however, that subject imports of welded tubing grew by 22,136 short tons between 1999 and 2001, while nonsubject imports of welded tubing grew by 144,071 short tons. In 2001, subject imports of welded tubing accounted for less than 16 percent of total imports of welded tubing. Staff memo to the Commission INV-Z-068, May 10, 2002.

¹³⁷ Petitioners place great reliance on the use of average unit values (AUVs) to gauge the price effects of the subject imports. See, e.g., U.S. Steel's Br. at 14-17 (comparison of AUVs with those of the domestic like product "strongly suggests that there was massive underselling;" as demand increased over the period examined, subject import AUVs increased only slightly); IPSCO Petitioners' Br. at 20-21 (underselling by six of the subject countries based on AUV analysis). In light of the differences in product mix between different countries, and even from a given country over time, we decline to place great weight on an analysis of the AUVs of subject imports of all OCTG as they enter the United States and U.S. commercial shipment AUVs as reported by U.S. mills. Petitioners also point to pricing data from Preston Pipe Report with respect to prices in the U.S. resale market. See U.S. Steel's Br. at 17 and exhibit 16. These data, which include domestic and import (subject and nonsubject) shipments, indicate that prices remained strong through at least April 2001, and began to decline noticeably in the July-August period, i.e., after the decline in oil and gas prices and as the rig count peaked and began to fall. Drill pipe, however remained strong throughout the period February 2001 - January 2002. We do not find that these data contradict our finding that *subject imports* have not had significant adverse effects on domestic prices.

¹³⁸ CR and PR at Table VI-3.

¹³⁹ CR and PR at Table V-10.

¹⁴⁰ CR and PR at Table V-10.

¹⁴¹ CR and PR at Table V-10.

market of approximately 3 million short tons, and we do not find them to be significant.

In sum, we find that, while the record indicates that subject imports have undersold the domestic merchandise during the period examined, subject imports have not depressed or suppressed domestic prices to a significant degree. Accordingly, we find that the subject imports have not had significant adverse effects on domestic prices during the period examined.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁴² These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{143 144}

Despite increases in subject import volume, the domestic industry experienced substantial improvement in almost all major indicators of industry performance during the period examined. A few indicators experienced some declines in last half of 2001 corresponding to a steep drop in demand, but this occurred at the same time as a significant decrease in subject import volume. U.S. capacity,¹⁴⁵

¹⁴² 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885.).

¹⁴³ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

¹⁴⁴ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce adjusted the petitioners’ alleged dumping margins as follows: *Austria*-39.36 percent; *Brazil* - 6.01 to 67.07 percent; *People’s Republic of China*- 42.7; *France*- 5.50 to 37.91 percent; *Germany*- 32.70 to 32.72 percent; *India*- 17.43 percent; *Indonesia* - 133.73 percent; *Romania*- 36.7 percent; *South Africa*-24.09 to 50.71 percent; *Spain*- 22.44 percent; *Turkey*-9.94 percent; *Ukraine*- 22.38 percent; and *Venezuela*-55.60 percent. 67 Fed. Reg. at 20732 (Apr. 26, 2002).

¹⁴⁵ Reported capacity increased from *** short tons in 1999 to *** short tons in 2000, and was *** short tons in 2001. Reported capacity fell slightly between the first and second halves of 2001, from *** short tons to *** short tons. Table C-6.

production,¹⁴⁶ and shipments¹⁴⁷ increased overall during the period examined, but declined slightly in 2001 from 2000 levels.¹⁴⁸ U.S. producers' capacity utilization rates increased from *** percent in 1999 to *** percent in 2000 and to *** percent in 2001. The rates were *** percent in the first half of 2001 and *** percent in the second half of 2001. We view these reported capacity utilization rates in the context of an industry that produces multiple products on the same line. We note that the industry was able to earn substantial profits even at production rates that do not approach full capacity. The number of production and related workers, hours worked, and wages paid increased from 1999 to 2001.¹⁴⁹

Despite an increase in market share by both subject and nonsubject imports, domestic producers' aggregate operating income margin rose significantly during the period, from a loss of 17.4 percent in 1999 to a profit of 14.0 percent in 2001.¹⁵⁰ U.S. producers' sales of OCTG more than doubled in value during 1999-2001. Total net sales and operating income rose for every producer reporting data for the period examined.¹⁵¹ *** faced operating losses for full year 2001.¹⁵² Capital expenditures for U.S. producers of OCTG increased 17.4 percent during 1999-2001, and research and development expenditures more than doubled.¹⁵³

The condition of the domestic industry improved substantially from 1999 to 2000, when subject import volume and market share increased the most. The industry's condition was steady or continued to improve from 2000 to 2001, and its financial performance was robust. Thus, there is no indication that subject imports have had a significant negative impact on the domestic industry's performance over the period examined.

In response to Petitioners' argument that the impact of the subject imports was felt mostly in the latter part of 2001, the Commission gathered separate data for the first half and second half of 2001. We did so while being mindful of the fact that partial year data may be less indicative of sustained market trends than full year data. Most industry indicators declined between the first half and the second half of

¹⁴⁶ Domestic production increased from *** million short tons in 1999 to *** short tons in 2000 and decreased slightly to *** million short tons in 2001. Domestic production was *** short tons in January-June 2001 and *** short tons in July-December 2001.

Table C-6.

¹⁴⁷ U.S. shipments increased from *** short tons in 1999 to *** short tons in 2000 and 2001. U.S. shipments decreased from *** short tons in the first half of 2001 to *** short tons in the last half of 2001.

Table C-6.

¹⁴⁸ CR and PR at Table C-6.

¹⁴⁹ CR and PR at Table C-6.

¹⁵⁰ CR and PR at Table C-1.

¹⁵¹ U.S. producers' operating income increased from a negative \$123 million in 1999 to \$81 million in 2000, and to \$240 million in 2001. In the first half of 2001, U.S. producers' operating income was \$163 million compared to \$85 million in the last half of 2001. At the same time, net sales increased from \$709 million in 1999 to \$1.5 billion in 2000, and to \$1.7 billion in 2001. In the first half of 2001, U.S. producers' net sales were \$1.0 billion compared to \$705 million in the last half of 2001. CR and PR at Table VI-1, Table C-1.

¹⁵² CR and PR at VI-1, Table VI-3.

¹⁵³ CR at VI-6; PR at VI-3.

2001, including production, capacity utilization, shipments, employment indicators, net sales, and operating profits. However, we do not conclude that this half-year decline represents a significant negative impact by subject imports. Apparent U.S. consumption declined by more than 30 percent between first-half and the second-half of 2001. The indicia of industry performance declined between the two halves of 2001 at comparable rates. As noted above, subject imports also declined at a substantial rate from the first half to the second half 2001.¹⁵⁴

As discussed above, we do not find that the subject imports had any significant adverse effects on domestic prices during the period examined. U.S. prices rose throughout most of the period examined, declining substantially only in the second half of 2001 which corresponded to a decline in demand and subject import volume. The record shows no causal nexus between the subject imports and the condition of the domestic industry. When demand was soft in 1999, the quantity of subject imports was the lowest during the period examined, as was the industry's profitability. When demand increased, from late 1999 through the first half of 2001, imports increased, but so did the U.S. industry's profitability.¹⁵⁵

In light of our finding that subject imports have not suppressed or depressed domestic prices to a significant degree, the robust condition of the domestic industry from 2000 to 2001, and the lack of correlation between subject import trends and the condition of the industry, we find no reasonable indication that subject imports are having a significant adverse impact on the domestic industry. Accordingly, we find that there is no reasonable indication that the domestic industry is materially injured by reason of imports of OCTG from Austria that are allegedly subsidized and by reason of imports of OCTG from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela that are allegedly sold in the United States at LTFV.

VII. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND/OR LTFV IMPORTS

¹⁵⁴ Petitioners also submitted data for 2001 on a quarterly basis for six domestic producers for such indicators as production, shipments, and operating profits. These data show increases from the first to second quarters, followed by declines, sometimes steep, in the third and fourth quarters. We note that these data do not cover the entire OCTG industry. (For example, the sum of the quarterly operating income figures for 2001 falls far short of yearly operating income reported in Table C-1.) In any event, a decline in the latter portion of 2001 is consistent with falling domestic demand. As noted above, domestic rig count fell from 1,278 in July 2001 to 901 in December 2001. On a quarterly basis, subject imports fell from 188,000 tons to 100,000 tons from second quarter to fourth quarter 2001, following the same trend as the submitted quarterly data on U.S. production, shipments, and operating profits.

¹⁵⁵ Petitioners argue that subject imports have caused a large build-up in distributor inventories that has reduced sales and prices of domestic OCTG. According to the Preston Pipe and Tube Report, distributor inventories increased from less than 1 million tons in late 1999 to more than 1.8 million tons in mid-to-late 2001, before decreasing. However, the increase appears generally consistent with historical patterns in which changes in inventories follow changes in demand (as reflected in the rig count), and does not appear excessive in view of the demand trends. Accordingly, we conclude that changes in inventory over the period examined reflect demand changes and not the effects of subject imports. See Joint Respondents' Brief at Ex. 13.

A. Cumulation for Purposes of Threat

For purposes of determining if a threat of material injury exists, cumulation is discretionary. Under section 771(7)(H) of the Act, the Commission may “to the extent practicable” cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.¹⁵⁶ In addition to considering the four cumulation factors described above, the Commission also may consider the similarity of trends in the volume and price of subject imports from the countries under investigation.¹⁵⁷

We exercise our discretion to cumulate all subject imports for purposes of our analysis of whether there is a reasonable indication of threat of material injury by reason of the subject imports. We have taken account the four cumulation factors described above, which indicate a reasonable overlap of competition among subject imports and between subject imports and the domestic like product. We have also taken into account the fact that although volume and price trends differed by varying degrees from subject country to subject country, the differences are insufficient to support non-cumulation in these cases. The volume of imports from each subject country increased from 1999 to 2001. We do not find any significant differences in the conditions of competition among the subject countries. We, therefore, have exercised our discretion to cumulate subject imports from all thirteen countries for purposes of our analysis of threat of material injury.

B. No Reasonable Threat of Material Injury by Reason of the Subject Imports

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁵⁸ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”¹⁵⁹ and considers the threat factors “as a whole.”¹⁶⁰ In making our determination, we have considered all factors¹⁶¹ that are relevant to these

¹⁵⁶ 19 U.S.C. § 1677(7)(H).

¹⁵⁷ See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

¹⁵⁸ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

¹⁵⁹ 19 U.S.C. §1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

¹⁶⁰ While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is

investigations.¹⁶²

As an initial matter, we find that the domestic industry is not vulnerable to material injury by reason of the subject imports in the imminent future. As discussed above, the industry's profitability increased throughout the period examined and was relatively robust throughout 2000 and 2001, with an operating margin of 14.0 percent during 2001.¹⁶³ In addition, the domestic industry experienced increases in production, shipments and sales levels during 1999-2001.¹⁶⁴ The demand-driven declines in the domestic industry's performance in the second-half of 2001 have arguably weakened its condition to some degree.¹⁶⁵ On balance, however, we are not persuaded that this places the industry in an overall vulnerable condition given the industry's performance over the entirety of the period examined, including the industry's profitability for 2001.¹⁶⁶

We find that the rate of increase in volume and market share of the subject imports does not indicate a likelihood of substantially increased imports. Although volume and market share of OCTG subject imports increased significantly overall, most of the increase in market share and volume occurred between 1999 to 2000, as demand increased, and had little adverse effect on the domestic industry. Moreover, the volume of the subject imports declined substantially (by 24.4 percent) from the first half to the second half of 2001.¹⁶⁷ Accordingly, the most recent trends in subject import volumes do not indicate a likelihood that there will be substantially increased imports of subject merchandise in the imminent future.

We also find that there is no indication that unused production capacity or any imminent increases in production capacity in the subject countries will lead to substantially increased imports in the imminent

fully consistent with the Commission's practice, the existing statutory language, and judicial precedent interpreting the statute." SAA at 184.

¹⁶¹ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although "[n]o substantive change in Commission threat analysis is required." SAA at 185.

¹⁶² 19 U.S.C. § 1677(7)(F)(I). Although statutory factor I applies to allegedly subsidized Austrian imports, Commerce has not provided any information on the nature of the five subsidy programs described in the Notice of Initiation. 67 Fed. Reg. 20730 (April 26, 2002). Statutory factor VII does not apply because these investigations do not involve allegations of a countervailable subsidy or imports of both a raw agricultural product or any product processed from such raw agricultural product. 19 U.S.C. §§ 1677(7)(F)(i)(I), 1677(7)(F)(i)(VII).

¹⁶³ CR and PR at Table C-1.

¹⁶⁴ Table C-6.

¹⁶⁵ We note the quarterly data submitted by certain industry members, described above, which are incomplete but show steady declines from the second to fourth quarter 2001.

¹⁶⁶ Although there is anecdotal information concerning possible post-period declines, the record also contains information that subject import volumes have continued to decline (consistent with current demand conditions), and that domestic producers are also projecting increases in OCTG demand during the first part of 2002. See e.g., Staff Worksheet dated April 18, 2001; Joint Respondents' Br. at Ex. 3. While January 2002 distributor inventories of OCTG were at 1.64 million tons, there is an indication that more recent inventory levels have fallen. See e.g., Joint Respondents' Br. at Ex. 5.

¹⁶⁷ Table C-6.

future. While the record indicates that subject producers of OCTG increased their capacity between 1999 and 2001, capacity levels are projected to stabilize in 2002 and 2003.¹⁶⁸ We do not find that the projected levels will likely result in substantially increased imports to the U.S. market. First, subject producers operated at increasingly high capacity utilization levels during the period examined, reaching 95.4 percent in 2001.¹⁶⁹ Second, subject producers' home and/or third-country market shipments generally increased during the period examined and have consistently accounted for the bulk of the subject producers' shipments,¹⁷⁰ indicating that capacity in subject countries will likely continue to be directed to the subject producers' home and third-country markets.¹⁷¹ Finally, although capacity utilization for some of the subject countries fell slightly at the end of 2001, the level of U.S. imports of subject merchandise fell as well.¹⁷²

End-of-period inventories of U.S. importers increased throughout the period, as did the end-of-period inventories of domestic producers, in conjunction with strong demand.¹⁷³ However, the ratio of importer inventories to imports fell from *** percent in 1999 to *** percent in 2000, before rising to *** percent in 2001.¹⁷⁴ Although the level of importers' inventories and ratios of inventories to imports increased in 2001, the increases coincided with a decline in exports to the United States during the second half of 2001.¹⁷⁵ Moreover, the increase in inventories from 1999 to 2001 represented less than 1 percent of 2001 apparent U.S. consumption.¹⁷⁶ The ratio of foreign producers' home market inventories relative to production and to shipments declined over the period examined from 4.4 percent to 2.2 percent.¹⁷⁷ Accordingly, we find that inventory levels do not indicate a likelihood of increased imports in the imminent future.¹⁷⁸

¹⁶⁸ CR and PR at Tables VII-1-13.

¹⁶⁹ CR and PR at Tables VII-1-13. *** projecting an increase in capacity, and several project declines. *** had approximately *** percent or more capacity utilization in 2001, and most of the larger suppliers (Austria, China, and Germany) as well as certain smaller suppliers (France, Spain) were operating at ***. CR and PR at Tables VII-1-13.

¹⁷⁰ CR and PR at Tables VII-1-13. In 2001, *** shipped *** percent or more of their total shipments of OCTG to markets other than the United States. Six other countries shipped *** percent or more to other markets. Id.

¹⁷¹ In 2001, subject countries sold 41.2 percent of their total shipments in their home markets, and 40.7 percent to other (non-U.S.) export markets. Staff Worksheet.

¹⁷² CR and PR at Tables VII-1-13, Table C-1. We also find that product-shifting by subject producers would be influenced by demand and would be unlikely during a period in which demand has decreased in the United States. To the extent product-shifting is a possibility, it most likely already occurred during the years of high demand for OCTG. CR at Tables VII-1-13, Table C-1.

¹⁷³ U.S. importers end-of-the period inventories were *** short tons in 1999, *** short tons in 2000, and *** short tons in 2001. CR at Table VII-14. U.S. producers' inventories were 158,946 short tons in 1999, 273,000 short tons in 2000, and 311,837 short tons in 2001. CR and PR at Table C-1.

¹⁷⁴ CR and PR at Table VII-14.

¹⁷⁵ CR and PR at Table C-1.

¹⁷⁶ Compare CR and PR at Table V-14 and Table C-6.

¹⁷⁷ Staff Worksheet.

¹⁷⁸ We also find that the antidumping remedies imposed by Romania against Indian tubing exports will not likely have any significant impact on the volume of subject imports entering the United States in the

We also find it unlikely that subject imports will enter the U.S. market at prices likely to suppress or depress domestic prices to any significant degree. As discussed above, the record evidence indicates that subject import prices have had no significant adverse effects on domestic prices. We see nothing in the record that indicates that conditions of competition in the industry will change so significantly in the imminent future that domestic prices will likely be adversely affected to a significant degree by subject import prices.

We also find that subject imports are not likely to have any actual or potential negative effect on the domestic industry's existing development and production efforts. The domestic industry's capital expenditures increased substantially overall during 1999-2001, and remained reasonably high during the second half of 2001.¹⁷⁹ Although the domestic producers' research and development expenses declined somewhat in the second half of 2001, they increased between 1999-2001, even though the volume and market share of subject imports were increasing.¹⁸⁰

Finally, there is no evidence of any other demonstrable adverse trends that indicate that the domestic industry is threatened with material injury by reason of the subject imports.¹⁸¹ On the contrary, trends in the industry's financial performance have been positive despite the increase in subject import volume during 1999 to mid-2001 and only began to weaken when subject imports declined. Thus, the industry's financial trends support our finding that the industry is not threatened with material injury by reason of the subject imports. Accordingly, we find no reasonable indication that the domestic OCTG industry is threatened with material injury by reason of subject imports from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela.

Conclusion

For the reasons stated above, we determined that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of imports of oil country tubular goods from Austria that are allegedly subsidized and by reason of imports of OCTG from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela that are allegedly sold in the United States at less than fair value.

imminent future.

¹⁷⁹ Capital expenditures increased from *** in 1999, to *** in 2000, declining to *** in 2001. Capital expenditures totaled *** in the first half of 2001 and *** in the second half. CR and PR at Table VI-6.

¹⁸⁰ Research and development expenses were *** in 1999, *** in 2000, *** in 2001, and *** in the first half of 2001 and *** in the second half of 2001. CR and PR at Table VI-6.

¹⁸¹ We do not find that the recent imposition of section 201 duties on certain welded non-OCTG pipes and tubes indicates the likelihood of significant product-shifting in favor of greater production and export to the United States of welded OCTG. Only five of the subject countries are covered by the section 201 duties, and they represent less than half of subject U.S. imports of welded OCTG during 2001. Moreover, to the extent that countries subject to the section 201 duties would have an incentive to product-shift toward greater OCTG production, excluded countries arguably would have the opposite incentive: *i.e.*, to ship more welded pipes and tubes to the United States to fill any gap left by covered countries whose exports to the United States were reduced by virtue of the section 201 duties.

DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Based upon the record in these preliminary investigations, I find a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of oil country tubular goods (“OCTG”) that are alleged to be subsidized by the Government of Austria and sold in the United States at less than fair value (“LTFV”) by Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela. In addition, I find that there are a number of important and potentially outcome determinative issues that remain unresolved on the record. I therefore dissent from the negative determination rendered by the Commission, and I provide my separate views below.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²

II. DOMESTIC LIKE PRODUCT

A. General Framework

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, 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....”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in

¹ 19 U.S.C. §§ 1671b(a), 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). I note that no party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

² American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); *see also* Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

³ 19 U.S.C. § 1677(4)(A).

⁴ *Id.*

⁵ 19 U.S.C. § 1677(10).

characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as the following:

{Oil country tubular goods (“OCTG”)} are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). The scope of this investigation does not contain {sic} casing, tubing, or drill pipe containing 10.5 percent or more of chromium, or finished drill pipe with tool joint attached.¹⁰

OCTG are circular pipes that can be threaded at one or both ends, and includes casing, tubing, and drill pipe, used inside oil and gas wells. OCTG is normally produced to API specifications. While casing and tubing may be produced by either the electric resistance-welding (“ERW”) process or the seamless process, drill pipe is always produced using the seamless process.¹¹

⁶ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹⁰ 67 Fed. Reg. 16,437, (Apr. 5, 2002).

¹¹ Staff Report, Confidential Version (“CR”) at I-5 to I-6, Public Version (“PR”) at I-4 to I-5.

Although casing, tubing, and drill pipe, are each used in the extraction of oil or natural gas, they are individually designed to perform distinct functions. Casing is used as a structural retainer for the walls of the well in order to prevent collapse from external pressures and/or burst from internal pressures. Tubing is installed within the casing to conduct the produced fluids to the surface. Drill pipe is linked together and used as the rotating stem of the drill used to reach the oil or gas.¹²

C. Domestic Like Product

I note that in numerous previous investigations involving OCTG, the Commission has defined OCTG other than drill pipe (*i.e.* casing and tubing), and drill pipe, as two separate like products.¹³ In each of these previous investigations, however, the scope included finished drill pipe with tool joint attached; the finished nature of that product contributed importantly to the treatment of drill pipe as a separate like product, particularly in the more recent OCTG investigations in which I have participated.¹⁴ In contrast, the scope of the instant investigations excludes finished drill pipe with tool joint attached; it does, however, include both unfinished drill pipe and finished drill pipe without tool joint attached.

The limited information on the record concerning unfinished (*i.e.*, “green”) product indicates that there is not a clear dividing line between green drill pipe on the one hand, and green casing and tubing on the other. There are overlaps in physical dimensions between green drill pipes and green tubes, and unfinished seamless products appear to be commodity products sharing similar chemical properties and are made on the same equipment.¹⁵ However, there is conflicting evidence on the record regarding the degree to which green drill pipe is interchangeable with green casing and tubing;¹⁶ in my view, this is a significant issue warranting further development in any final phase investigation, particularly since a

¹² CR at I-4, PR at I-3.

¹³ See Oil Country Tubular Goods from Brazil, Korea, and Spain, Invs. Nos. 701-TA-215-217 (Final), USITC Pub. 1633 (Jan. 1985); Oil Country Tubular Goods from Austria, Romania, and Venezuela, Invs. Nos. 701-TA-240-241 and 731-TA-249-251 (Preliminary), USITC Pub. 1679 (Apr. 1985); Oil Country Tubular Goods from Argentina and Spain, Invs. Nos. 731-TA-191 and 195 (Final), USITC Pub. 1694 (May 1985); Oil Country Tubular Goods from Canada and Taiwan, Invs. Nos. 701-TA-255 and 731-TA-276-277 (Final), USITC Pub. 1865 (June 1986); Oil Country Tubular Goods from Israel, Inv. No. 701-TA-271 (Final), USITC Pub. 1952 (Feb. 1987); Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Invs. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995); Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-253 and 731-TA-132, 252, 271, 273, 276-277, 296, 409-410, 532-534, and 536-537 (Review), USITC Pub. 3316 (July 2000); Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, Invs. Nos. 701-TA-364 and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 (June 2001).

¹⁴ See Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Invs. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995); Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-253 and 731-TA-132, 252, 271, 273, 276-277, 296, 409-410, 532-534, and 536-537 (Review), USITC Pub. 3316 (July 2000); Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, Invs. Nos. 701-TA-364 and 731-TA-711 and 713-716 (Review), USITC Pub. 3434 (June 2001).

¹⁵ See CR at I-8 to I-9 & n.13, PR at I-6 to I-7 & n.13. I note that there may be some difference in production processes between processors (which tend to produce unfinished drill pipe in facilities dedicated to that purpose), and mills (which tend to produce drill pipe on the same equipment and use the same resources used in the production of casing and tubing). See CR at I-9, PR at I-6.

¹⁶ Cf. Grant Prideco Brief at 9 with U.S. Steel Brief, Exhibit 1 at 17-20.

similar analytical situation involving drill pipe and casing and tubing resulted in the definition of separate like products in numerous previous investigations. Until I determine the extent to which green products are interchangeable in the production of finished drill pipe and finished casing and tubing, I am satisfied that there exists a sufficient range of product falling within the scope to constitute a continuum, and I therefore define a single domestic like product coterminous with the scope of these investigations.¹⁷

III. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Industry

The domestic industry is defined as “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”¹⁸ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.¹⁹ In these investigations, the question arises as to whether processors and threaders should be included in the domestic industry. Processors operate facilities that are capable of performing any and all finishing operations for one or more types of OCTG; threaders are generally restricted to threading and coupling casing and tubing.²⁰

I first dealt with this issue in the context of the 2000 pipe and tube sunset reviews conducted by the Commission, where I joined in finding that processors should be included in the domestic industries producing drill pipe and OCTG other than drill pipe because their operations involved sufficient U.S. production-related activity to constitute domestic production of the respective like products; in contrast, I found that threaders should not be included in the domestic industry producing OCTG other than drill pipe because the level of value added and technical expertise required to perform threading and coupling operations was considerably less than that of either mills or processors.²¹ I find nothing in the record of the instant investigations that warrants altering these conclusions, and I note that no party argued that the Commission should reach a different result in this case. Accordingly, I define a single domestic industry comprised of all U.S. producers of OCTG, including processors, but not including threaders.

¹⁷ I note that Brazilian, French, and German respondents urge the Commission to define welded OCTG and seamless OCTG as separate like products. In the Commission’s recent section 201 steel investigation, I defined carbon and alloy welded tubular products (including OCTG), and carbon and alloy seamless tubular products (including OCTG), as separate like products. Steel, Inv. No. TA-201-73 (Dec. 2001), Vol. I at 282-283. That analysis addressed a broader spectrum of products in the context of a global safeguard investigation; as such, it was heavily focused on factors of production. *See id.* at 278-280. In contrast, I find that application of the Commission’s traditional six-factor test in the context of the instant Title VII investigations mitigates in favor of including welded and seamless OCTG in a single domestic like product, consistent with my finding in the 1994-1995 investigations involving OCTG. See Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Invs. Nos. 701-TA-363-364 and 731-TA-711-717 (Preliminary), USITC Pub. 2803 at I-9 (Aug. 1994).

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996).

²⁰ CR at I-8, PR at I-6.

²¹ Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-253 and 731-TA-132, 252, 271, 273, 276-277, 296, 409-410, 532-534, and 536-537 (Review), USITC Pub. 3316 at 17 (July 2000).

B. Related Parties

I must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.²² Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²³

Grant Prideco, a domestic producer of all OCTG, is a related party by virtue of its corporate relationships with an Austrian subject producer and a U.S. importer of subject merchandise from Austria, as well as by virtue of its own importation of subject merchandise from Austria. The ratio of subject imports to total OCTG production for Grant Prideco during the period of investigation is *** percent.²⁴ Although Grant Prideco does not support the petition, the company's interests appear to be that of a domestic producer. Accordingly, I find that appropriate circumstances do not exist to exclude Grant Prideco from the domestic industry. I similarly find that appropriate circumstances do not exist to exclude any other producer from the domestic industry as a related party.²⁵

IV. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.²⁶ The statute further provides that imports from a single country which comprise less than 3 percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation

²² 19 U.S.C. § 1677(4)(B).

²³ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

²⁴ *See* Grant Prideco's Producer and Importer Questionnaire Responses.

²⁵ With respect to other processors, I do not find either OMSCO or TSC to be related parties. OMSCO currently sources almost all of its drill pipe green tubes from U.S. mills. *See* OMSCO letter of May 7, 2002. In addition, I find that TSC's purchases of green tubes do not constitute control over large volumes of imports. *See* ***.

²⁶ 19 U.S.C. § 1677(24)(A)(i)(I).

with negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than 7 percent of the volume of all such merchandise imported into the United States.²⁷

In this case, subject imports from Austria, China, Germany, and Venezuela, are each individually above the 3 percent threshold negligibility level.²⁸ Although imports from Brazil, France, India, Indonesia, Romania, South Africa, Spain, Turkey, and Ukraine, are each below the 3 percent threshold, subject imports from these nine countries together substantially exceed the 7 percent aggregate threshold negligibility level.²⁹ As a result, I do not find that imports from any of the thirteen subject countries are to be considered negligible.

V. CUMULATION

A. General Framework

For purposes of evaluating the volume and price effects for a determination of material injury by reason of subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.³⁰ In assessing whether subject imports compete with each other and with the domestic like product,³¹ the Commission has generally considered four factors, including:

- (1) the degree of fungibility among the subject imports from different countries and between subject imports and the domestic like product;
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.³²

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.³³ Only a “reasonable overlap of

²⁷ 19 U.S.C. § 1677(24)(A)(ii).

²⁸ CR at IV-7, PR at IV-6.

²⁹ *See id.*

³⁰ 19 U.S.C. § 1677(7)(G)(i).

³¹ The Uruguay Round Agreements Act, Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, Vol. 1 at 848 (1994), states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition” (*citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988)).

³² *See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

³³ *See, e.g., Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct’ Int’l Trade 1989).

competition” is required.³⁴ None of the statutory exceptions to cumulation are present in the instant investigations.³⁵

B. Analysis

Fungibility. Virtually all OCTG, whether domestically produced or imported, are sold on specification and are essentially commodity products. All but one U.S. producer reported that OCTG from all subject countries and the domestic like product were always interchangeable (the remaining U.S. producer reported that they were “frequently” interchangeable).³⁶ U.S. importers reported that domestic and subject OCTG were “always,” “frequently,” or “sometimes” interchangeable.³⁷

Geographic Overlap. Domestically produced OCTG is sold nationwide, with sales concentrated in the Gulf coast states, the Southwest, and the West coast states; subject imports have a similar presence in the United States market.³⁸

Channels of Distribution. The domestic like product and subject imports are distributed similarly, with both drilling contractors and operators purchasing primarily through distributors.³⁹

Simultaneous Presence. Domestically produced OCTG and subject imports of OCTG from each country were present throughout the period of investigation.⁴⁰

Conclusion. Based upon the foregoing, I am satisfied for purposes of these preliminary investigations that there exists a reasonable overlap of competition among subject imports, and between subject imports and the domestic like product, in the U.S. market for OCTG. Accordingly, I engage in a cumulative analysis of subject imports from Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela, for purposes of analyzing whether there is a reasonable indication that the domestic OCTG industry is either materially injured or threatened with material injury by reason of subject imports.

VI. PRESENT MATERIAL INJURY

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially

³⁴ SAA at 848.

³⁵ See 19 U.S.C. § 1677(7)(G)(ii).

³⁶ CR at II-10, PR at II-6.

³⁷ *Id.*

³⁸ CR/PR at II-2.

³⁹ CR/PR at II-2.

⁴⁰ See Memorandum INV-Z-068 (showing quarterly U.S. imports, by source, for the period 1999-2001). Although the Indonesian respondent argues that its exports did not display the same trend as imports from the other subject countries, I note that subject imports from Indonesia were present in the U.S. market in each quarter throughout 2000 and 2001.

injured or threatened with material injury by reason of the imports under investigation.⁴¹ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁴² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴³ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States; no single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴⁴

I note from the outset that the record developed in these preliminary investigations indicates a progressive rebound in the financial performance of the domestic OCTG industry over much of the period of investigation, with average operating margins increasing from negative 17.4 percent in 1999 to 5.6 percent in 2000, and to 14.0 percent in 2001.⁴⁵ Although it may be argued that, within the context of the business cycle and conditions of competition that are distinctive to the domestic OCTG industry, U.S. producers should have enjoyed even better financial returns during this period, I do not find that the record establishes a sufficient causal nexus between subject imports and any alleged injury experienced by the domestic industry. However, I also find that the timing of subject import volumes evidenced during the period of investigation, and their price levels, are highly probative in the context of a threat analysis; coupled with the more recent decline in the domestic industry’s profitability⁴⁶ and other recent developments affecting U.S. industries producing steel products, I am satisfied that the record evidences a reasonable indication of imminent threat of material injury to the domestic OCTG industry by reason of subject imports (*see infra* section VII).

A. Conditions of Competition

The record in these preliminary investigations depicts a domestic industry benefitting from a sharp increase in U.S. demand between 1999 and the first half of 2001, even as the industry sought to recover from substantial losses incurred in 1999; this occurred notwithstanding progressive increases in the volumes of subject and nonsubject imports present in the U.S. market over the period of investigation. The general improvement in the performance of the domestic industry depicted in the annual data for the 1999-2001 period is belied, however, by the recent deterioration in market conditions for the domestic OCTG industry during the latter six months of 2001, accompanied by indications of the industry’s increased vulnerability.

⁴¹ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁴² 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); *see also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁴³ 19 U.S.C. § 1677(7)(A).

⁴⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁵ CR/PR at Table C-1.

⁴⁶ The domestic industry’s average operating margin declined from 16.3 percent in the first 6 months of 2001, to 12.1 percent in the latter 6 months of 2001. CR/PR at Table C-1. *See infra* section VI.D.

With respect to demand, I note that apparent U.S. consumption of OCTG more than doubled from 1999 to 2000, and increased a further 9.7 percent between 2000 and 2001; importantly, however, between the first half of 2001 and the latter six months of 2001, apparent U.S. consumption declined by 32.3 percent.⁴⁷ U.S. demand for OCTG is based entirely on the number of active rotary or workover rigs drilling for oil and natural gas in the United States; thus, the demand for OCTG depends on the rig count, which in turn is driven by the prices of oil and natural gas.⁴⁸ Indeed, the U.S. rig count nearly doubled from 1999 through July 2001, to levels unprecedented during the 10 year period for which rig count data are available on the record; from July 2001, however, the U.S. rig count began declining over the rest of the year.⁴⁹

With respect to supply, the domestic industry's share of apparent U.S. consumption progressively declined over the period of investigation, from 86.9 percent in 1999 to 74.0 percent in 2000 and to 67.6 percent in 2001; between the first half of 2001 and the latter six months of 2001, the domestic industry's share of apparent U.S. consumption declined from 68.1 percent to 67.0 percent.⁵⁰ Conversely, cumulated subject imports increasingly captured U.S. market share, from 8.5 percent of apparent U.S. consumption in 1999 to 17.9 percent in 2000 and to 18.8 percent in 2001; between the first half of 2001 and the latter six months of 2001, the share of apparent U.S. consumption captured by cumulated subject imports increased from 18.0 percent to 20.1 percent.⁵¹ Nonsubject imports also captured an increasing share of the U.S. market, rising from 4.6 percent of apparent U.S. consumption in 1999 to 8.1 percent in 2000 and to 13.5 percent in 2001; notably, however, between the first half of 2001 and the latter six months of 2001 the share of apparent U.S. consumption captured by nonsubject imports declined from 13.9 percent to 12.9 percent.⁵² These data clearly identify the role of subject imports in capturing additional market share away from U.S. producers during the most recent period for which data were collected.

U.S. producers' capacity to produce OCTG increased by 16.9 percent between 1999 and 2000, but declined by 4.1 percent between 2000 and 2001; between the first half of 2001 and the latter six months of 2001, the average production capacity of the domestic industry declined by 2.6 percent.⁵³ Between 1999 and 2001, capacity utilization by the domestic industry increased progressively, from 35.5 percent in 1999 to 58.0 percent in 2000 and to 59.2 percent in 2001; significantly, however, between the first half of 2001 and the latter six months of 2001, the domestic industry's capacity utilization declined from 70.1 percent to 47.9 percent.⁵⁴

⁴⁷ CR/PR at Table C-1.

⁴⁸ CR at II-6, PR at II-3.

⁴⁹ See CR at II-9 & Figures II-1 through II-4, PR at II-3 and II-6 & Figures II-1 through II-4.

⁵⁰ CR/PR at Table C-1.

⁵¹ CR/PR at Table C-1.

⁵² CR/PR at Table C-1.

⁵³ CR/PR at Table C-1.

⁵⁴ CR/PR at Table C-1. Although several U.S. producers recently undertook efforts to increase capacity, including ***, I note that the recent decline in capacity utilization evidenced between the first half of 2001 and the latter six months of 2001 is due primarily to a decline in production by the domestic industry. See CR/PR at Table III-2; CR at II-3, PR at II-2.

OCTG production, both domestic and foreign, is capital intensive and utilizes the same equipment used for the production of standard, line, and pressure pipe, mechanical and pressure tubing, and coupling stock; most U.S. producers used the majority of their pipe production equipment for producing OCTG.⁵⁵ Domestic shipments account for the vast majority of domestic production, with U.S. producers exporting a stable 7 to 8 percent of their production over the period of investigation.⁵⁶ In general, neither U.S. producers nor subject importers issue price lists; rather, prices are negotiated on a transaction-by-transaction basis.⁵⁷ Finally, I note that the key raw materials used in the production of OCTG are scrap, pig iron, and hot-briqueted iron; U.S. producers reported that raw material costs to produce OCTG ranged from 40 percent to 45 percent of the cost of goods sold during the period 1999 to 2001.⁵⁸

B. Volume of the Subject Imports

Section 771(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁵⁹

Cumulative subject import volume increased by more than threefold between 1999 and 2000, and nonsubject import volume increased at almost the same rate; in contrast, U.S. shipments by the domestic industry nearly doubled during this period, at the same time that apparent U.S. consumption increased by over 140 percent.⁶⁰ As a result of the foregoing, the domestic industry lost substantial market share to both subject and nonsubject imports. Between 2000 and 2001, cumulative subject import volume increased by a further 15.7 percent, and nonsubject import volume increased by a further 82.7 percent; in contrast, U.S. shipments by the domestic industry increased by a mere 0.2 percent, at the same time that apparent U.S. consumption increased by 9.7 percent.⁶¹ As a result of the foregoing, the domestic industry again lost substantial market share to both subject and nonsubject imports. Thus, during the entire period from 1999 to 2001, subject imports and nonsubject imports each captured an additional 9 to 10 percentage points of apparent U.S. consumption from the domestic industry.

At the same time, U.S. production by the domestic industry roughly doubled between 1999 and 2000, before declining by 2.1 percent between 2000 and 2001; capacity utilization by the domestic industry

⁵⁵ CR at II-4, PR at II-3.

⁵⁶ Calculated from CR/PR at Table C-1.

⁵⁷ See CR at V-11, PR at V-9. U.S. producers reported an even split of their sales between contract and spot sales; during 2001, 16.3 percent of sales were via long term contracts and 32.4 percent were via short term contracts, with the remaining 51.3 percent comprised of sales on a spot basis. *Id.* At the same time, subject importers sold 20.1 percent of their OCTG via long term contracts and 48.6 percent via short term contracts, with the remaining 31.3 percent of sales on a spot basis. *Id.* Contract durations typically range from 6 months for short term contracts to up to 6 years for long term contracts; the price term is generally fixed and contracts do not generally contain meet-or-release provisions. *Id.*

⁵⁸ CR/PR at V-1.

⁵⁹ 19 U.S.C. § 1677(7)(C)(I).

⁶⁰ CR/PR at Table C-1.

⁶¹ CR/PR at Table C-1.

increased from 35.5 percent in 1999 to 58.0 percent in 2000 and to 59.2 percent in 2001.⁶² Given demand conditions in the U.S. market from 1999 to 2001, the domestic industry arguably should have enjoyed somewhat higher production and shipment levels; however, I do not find a significant volume effect by reason of subject imports for purposes of these preliminary determinations. Subject and nonsubject imports appear to have contributed equally to limit the production and market share of the domestic industry; moreover, from 1999 through the first half of 2001, capacity utilization by the domestic industry roughly doubled, from 35.5 percent to 70.1 percent. Finally, absent significant price effects (*see infra* section VI.C), I do not find the absolute volume of subject imports to be significant; however, I note that a significant issue unaddressed by the record in these investigations is the extent to which the domestic industry may have sought to preserve pricing levels and thereby sacrifice market share in the face of increasing volumes of lower priced subject imports.

Importantly, even as apparent U.S. consumption declined by 32.3 percent between the first half of 2001 and the latter six months of 2001, subject imports declined by only 24.4 percent while nonsubject imports declined by 37.2 percent; as a result, the market share captured by subject imports increased by 2.1 percentage points during this period of sharp contraction in U.S. demand.⁶³ I find this behavior highly probative of the imminent threat posed by subject imports (*see infra* section VII).

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁶⁴

The Commission collected quarterly pricing data for eight OCTG products; eight U.S. producers and 11 importers provided usable pricing data regarding sales of these products.⁶⁵ The data account for 10.2 percent of U.S. producers' commercial shipments during January 1999 to December 2001; data reported by the subject importers accounted for a range of between *** percent and *** percent of OCTG imports from the subject countries during this period.⁶⁶

Quarterly pricing comparisons indicate underselling in 49 out of 73 instances, for a 67 percent incidence of underselling. In light of the price trends evidenced on the record, I do not find such underselling to be significant. In general, price trends for U.S. producers appear to have tracked demand conditions in the U.S. market, with prices falling during the first few quarters of 1999, increasing to a high

⁶² CR/PR at Table C-1.

⁶³ CR/PR at Table C-1. *See supra* section VI.A.

⁶⁴ 19 U.S.C. § 1677(7)(C)(ii).

⁶⁵ CR at V-12, PR at V-10.

⁶⁶ *Id.*

point at the end of 2000 or beginning of 2001, and then declining over the rest of the period of investigation; prices in December 2001 generally were higher compared to January 1999.⁶⁷

On balance, I do not find significant price suppression or depression by reason of subject imports.⁶⁸ However, the pricing behavior of subject imports during the period of investigation provides an important indication of the imminent threat posed by such low priced imports given the recent deterioration in the performance of the domestic industry over the latter half of 2001 (*see infra* section VII). In particular, I note that with the domestic industry's per unit cost of goods sold increasing by 8.0 percent between the first half of 2001 and the latter six months of 2001,⁶⁹ and with U.S. producers experiencing weighted average price declines during this period ranging from 1 to 4 percent for most of the products for which pricing data were collected,⁷⁰ it appears that the domestic industry is beginning to experience a cost/price squeeze; indeed, this is corroborated by the fact that the ratio of COGS/sales for the domestic industry increased from 80.2 percent in the first half of 2001 to 83.5 percent during the latter six months of 2001.⁷¹ Moreover, I find that a significant issue regarding the price effects of subject imports remains unanswered on the record of these preliminary investigations. Specifically, because roughly half of the domestic industry's sales are made via contracts in which the price term is fixed and which do not contain meet-or-release provisions, it is quite possible that low priced subject imports would exhibit a lagged negative effect on price levels in the U.S. market. As noted, the duration of short term contracts is typically 6 months and thus short term contracts entered into at the beginning of the downturn that began in the latter six months of 2001 would not be renegotiated until the first quarter of 2002. Pricing data available on the record for the first quarter of 2002 do indeed evidence a progressive decline in U.S. price levels.⁷² I consider this evidence to be indicative of the imminent threat posed by low priced subject imports. At present it is unclear whether, in the context of a present material injury analysis, the domestic industry is experiencing significant price suppression or depression, given the ambiguity surrounding the domestic industry's pricing behavior that I identified earlier (*see supra* section VI.B).

⁶⁷ See CR at V-13 & Tables V-1 through V-8, PR at V-11 & Tables V-1 through V-8.

⁶⁸ I find average unit value ("AUV") data probative to the extent that the AUVs of nonsubject imports substantially exceeded the AUVs of U.S. shipments by the domestic industry for most of the period of investigation; in particular, the AUV of nonsubject imports was 15.5 percent higher than the AUV of U.S. shipments by the domestic industry during the latter half of 2001. Calculated from CR/PR at Table C-1. These data corroborate the absence of any negative price effects in the U.S. market for OCTG by reason of nonsubject imports.

In contrast, the AUVs of cumulated subject imports were consistently below the AUVs of U.S. shipments by the domestic industry throughout the period of investigation; in particular, the AUV of cumulated subject imports was 26.8 percent lower than the AUV of U.S. shipments by the domestic industry during the latter half of 2001. Calculated from CR/PR at Table C-1. These data corroborate the imminent threat posed by subject imports to the domestic industry.

⁶⁹ CR/PR at Table C-1.

⁷⁰ Calculated from Tables V-1 through V-8. The data permit comparisons of weighted average prices for U.S. producers between the first half of 2001 and the latter six months of 2001 for 7 out of 8 products; in six instances, weighted average prices declined between 1.1 percent and 4.0 percent, with prices for the remaining product increasing 4.7 percent over this period; significantly, for 6 out of 8 products, pricing data collected for the first quarter of 2002 indicate that price levels in the U.S. market continue to decline. See Tables V-1 through V-8.

⁷¹ CR/PR at Table C-1.

⁷² See CR/PR at Tables V-1 through V-8.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷³ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{74 75}

Notwithstanding the recent deterioration in the performance of the domestic industry, annual data for the period 1999 through 2001 evidence substantial improvements in a number of important financial and operating indicia of the domestic industry. U.S. production increased by 98.9 percent between 1999 and 2000, before declining by 2.1 percent between 2000 and 2001; U.S. shipments increased by 86.7 percent between 1999 and 2000, and by a further 0.2 percent between 2000 and 2001; capacity utilization increased from 35.5 percent in 1999 to 58.0 percent in 2000 and to 59.2 percent in 2001; the number of production workers increased by 47.1 percent between 1999 and 2000, and by an additional 4.3 percent between 2000 and 2001; and, operating margins increased from negative 17.4 percent in 1999 to 5.6 percent in 2000, and to 14.0 percent in 2001.⁷⁶ In addition, the number of U.S. producers experiencing operating losses declined from 8 out of 9 in 1999 to *** out of 9 in 2000, and to *** out of 9 in 2001; the domestic industry’s cash flow increased from negative \$81.8 million in 1999 to \$90.2 million and to \$247 million in 2001.⁷⁷ Finally, research and development expenses increased in both 2000 and 2001, and capital expenditures by 70.6 percent between 1999 and 2000, before declining by 31.2 percent between 2000 and 2001.⁷⁸

⁷³ 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885).

⁷⁴ 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 & 885.

⁷⁵ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce adjusted the petitioners’ alleged dumping margins as follows: Austria (39.36 percent); Brazil (from 6.01 percent to 67.07 percent); People’s Republic of China (42.7 percent); France (from 5.50 percent to 37.91 percent); Germany (from 32.70 percent to 32.72 percent); India (17.43 percent); Indonesia (133.73 percent); Romania (36.7 percent); South Africa (from 24.09 percent to 50.71 percent); Spain (22.44 percent); Turkey (9.94 percent); Ukraine (22.38 percent); and, Venezuela (55.60 percent). 67 Fed. Reg. at 20,732 (Apr. 26, 2002).

I further note that I do not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁷⁶ CR/PR at Table C-1.

⁷⁷ CR/PR at Table VI-1.

⁷⁸ *See* CR/PR at Table VI-6.

As noted, I do not find significant volume or price effects by reason of subject imports for purposes of assessing present material injury; coupled with the foregoing data, I do not find that the domestic industry has experienced a significant adverse impact by reason of subject imports. However, the record also evidences several declining trends, particularly over the latter portion of the period of investigation, that indicate the domestic industry's recent recovery from substantial losses in 1999 is in danger, and that the domestic industry is now vulnerable to injury.

In particular, I note that hourly wages in the domestic industry declined by 3.1 percent between 1999 and 2000, before increasing by 3.3 percent between 2000 and 2001 (thus remaining flat during a period of extraordinary growth in demand); productivity increased by 22.1 percent between 1999 and 2000, before declining by 6.8 percent between 2000 and 2001; the market share of the domestic industry declined from 86.9 percent in 1999 to 74.0 percent in 2000, and to 67.6 percent in 2001; and, ending inventories for U.S. producers increased by 58.6 percent between 1999 and 2000, and by a further 13.8 percent between 2000 and 2001—indeed, the level of ending inventories in 2001 was equivalent to roughly 15 percent of production by the domestic industry that year.⁷⁹

Moreover, I note that between the first half of 2001 and the latter six months of 2001 in particular, U.S. production declined by 33.5 percent; U.S. shipments declined by 33.4 percent; capacity utilization declined from 70.1 percent to 47.9 percent; ending inventories increased by 1.5 percent; the number of production workers declined by 11.9 percent; hourly wages declined by 0.1 percent; productivity declined by 17.1 percent; and, operating margins declined from 16.3 percent to 12.1 percent.⁸⁰ In addition, the number of U.S. producers experiencing operating losses increased from *** out of 9 in the first half of 2001 to *** out of 9 during the latter six months of 2001, while at the same time the domestic industry's cash flow declined from \$164.9 million to \$90.5 million.⁸¹ Research and development expenses declined by 16.3 percent and capital expenditures declined by 14.4 percent during this period.⁸² Finally, as noted, there is evidence that due to rising costs and falling prices, the domestic industry is beginning to experience a cost/price squeeze (*see supra* section VI.C), even as demand for OCTG is softening in the U.S. market and the domestic industry brings additional capacity online.⁸³

Based upon all the foregoing, I find that the domestic industry is now vulnerable to material injury; it is in this context that I evaluate the threat of material injury posed by subject imports.

VII. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LESS THAN FAIR VALUE IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports

⁷⁹ See CR/PR at Table C-1.

⁸⁰ CR/PR at Table C-1.

⁸¹ CR/PR at Table VI-1.

⁸² CR/PR at Table VI-6.

⁸³ See CR at II-3 and II-9, PR at II-2 and II-3 & II-6.

would occur unless an order is issued or a suspension agreement is accepted.”⁸⁴ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”⁸⁵ In making my determination, I have considered all factors that are relevant to this investigation.⁸⁶

As noted, I find that the domestic industry is vulnerable to material injury, particularly in light of declining demand for OCTG in the U.S. market, record evidence that the domestic industry has begun to experience a cost/price squeeze, and the adverse trends in financial and performance indicia that began to emerge during the latter half of 2001 (*see supra* section VI.D). It is in this context that I assess the likely impact of further volumes of low priced subject imports.

First, I note that the behavior of subject imports during the period of investigation evidences a targeting of the U.S. market; as apparent U.S. consumption increased 119.2 percent between 1999 and 2000, the volume of cumulated subject imports increased 362.8 percent, and as apparent U.S. consumption increased a further 9.7 percent between 2000 and 2001, the volume of cumulated subject imports increased 15.7 percent.⁸⁷ Conversely, as apparent U.S. consumption declined 32.3 percent between the first half of 2001 and the latter six months of 2001, the volume of cumulated subject imports declined only 24.4 percent; thus, cumulated subject imports progressively captured an increasing share of the U.S. market during the period of investigation, notwithstanding the most recent period of decreasing demand.⁸⁸ Even if subject import volumes were to remain stagnant, I would find that subject imports pose an imminent threat of material injury in light of the additional factors discussed below; however, I further find that the share of the U.S. market captured by low priced subject imports is likely to increase further given that subject imports have taken advantage of both ends of the business cycle for OCTG in the United States, as evidenced most recently during the latter half of 2001.⁸⁹

With regard to unused capacity in the subject countries,⁹⁰ I note that similar to U.S. producers, most subject producers manufacture products other than OCTG with the same equipment and workforce; as a result, not only is there a distinct possibility of product-shifting by subject producers,⁹¹ but in addition any estimations of future capacity levels are subject to product mix determinations.⁹² As a result, I do not rely on projected capacity and capacity utilization data for the subject producers. Moreover, I note that for seven of the subject countries, actual production during 2001 exceeded reported capacity, creating additional uncertainty regarding the reliability of these data and the sufficiency of the record in these

⁸⁴ 19 U.S.C. §§ 1677d(b) and 1677(7)(F)(ii).

⁸⁵ 19 U.S.C. § 1677(7)(F)(ii).

⁸⁶ 19 U.S.C. § 1677(7)(F)(i). Factor (VII) regarding raw and processed agricultural products is inapplicable to the instant investigations. With regard to factor (I) involving allegations of a countervailable subsidy, I note that the Commission has not received any information from Commerce regarding the nature of the alleged Austrian subsidy.

⁸⁷ CR/PR at Table C-1.

⁸⁸ CR/PR at Table C-1.

⁸⁹ *See* 19 U.S.C. § 1677(7)(F)(i)(III).

⁹⁰ *See* 19 U.S.C. § 1677(7)(F)(i)(II).

⁹¹ *See* 19 U.S.C. § 1677(7)(F)(i)(VI).

⁹² CR/PR at VII-1.

investigations;⁹³ indeed, the total amount by which actual production exceeded reported capacity in ***, was equivalent to 16.0 percent of apparent U.S. consumption based upon full year data for 2001.⁹⁴ In any event, cumulative unused capacity in the remaining subject countries during 2001 was equivalent to 10.3 percent of apparent U.S. consumption that year; even more significant is the fact that during the latter half of 2001, cumulative unused capacity in the subject countries was equivalent to 15.3 percent of apparent U.S. consumption during that period.⁹⁵

Furthermore, the data collected by the Commission in these preliminary investigations do not account fully for OCTG production in many of the subject countries, nor do they account fully for those producers responsible for subject exports to the U.S. market from many of the subject countries.⁹⁶ At a minimum, I find that subject import volumes are likely to continue unabated notwithstanding declining demand in the U.S. market, and that subject imports are likely to continue capturing market share from the domestic industry. I further find that the nature of current demand conditions in third country markets remains unresolved on this preliminary record; in my view, this important factual element warrants additional development and analysis in a final phase investigation.⁹⁷

With regard to inventories,⁹⁸ I note that the data available on this preliminary record indicate that cumulative end of period inventories of the subject merchandise held by U.S. importers were equivalent to *** percent of apparent U.S. consumption during the latter half of 2001.⁹⁹ At the same time, end of period inventories for the domestic industry were equivalent to 17.8 percent of apparent U.S. consumption during the latter half of 2001.¹⁰⁰ In addition, capacity utilization for the domestic industry declined sharply, from 70.1 percent in the first half of 2001 to 47.9 percent in the latter half of 2001.¹⁰¹ A capital intensive industry such as the OCTG industry requires a high rate of capacity utilization in order to remain profitable; thus, the combination of low and declining capacity utilization plus high and increasing inventory levels, in the context of declining demand, renders the domestic industry particularly vulnerable to a further deterioration in profitability if the present level of subject imports is sustained or increases, as appears imminent.

⁹³ Calculated from CR/PR at Tables VII-1 through VII-13. Based upon full year data for 2001, actual production for *** exceeded the capacity reported for each of these countries. Based upon data for the first half of 2001, this remained true for ***, and was also true for **. Finally, based upon data for the latter half of 2001, actual production for *** exceeded the capacity reported for each of these countries.

⁹⁴ Calculated from CR/PR at Tables VII-1 through VII-13 and Table C-1.

⁹⁵ Calculated from CR/PR at Tables VII-1 through VII-13 and Table C-1.

⁹⁶ See CR at VII-9 to VII-10, PR at VII-1 & VII-3.

⁹⁷ I note that there are third-country antidumping orders on OCTG exports from a number of countries subject to these investigations. See CR at VII-10 to VII-11, PR at VII-4; 19 U.S.C. § 1677(7)(F)(iii)(I).

⁹⁸ 19 U.S.C. § 1677(7)(F)(i)(V).

⁹⁹ Calculated from CR/PR at Table VII-14 and Table C-1. Because the inventory data for subject imports do not distinguish between finished and unfinished product, the full impact of the inventory overhang on the U.S. market is unclear. See CR at VII-11, PR at VII-4. I believe this presents another issue warranting further attention in a final phase investigation.

¹⁰⁰ CR/PR at Table C-1.

¹⁰¹ CR/PR at Table C-1.

The statute also directs the Commission to examine whether subject imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.¹⁰² Based upon the pricing behavior evident on the record, I find that subject imports are likely to continue to undersell the domestic like product; as noted, subject imports undersold the domestic like product in two-thirds of the pricing comparisons available on the record, with margins of underselling ranging from 0.2 percent to 37.9 percent during the period of investigation.¹⁰³ In addition, the record also indicates that the domestic industry is beginning to experience a cost/price squeeze, with the ratio of COGS/sales increasing from 80.2 percent in the first half of 2001 to 83.5 percent in the latter six months of 2001.¹⁰⁴ In the context of declining demand, and the extent of the underselling likely to prevail, I find that subject imports are likely to enter the U.S. market at prices that are likely to have a significant suppressing effect on domestic prices in the imminent future; this, in turn, will exacerbate the cost/price squeeze currently confronting the domestic industry.¹⁰⁵

Finally, I find there is an additional significant issue relevant to a threat analysis that remains unaddressed by the record in these preliminary investigations. Specifically, I note that in June 2001 the Commission instituted a global safeguard investigation involving a number of steel products, including OCTG.¹⁰⁶ The Commission announced its remedy recommendations in that investigation on December 7, 2001. In my view, the question of how the Commission's safeguard investigation (and the anticipation of possible import restrictions) impacted the U.S. market for OCTG during the latter half of 2001 is significant; the resolution of this question is essential in order to understand fully the trends in the data evidenced during 2001. However, the extent to which purchasing patterns and pricing levels in the U.S. market were impacted by the pendency of the Commission's safeguard investigation, and the full probative value of 2001 data as a baseline for assessing the threat posed by subject imports, remain in question. Moreover, it is unclear on this record whether, or to what extent, differences in the safeguard relief applied to various steel imports are likely to influence the volume of subject imports in the future since producers of OCTG, both domestic and foreign, have the demonstrated ability to shift production to other products. I believe this presents yet another issue warranting further attention in a final phase investigation.

In sum, I find that the record contains ample evidence providing a reasonable indication of threat of material injury by reason of subject imports; moreover, in my view there are a number of important and potentially outcome determinative issues that remain unresolved on the preliminary record in these investigations and that warrant final investigations; these include: the degree to which green drill pipe is interchangeable with green casing and tubing; the extent to which U.S. producers sought to preserve

¹⁰² 19 U.S.C. § 1677(7)(F)(i)(IV).

¹⁰³ See CR/PR at Tables V-1 through V-8.

¹⁰⁴ CR/PR at Table C-1.

¹⁰⁵ See *supra* section VI. C. Given the sustained underselling that is likely to occur, subject imports threaten to capture additional market share from the domestic industry, the impact of which would be magnified since there is already a substantial inventory overhang for the domestic industry; coupled with low capacity utilization and rising costs for U.S. producers, the likely price suppressive effect of increasing volumes of subject imports will adversely impact the domestic industry's profitability in the near term. This, in turn, could potentially result in a negative effect on the existing development and production efforts of the domestic industry, particularly as several U.S. producers bring additional capacity online. See CR/PR at II-3, PR at II-2; 19 U.S.C. § 1677(7)(F)(i)(VIII).

¹⁰⁶ Steel, Inv. No. TA-201-73 (Dec. 2001).

pricing levels at the expense of market share; the degree to which low priced subject imports exhibit a lagged negative effect on price levels in the U.S. market; the prevailing demand conditions in third country markets for OCTG exports by foreign producers subject to these investigations; the reliability of projected capacity and production levels by subject producers; the extent of the impact of subject import inventories on the U.S. market; and, the impact of the Commission's recent steel safeguard investigation on market behavior during the latter six months of 2001, as well as the impact of section 201 relief on future product mix decisions by subject producers.

VIII. CONCLUSION

Based upon all the foregoing, I determine that there is a reasonable indication that the domestic industry producing OCTG is threatened with imminent material injury by reason of subject imports that are alleged to be subsidized by the Government of Austria and sold in the United States at less than fair value by Austria, Brazil, China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela.