UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN SEAMLESS CARBON AND ALLOY STEEL STANDARD, LINE, AND PRESSURE PIPE FROM THE CZECH REPUBLIC, JAPAN, MEXICO, ROMANIA, AND SOUTH AFRICA

Investigations Nos. 731-TA-846 through 850 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3221, August 1999)

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Czech Republic, Japan, Romania, and South Africa of small diameter (less than or equal to 4.5 inches in outside diameter) seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipe (including redraw hollows), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan and Mexico of large diameter (greater than 4.5 inches up to and including 16 inches in outside diameter) seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipe, provided for in subheadings 7304.10.10, 7304.10.50, 7304.39.00, and 7304.59.80 of the HTS, that are alleged to be sold in the United States at LTFV.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling that will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these investigations need not enter a separate appearance for the final phase of the investigations. Industrial users and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On June 30, 1999, petitions were filed with the Commission and the Department of Commerce by Koppel Steel Corp., Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX; alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of small diameter seamless carbon and alloy steel standard, line, and pressure pipe from the Czech Republic, Japan, Romania, and South Africa; and by reason of LTFV imports of large diameter seamless carbon and alloy steel standard, line, and pressure pipe from Japan and Mexico.[2] Accordingly, effective June 30, 1999, the Commission instituted antidumping investigations Nos. 731-TA-846 through 850 (Preliminary).

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 July 8, 1999 (64 FR 36920). The conference was held in Washington, DC, on July 21, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[2] Koppel, Sharon, and Vision are not petitioners in the investigations regarding large diameter subject products.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of certain seamless carbon and alloy steel standard, line, and pressure pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa that are allegedly sold in the United States at less than fair value ("LTFV").

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]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

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."[5] 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."[6] 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."[7]

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.[8] No single factor is dispositive, and the Commission

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[3] 19 U.S.C. § 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 __, Slip Op. 96-51, at 4-6 (Mar. 11, 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] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(4)(A).

[7] 19 U.S.C. § 1677(10).

[8] *See, e.g.*, NEC Corp. v. Dep't of Commerce, Slip Op. 98-164 at 8 (Ct. Int'l Trade, Dec. 15, 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

may consider other factors it deems relevant based on the facts of a particular investigation.[9] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[10] 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 LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[11]

B. Product Description

Petitioners filed petitions regarding certain small diameter seamless pipe from the Czech Republic, Japan, Romania, and South Africa, as well as petitions regarding certain large diameter seamless pipe from Japan and Mexico. In its notice of initiation Commerce provided two separate scopes defining the imported merchandise subject to investigation. The scopes of the investigations are as follows (in part):

Scope of Large Diameter Investigations

> The scope of these investigations includes large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these investigations are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.
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> The seamless pipes subject to these investigations are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").
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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).

[9] *See, e.g.*, S. Rep. No. 96-249, at 90-91 (1979).

[10] 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.").

[11] 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).

The scope of these investigations includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

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Specifically excluded from the scope of these investigations are boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods ("OCTG") are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Scope of Small Diameter Investigations

The scope of these investigations includes small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these investigations are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to these investigations are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

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Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of these investigations includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM

A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

. . . .

Specifically excluded from the scope of these investigations are boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.[12]

Steel pipes and tubes are made in circular, rectangular, or other cross sections[13] and can be divided into two general categories according to the method of manufacture: welded or seamless. Each category can be further subdivided by grades of steel, namely carbon or alloy. Included in alloy are heat-resisting, stainless, and "other" alloy grades. In addition, steel pipes and tubes can be categorized by end use. The American Iron and Steel Institute ("AISI") has defined six such end-use categories: standard pipe, line pipe, structural pipe and tubing, mechanical tubing, pressure tubing, and oil country tubular goods ("OCTG"). AISI further defines subject products as:

Standard pipe. -- Seamless standard pipe is most commonly produced to ASTM A-53 specification and is generally intended for the low temperature and low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses.

Line pipe. -- Seamless line pipe is produced to API 5L specification and is intended for the conveyance of oil and natural gas and other fluids in pipe lines.

Pressure pipe. -- Seamless pressure pipe is commonly produced to the ASTM A-106 specification and is intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gases in industrial piping systems. It may carry these substances at elevated pressure and temperatures and may be subject to the application of external heat. (Seamless carbon steel ASTM standard A-106 B pressure pipe may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy piping made to ASTM standard A-335 must be used if temperature and stress levels exceed those allowed for A-106 and ASME codes.)

Steel pipes and tubes are generally produced according to standards and specifications published by a number of organizations, including ASTM, ASME, and API. Comparable organizations in England,

[12] 64 Fed. Reg. 40825 (July 28, 1999).

[13] Virtually all seamless pipe is circular.

Germany, Japan, Russia, and other countries have also developed standard specifications for steel pipes and tubes.[14]

C. Domestic Like Product Issues

Commerce's investigations have separate and distinct scopes. Petitioners assert that the Commission should determine that there are two domestic like products: 1) small diameter seamless pipe, *i.e.* pipe with an outer diameter of not more than 4.5 inches; and 2) large diameter seamless pipe, *i.e.* pipe with an outer diameter of more than 4.5 inches, but not more than 16 inches. Thus, petitioners propose two domestic like products corresponding to the two scopes of these investigations. Respondents that have expressed an opinion on this issue support these like product definitions, but raise other like product issues.

As discussed below, we determine for purposes of the preliminary phase of these investigations that there are two domestic like products consisting of 1) small diameter seamless pipe, *i.e.* pipe with an outer diameter of not more than 4.5 inches; and 2) large diameter seamless pipe, *i.e.* pipe with an outer diameter of more than 4.5 inches, but not more than 16 inches.

1. Small Diameter vs. Large Diameter Pipe

Petitioners argue that the 4.5-inch "breakpoint" reflects differences in product demand as well as in the cost of the equipment required to produce small and large diameter pipe and that these differences are reflected in the pricing for the small and large diameter products. They note that three petitioners' manufacturing equipment is limited to producing pipe below or just above 4.5 inches in outer diameter.[15]

We find that there is a physical difference between the two types of pipe, namely size. Small diameter pipe is generally used in chemical plants and refineries in applications for conveyance of liquids or gases in production processes, whereas large diameter pipe is used more in pipeline construction for long-distance transmission of liquids or gases in high volumes.[16] The production facilities and the employees used to manufacture small diameter and large diameter pipe are similar, with each manufacturer producing a limited range of sizes, based on the limitations of its equipment, that tend to conform closely with the proposed like products.[17] There is limited interchangeability between small diameter pipe and large diameter pipe.[18] Most small diameter pipe is sold by both domestic producers and importers to distributors. Importers sell approximately equal amounts of large diameter pipe to distributors and end users, while domestic large pipe producers sell principally to distributors.[19]

The Commission "generally has not drawn lines based solely on size, and has looked for other points of distinction before finding separate like products."[20] However, on the basis of the limited

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[14] The specifications met by a pipe product are commonly marked on each piece of the pipe and referred to as a "stencil."

[15] Petitioners' Postconference Brief at 4-6; *see* Tr. at 22-23.

[16] Confidential Report ("CR") at I-10 - I-11, Public Report ("PR") at I- 9; *see* CR/PR at D-3, D-4.

[17] CR at I-17, D-8; PR at I-14 - I-15, D-7.

[18] CR at I-19, D-3, D-4, D-8, D-10; PR at I-16, D-3, D-4, D-7, D-9.

[19] CR at I-19, PR at I-16.

[20] Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357, at 7-8 (Feb. 1991), *citing* Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea and Taiwan, Inv. Nos. 731-TA-488-450 (Preliminary), USITC Pub. 2334, at 4-5 (Nov. 1989). *See also* Melamine from Japan, Inv. No. AA-1921-162 (Review), USITC Pub. 3209, at 5 (July 1999) (product most

information in the record as well as the fact that the size delineation appears to be recognized by the market, we determine that there are two domestic like products, each coextensive with Commerce's specific scope: small diameter pipe, which has an outer diameter of not more than 4.5 inches, and large diameter pipe, which has an outer diameter of more than 4.5 inches but not more than 16 inches. We may revisit this issue in any final phase of these investigations.[21]

2. Carbon vs. Alloy Pipe

The Japanese and Mexican respondents, as well as MC Tubular Products, Inc. ("MCTP"), argue that the Commission should find that alloy pipe is a separate domestic like product from carbon pipe. Petitioners argue that the Commission rejected similar arguments in the prior Seamless Pipe investigations[22] and contend that the Commission should reject those arguments in these investigations.[23]

The chemical composition of alloy pipe differs from that for carbon pipe. Inclusion of elevated levels of alloying elements gives pipe higher strength and allows it to withstand elevated temperatures. Carbon pipe products typically are used in low/minimal demand working environments and applications calling for minimal physical characteristics.[24] Alloy pipe is used primarily in higher temperature applications in the petrochemical, refining, and power related industries.[25] While carbon pipe is sold with certifications to both industry-wide and proprietary specifications, service conditions (pressure, temperature, corrosive atmosphere, and the like) requiring alloy steel preclude the use of carbon pipe.[26] It is technically possible (although not economically feasible) to substitute alloy pipe for carbon pipe.[27]

For purposes of these preliminary determinations, we determine that seamless carbon and alloy pipe do not constitute separate domestic like products. Both are produced in the same facilities with the

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similar to melamine crystal of a particle size of less than 10 microns is all melamine in crystal form); Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 (Dec. 1987) (all color picture tubes are one like product regardless of size).

[21] Petitioners argue that the Commission should not include pipe exceeding 16 inches in outer diameter in the large pipe like product. Petitioners' Postconference Brief at 7, Exh. 53. They state that the Commission has found that 16 inches is a distinct dividing line for large diameter pipe in previous investigations and argue that this determination is an appropriate one. No other party objects to this argument. The limited information available does not indicate that we should include pipe greater than 16 inches in outer diameter in the domestic like product. *See* CR at D-5, D-8, D-11; PR at D-5, D-7, D-9. We note that the Commission has declined to do so in previous investigations of pipe products in which the scope was delineated at 16 inches. *See* Certain Circular Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, Inv. Nos. 731-TA-532-537 (Final), USITC Pub. 2564 (Oct. 1992); Certain Line Pipes and Tubes from Canada, Inv. No. 731-TA-375 (Preliminary), USITC Pub. 1965 (Mar. 1987).

[22] Only pipe not more than 4.5 inches in outside diameter was the subject of those investigations. *See* Certain Seamless, Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 & 731-TA-707-710 (Final), USITC Pub. 2910 (July 1995). We determine like products on the basis of the record of each investigation and are not bound by the definition in a previous investigation. *See, e.g.*, Nippon Steel , 19 CIT at 454-55; Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988).

[23] Petitioners' Postconference Brief at 10; *see* Seamless Pipe, USITC Pub. 2910, at I-12 - I-13.

[24] Seamless Pipe, USITC Pub. 2910, at C-3.

[25] Seamless Pipe, USITC Pub. 2910, at C-3.

[26] Seamless Pipe, USITC Pub. 2910, at C-4.

[27] CR at I-19, PR at I-16; Seamless Pipe, USITC Pub. 2910, at C-5.

same employees; both are sold to distributors; and there is some interchangeability in that alloy pipe can be used for carbon pipe. There appears to be a continuum linking carbon and alloy pipe without a clear dividing line. The fact that the differences in chemical composition lead to a different range of uses is not in and of itself controlling, nor is the price differential.[28] However, the issue appears to be a close one based on the limited data available. In particular, petitioners have presented virtually no information on this issue. We intend to gather additional information regarding this product delineation in any final phase of these investigations and may revisit our like product determination at that time.

3. Commodity Grade vs. High-Strength

Japanese respondents claim that seamless "high-strength" carbon line pipe is a separate domestic like product from multi-stenciled, commodity grade carbon pipe.[29] No other party addresses this issue.

According to the Japanese respondents, producers and customers view high-strength pipe as a different product. The Japanese respondents also argue that the end use strictly controls the production process.[30] High-strength pipe is used in conditions that are physically demanding and must be designed to resist high hydrostatic pressure and high internal, oil and gas pressure.[31] Japanese respondents state that, because it is highly engineered and designed for a particular project, high-strength pipe is not interchangeable with other high-strength products, much less with multi-stenciled commodity grade carbon pipe.[32] They further argue that high-strength pipe is sold to end users, such as specific oil and gas companies, for particular projects, whereas commodity grade pipe is mostly sold to distributors;[33] that the production of high-strength pipe requires an additional manufacturing step, *i.e.* heat treatment;[34] and that there is a "very substantial pricing differential" between high-strength pipe and commodity grade pipe.[35]

The information in the record shows that high-strength pipe is produced on the same equipment and with the same workers as other seamless pipe. The product has the same use as other line pipe (the conveyance of oil and natural gas or other fluids in pipe lines), although it is generally employed in more demanding environments (*e.g.*, the Gulf of Mexico).[36] The price premium (13.3 percent for small diameter pipe and 9.3 percent for large diameter pipe)[37] is not large, especially in light of anecdotal evidence

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[28] In addition, recent investigations have shown that the line between carbon and alloy products has become blurred. *See, e.g.,* Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia, Inv. Nos. 701-TA-384 & 731-TA-806-808 (Preliminary), USITC Pub. 3142, at 6 (Nov. 1998) (no clear dividing line between microalloyed steels and hot-rolled carbon steel).

[29] The Japanese producers structure their arguments around API 5L grades X-60 through X-80, *see* Japanese Respondents' Postconference Brief at 19, whereas importers refer to API 5L grades X-52 through X-70, *see* Importers' Questionnaire Responses at II.7.

[30] Japanese Respondents' Postconference Brief at 19, 25.

[31] Japanese Respondents' Postconference Brief at 21-23.

[32] Japanese Respondents' Postconference Brief at 23.

[33] Japanese Respondents' Postconference Brief at 23-24.

[34] Japanese Respondents' Postconference Brief at 24-25.

[35] Japanese Respondents' Postconference Brief at 26.

[36] *See* Japanese Respondents' Postconference Brief at 19.

[37] *See* CR at I-21, PR at I-17.

suggesting that high-strength pipe is more often sold directly to end users than is seamless pipe generally[38] and is clearly produced in smaller volumes by the domestic industry.[39]

Based on the information available, we do not find a clear dividing line between high-strength line pipe and commodity grade pipe and therefore do not find them to be separate like products.[40] We note that there is no agreement among the parties as to what constitutes high-strength line pipe and we intend to seek more information on this issue in any final phase of these investigations.

4. Circular Welded Pipe vs. Seamless

Iscor Limited, the South African producer, argues that circular welded pipe can be produced and stenciled to ASTM/ASME A-53 and API 5L specifications, which means the pipe possesses the same physical characteristics and can be used in the same low pressure applications as standard, line, and pressure pipe.

Information obtained in these investigations indicates that there are significant differences between the two products. They have some differences in physical characteristics, most notably the presence of a weld on welded pipe. Seamless pipe is commonly used in demanding applications that require exceptional strength, high pressure containment, and a great degree of reliability. Welded pipe is more commonly used to transport liquids at or near atmospheric pressure, but may also be used for purely structural applications.[41] Welded and seamless pipe are produced in completely different manufacturing facilities.[42] Seamless pipe may be substituted for welded pipe, although it would usually be economically prohibitive, but welded pipe may not be substituted for seamless pipe.[43]

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[38] Japanese Respondents' Postconference Brief at 23.

[39] *See* CR/PR at Tables IV-6 - IV-7.

[40] This is consistent with the Commission's recent unanimous decision not to find plate used to produce X-70 line pipe to be a separate like product. *See* Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 & 731-TA-815-822 (Preliminary), USITC Pub. 3181, at 6 (Apr. 1999).

[41] CR at I-9 n.15, PR at I-8.

[42] CR at I-18, PR at I-15 - I-16. Welded pipe is produced from flat rolled sheet or plate, which is rolled on hot-strip mills. The plate or sheet is then formed into a hollow and welded in a pipe mill. In contrast, seamless pipe is produced from billets, which are round or square long products produced by continuous casting. The billets are rotary-pierced or extruded and hot rolled on a plug mill or a mandrel mill. The finishing operations for the two types of pipe, such as straightening, testing, and inspecting, are not performed on the same equipment. CR at I-18, PR at I-15 - I-16.

[43] CR at I-19, PR at I-16.

Based on these differences, we determine not to include welded pipe within the definition of the domestic like product.[44] [45] [46]

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[44] *See* CR at D-7, D-9, D-11; PR at D-6, D-8, D-10. In other investigations involving seamless pipe the Commission determined that welded and seamless pipe constituted separate like products based on different characteristics and uses (seamless pipe is generally stronger than welded such that the latter cannot be substituted for the former when strength and reliability are important); different production facilities; distinct production techniques; and price. *See* Stainless Steel Pipes and Tubes from Sweden, Inv. No. 731-TA-354 (Final), USITC Pub. 2033, at 5 (Nov. 1987); Stainless Steel Pipes and Tubes from Sweden, Inv. No. 701-TA-281 (Final), USITC Pub. 1966, at 5-7 (Apr. 1987); Certain Seamless Steel Pipes and Tubes from Japan, Inv. No. 731-TA-87 (Final), USITC Pub. 1347, at 4, 7 (Feb. 1983).

[45] Petitioners note that the Japanese respondents suggested at the conference that OCTG should be included in the domestic like product. Tr. at 90. The Japanese respondents do not make this argument in their postconference brief and no other party discussed this issue. Commerce excluded from these investigations OCTG if covered by the scope of an existing antidumping duty order on the same country. However, finished and unfinished OCTG are included in the scope when used in standard, line or pressure applications if not covered by an order. 64 Fed. Reg. at 40826, 40827. This is the same language Commerce used in delineating the scope in the previous Seamless Pipe investigations, in which the Commission did not include OCTG in the domestic like product because there was no domestic production of OCTG meeting the specifications of the scope or used in the described applications. It found that the physical characteristics of standard, line, and pressure pipe and OCTG differ; that producers perceive standard, line, and pressure pipe to be different from OCTG; and that interchangeability between these products is limited. Accordingly, the Commission determined that the product most similar in characteristics and uses to the OCTG included in the scope of the investigations was certain seamless carbon and alloy pipe and not OCTG generally. Seamless Pipe, USITC Pub. 2910, at I-10 - I-11. Based on the limited information and argument in the record, we have no reason to find differently in these investigations. *See* CR at D-6 - D-7, D-9, D-11, PR at D-6, D-8, D-10. We note that in prior investigations involving OCTG, the Commission has not expanded the domestic like product to include seamless or welded pipe. *See* Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 & 731-A-711-717 (Final), USITC Pub. 2911 (Aug. 1995); Oil Country Tubular Goods from Israel, Inv. Nos. 701-TA-271 & 731-TA-318 (Final), USITC Pub. 1952 (Feb. 1987); Oil Country Tubular Goods from Canada and Taiwan, Inv. Nos. 701-TA-255 & 731-TA-276-277 (Final), USITC Pub. 1865 (June 1986); Oil Country Tubular Goods from Argentina and Spain, Inv. Nos. 731-TA-191 & 195 (Final), USITC Pub. 1694 (May 1985); Oil Country Tubular Goods from Brazil, Korea and Spain, Inv. Nos. 701-TA-215-217 (Final), USITC Pub. 1633 (Jan. 1985).

[46] A question regarding whether redraw hollows should be included in the domestic like product definition also arose during these investigations. In the scope of the small diameter pipe investigations, Commerce includes redraw hollows, which it defines as

> any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing /hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

64 Fed. Reg. at 40827. Petitioners stated at the conference that they are unaware of production of large diameter redraw hollows. Tr. at 52. Petitioners state that in the previous Seamless Pipe investigations, the Commission found that redraw hollows were a part of the small diameter like product based on the Commission's semifinished product criteria and the six factors it considers in its traditional like product analysis. Petitioners further state that the facts underlying that finding have not changed. Petitioners' Postconference Brief at 10-11. Japanese respondents argue briefly that because the redrawing process accounts for 50 percent or more of the value of the finished product, the case "is strong" for a separate like product determination. Japanese Respondents' Postconference Brief, Part II, at 2. Based on the limited evidence in the record, and the fact that the record in these investigations contains no evidence contrary to that in the previous Seamless Pipe investigations, we include redraw hollows in the domestic like product. See CR/PR at D-4.

D. Domestic Industries

The domestic industry is defined as "the producers as a [w]hole of a domestic like product."[47] In defining the domestic industry, the Commission generally includes in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[48] Based on our finding of two domestic like products consisting of certain small diameter and large diameter seamless carbon and alloy pipe included within the scope of these investigations, for purposes of these preliminary determinations, we find two domestic industries. The first consists of all domestic producers of certain small diameter seamless carbon and alloy standard, line, and pressure pipe. The second domestic industry comprises all domestic producers of certain large diameter seamless carbon and alloy standard, line, and pressure pipe.

We must consider whether the production of certain small diameter standard, line, and pressure pipe includes the operations of two redrawers/finishers: Sharon Tube Co. and ***.[49] In deciding whether a firm qualifies as a domestic producer, the Commission often analyzes the overall nature of a firm's production-related activities in the United States,[50] although production-related activity at minimum levels could be insufficient to constitute domestic production.[51]

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[47] 19 U.S.C. § 1677(4)(A).

[48] *See* United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), *aff'd*, 96 F. 3d 1352 (Fed. Cir. 1996).

[49] In any final phase of these investigations, we intend to examine whether other finishing operations (*e.g.*, heat treatment) carried out by companies such as *** is sufficient to consider such firms to be domestic producers. *See, e.g.*, Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, USITC Pub. 2911, at I-11 - I-15, II-17 - II-19.

[50] *See, e.g.*, Sulfur Dyes from China and the United Kingdom, Inv. Nos. 731-TA-548 and 551 (Final), USITC Pub. 2602 (Feb. 1993); Dry Film Photoresist from Japan, Inv. No. 731-TA-622 (Preliminary), USITC Pub. 2555, at 14 (Aug. 1992); Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea, Inv. No. 731-TA-556 (Preliminary), USITC Pub. 2519, at 11-12 (June 1992).

[51] Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904, at I-8 (June 1995). 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.

See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736 and 737 (Final), USITC Pub. 2988, at 7-8 (Aug. 1996); Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911, at I-11 n.37 (Aug. 1995). With respect to the third factor, Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer. *See* Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783, at I-8 - I-9 & n.34 (June 1994) ("no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account"); Low Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded that twenty percent value added by flux coaters was sufficient); *see also* Low Fuming Brazing Copper Wire and Rod

In the previous Seamless Pipe investigations, the Commission determined to include in the domestic industry the one known domestic redrawer/finisher.[52] We find that the record in these investigations supports including redrawers/finishers in the domestic industry producing small diameter pipe.[53]

1. Sharon Tube Co.

Sharon Tube produces small diameter seamless pipe by cold drawing redraw hollows or otherwise finishing products that it purchases from domestic and *** sources.[54] After cold drawing, the pipe typically undergoes finishing operations such as annealing, cutting, hydrostatic testing, marking, and packing. Sharon Tube possesses a cold-drawing bench, which can cost between $750,000 and $2 million, as well as hydrostatic testing and marking equipment.[55] However, Sharon Tube reported ***[56] The value added by cold drawing during 1998 was between *** and *** percent.[57] Sharon Tube had *** production and related workers throughout the period examined and in 1998 *** percent of its total purchases were from domestic sources.[58] Based on this information, we include Sharon Tube in the domestic industry producing small diameter pipe.

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from South Africa, Inv. No. 731-TA-246 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

The Commission has also stated that a "modest percentage of domestically sourced parts or raw materials as a percentage of cost does not necessarily mean that a firm is not a domestic producer." Certain All Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163, at 13-14 (Mar. 1989). Conversely, the Commission has decided not to include a firm in the domestic industry where its operations contributed only a "minor percentage of the total value" of the product. Certain Radio Paging and Alerting Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 (Aug. 1983) (operations involved assembly and soldering of foreign-sourced parts involving little technical skill); *see also* Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514, at 7-8 (Apr. 1984) (Commission emphasized for the first time that no single factor--including value added--is determinative). The Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. *See* Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine, Inv. Nos. 731-TA-753-756 (Final), USITC Pub. 3076, at 11 (Dec. 1997); Silicon Carbide from The People's Republic of China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779, at I-11 n.49 (June 1994).

[52] Seamless Pipe, USITC Pub. 2910, at I-13-1-14. The Commission found that the overall nature of the redrawer/finisher's activities in producing the like product, including cold drawing as well as finishing, was sufficient for the redrawer/finisher to be considered a domestic producer. The Commission further determined that the value of its assets, as well as the amount of production inputs procured from domestic sources, were significant. In addition, the Commission stated that the cold-drawing process required substantial technical expertise and added significant value to the product, although it was unclear whether finishing operations other than cold drawing required a similar degree of expertise. Seamless Pipe, USITC Pub. 2910, at I-14.

[53] We note that no party has objected to the inclusion of redrawers/finishers.

[54] CR at III-4, PR at III-3.

[55] Petitioners' Postconference Brief, Exh. 51.

[56] CR /PR at Table E-7. Sharon Tube stated that *** CR/PR at Table E-7 n.1.

[57] It was *** percent when calculated as the ratio of conversion costs (factory labor plus factory overhead) to cost of goods sold and was *** percent when calculated as the ratio of conversion costs plus selling, general, and administrative expenses to cost of goods sold plus selling, general, and administrative expenses. CR/PR at Table E-1.

[58] CR/PR at Table E-9.

2. ***

*** performs finishing operations on redraw hollows that it purchases ***.[59] According to petitioners, ***, which is used to make hot-finished small diameter seamless pipe from redraw hollows. After the stretch reducing process, the pipe undergoes additional finishing operations such as straightening, hydrostatic testing, end facing, coating, stenciling, and packing. Testing and marking equipment is also utilized in this process. *** also has a ***.[60] The *** in which it reported capital expenditures was ***. It reported ***.[61] The value added by its production-related activities during 1998 was between *** and *** percent.[62] *** had *** production and related workers in 1998, but only *** during the interim periods.[63]

*** employment levels are low, yet it does add significant value to the product. It appears that *** employs considerable expertise in transforming the redraw hollows into finished pipe, although data on the record is somewhat conflicting. Nonetheless, for purposes of these preliminary investigations we find *** production-related activities to be sufficient for it to be considered a domestic producer of small diameter pipe.

III. MATERIAL INJURY -- SMALL DIAMETER PIPE

A. Cumulation[64]

1. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports of small diameter pipe, 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 U.S. market.[65] In assessing whether subject imports compete with each other and with the domestic like product,[66] the Commission has generally considered four factors, including:

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[59] CR at III-4, PR at III-3. *** CR/PR at Table III-1 n.2.

[60] Petitioners' Postconference Brief, Exh. 51.

[61] CR/PR at Table E-4. This figure conflicts with petitioners' estimate of the cost of ***'s equipment, especially because ***. We intend to explore this discrepancy in any final phase of these investigations.

[62] It was *** percent when calculated as the ratio of conversion costs (factory labor plus factory overhead) to cost of goods sold, and was *** percent when calculated as the ratio of conversion costs plus selling, general, and administrative expenses to cost of goods sold plus selling, general, and administrative expenses. CR/PR at Table E-1.

[63] CR/PR at Table E-9.

[64] The negligibility of subject imports is not an issue in these investigations. *See* 19 U.S.C. § 1677(24).

[65] 19 U.S.C. § 1677(7)(G)(i).

[66] The SAA (at 848) 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," *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).

(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;[67]
(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.[68]

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.[69] Only a "reasonable overlap" of competition is required.[70]

2. Analysis

For purposes of these preliminary determinations, we find that there is a reasonable overlap of competition among the subject imports of small diameter pipe and between the subject imports and the domestic like product.

a. Fungibility

The record shows that domestic producers believe their product to be interchangeable with the subject imports, with most characterizing them as always or frequently interchangeable.[71] Many importers divided small diameter seamless pipe into three market segments: standard (commodity), line (high-strength), and pressure (alloy) pipe. These importers stated that while commodity seamless pipe competes on the basis of price, there are non-price differences between the domestic and imported line and pressure pipe.[72] Respondents from the Czech Republic, Romania, and South Africa claim a lack of fungibility

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[67] Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that the subject imports should be cumulatively assessed. However, in any final phase investigations she intends to examine further the substitutability between the domestic like product and subject imports of certain small diameter alloy steel pipe from Japan and the other countries subject to investigation. *See* Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

[68] *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 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

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

[70] *See* Goss Graphic System, Inc. v. United States, ___ CIT ___, Slip Op. 98-147, at 8 (Oct. 16, 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[71] CR at II-14 - II-17, PR at II-10 - II-12.

[72] CR at II-14 - II-17, PR at II-10 - II-12.

because of significantly longer lead times for delivery as compared with domestic mills. They also argue that unlike the domestic producers, respondent producers are not on the major purchasers' approved manufacturers lists.[73] The Japanese respondents agree that there is the necessary overlap of competition among commodity grade multi-stenciled products in the small diameter size range. However, they argue that there is no such meaningful overlap between imports of alloy pressure pipe from Japan, which is generally over 2.5 inches in outside diameter, and domestically produced alloy pressure pipe, which is generally 2.5 inches and less in outside diameter.[74]

With respect to interchangeability in general among the subject imports, domestic producers often stated that the small diameter pipe was always or frequently interchangeable. Two Japanese respondents stated that only Japanese and European high-strength pipe are sometimes interchangeable. Two other Japanese respondents added that Mexican pipe is sometimes interchangeable in that market. Seven Japanese respondents stated that Japanese, European, and Mexican commodity pipe is frequently or sometimes interchangeable.[75]

The available data do not indicate that imports from the Czech Republic, Romania, and South Africa sufficiently differ in qualification and delivery times to indicate a lack of reasonable overlap of competition.[76] The Japanese respondents claim somewhat limited interchangeability because of the specialty nature of their products.[77] However, in 1998, it appears that more than 60 percent of Japanese shipments of small diameter pipe were of commodity grade pipe, which competes with the domestic like product and other subject imports in that grade.[78]

b. Geographic Overlap

Six domestic producers reported that they serve the entire United States, although some excepted Hawaii. One domestic producer stated that it serves only the eastern and midwest states, stating that it could not compete with foreign prices on the Gulf and west coasts. Another producer reported that it serves only the region east of the Mississippi River.[79]

Most of the subject imports entered the Gulf region of the United States.[80] During the period examined, subject imports from Japan were present in all regions, and subject imports from the Czech Republic, South Africa, and Romania were present in three regions.[81]

c. Channels of Distribution

Both domestic and subject foreign producers of seamless pipe sell to distributors and end users. Japanese respondents argue that high-strength seamless pipe is usually sold to end users, *i.e.*, oil and gas

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[73] Nova Hut's Postconference Brief at 3; Romanian Respondents' Postconference Brief at 3; Iscor's Postconference Brief at 25-26.

[74] Japanese Respondents' Postconference Brief at 26-27.

[75] CR at II-18, PR at II-12.

[76] *See* CR at II-14 - II-17, PR at II-10 - II-12.

[77] CR at II-15 - II-18, PR at II-10 - II-12.

[78] *Compare* CR/PR at Table IV-6 *with* CR/PR at Table IV-2.

[79] CR at II-1, PR at II-1.

[80] Petitioners' Postconference Brief, Exh. 3.

[81] Petitioners' Postconference Brief, Exh. 3.

companies, directly.[82] Nonetheless, the record shows that all imports of small diameter seamless pipe from the Czech Republic, Romania, and South Africa are sold to distributors, as are 94.6 percent of Japanese imports and 85.8 percent of U.S. producers' shipments.[83]

d. Simultaneous Presence

Domestically produced small diameter seamless pipe was present throughout the United States during the entire period examined.[84] Similarly, subject imports from Japan were present during each month between January 1996 and March 1999. During that period, subject imports from the Czech Republic were present in 29 of the 39 months, those from South Africa were present in 31 months, and those from Romania were present in 26 months.[85]

e. Conclusion

Based on the record in this preliminary phase of these investigations, we find there is a reasonable overlap of competition among the subject imports of small diameter pipe and between the subject imports and the domestic like product and cumulate all subject imports for our analysis. However, we intend to examine cumulation issues closely in any final phase of these investigations.

B. Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports

In the preliminary phase of antidumping 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.[86] [87] In making this determination, the Commission must consider the volume

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[82] CR at II-3, PR at II-2.

[83] CR/PR at Table I-3.

[84] *See* CR/PR at Table IV-2.

[85] Petitioners' Postconference Brief, Exh. 2.

[86] 19 U.S.C. § 1673b(a).

[87] Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997)(rehearing denied).

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.[88] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[89] 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 in the United States.[90] 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."[91]

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing certain small diameter seamless carbon and alloy standard, line, and pressure pipe is materially injured by reason of subject imports from the Czech Republic, Japan, Romania, and South Africa that are allegedly sold in the United States at less than fair value.

1. Conditions of Competition

Apparent consumption increased irregularly from 1996 to 1998 but began to fall in 1998, dropping by almost one-half between the interim periods.[92] The parties do not agree as to the reasons for the decrease. Respondents argue that lower prices for oil and gas have resulted in a decreased demand for small diameter seamless pipe.[93] Petitioners claim demand is tied to the state of the U.S. economy as a whole,[94] although they do agree that the decline in oil prices is at least partly responsible for the demand decline.[95] The record indicates that trends in apparent consumption are generally influenced by activities in the energy and petrochemical industries as well as in the oil and gas refinery industries.[96] We will explore this issue further in any final phase of these investigations.

Other products are produced on the equipment used to manufacture small diameter seamless pipe,[97] which suggests producers can shift production among various products in response to different demand

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For a detailed description and application of Commissioner Crawford's analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745(Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with Commissioner Crawford's mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff'g* 873 F. Supp. 673, 694-95 (Ct. Int'l Trade 1994).

[88] 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).

[89] 19 U.S.C. § 1677(7)(A).

[90] 19 U.S.C. § 1677(7)(C)(iii).

[91] 19 U.S.C. § 1677(7)(C)(iii).

[92] CR/PR at Table IV-3.

[93] *See* Tr. at 97.

[94] *See* CR at II-9, PR at II-7.

[95] CR at II-10 - II-11, PR at II-7 - II-8; Tr. at 54.

[96] Seamless Pipe, USITC Pub. 2910, at II-25.

[97] OCTG, mechanical tubing, pressure tubing, and structural pipe and tubing are produced on the same equipment. CR at I-13, PR at I-11.

conditions. As a result, trends in oil and gas exploration and extraction may have a substantial indirect effect on the demand for seamless pipe.

Buy American policies still exist but they appear to be less relevant today than at the time of the previous Seamless Pipe investigations.[98] Approved manufacturers lists, or AMLs, also exist, especially for some of the larger end users such as oil and gas companies, but their effect on the market is unclear.[99]

2. Volume

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."[100] [101]

The quantity and value of cumulated U.S. shipments of imports of small diameter pipe increased steadily and significantly between 1996 and 1998, but decreased between the interim periods.[102] Cumulated import market share increased substantially over the entire period examined, increasing from 16.0 percent in 1996 to 19.9 percent in 1997, and to 30.5 percent in 1998. Between the interim periods, it increased from 19.6 percent to 23.2 percent.[103] Domestic market share followed the opposite trend.[104] Nonsubject import market share rose irregularly between 1996 and 1998, and increased between the interim periods.[105]

For purposes of these preliminary determinations, we find the volume of subject imports of small diameter seamless pipe to be significant.

3. 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

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[98] *See* Tr. at 56-57.

[99] *See* CR at II-14, PR at II-10.

[100] 19 U.S.C. § 1677(7)(C)(i).

[101] Commissioner Crawford joins only in the factual, numerical discussion of the volume of imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of a reasonable indication of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of subject imports is significant in light of its price effects and impact.

[102] Cumulated U.S. shipments of subject imports increased from 38,105 short tons in 1996 to 58,854 short tons in 1997, and to 83,604 short tons in 1998. They decreased from 17,177 short tons in Jan.-Mar. 1998 to 11,450 short tons in Jan.-Mar. 1999. CR/PR at Table IV-2. The value of cumulated U.S. shipments of subject imports rose from $28.1 million in 1996 to $41.7 million in 1997, and to $57.7 million in 1998. The value of cumulated subject imports fell from $12.5 million in Jan.-Mar. 1998 to $8.2 million in Jan.-Mar. 1999. CR/PR at Table IV-2.

[103] CR/PR at Table IV-3.

[104] Domestic market share fell from 64.6 percent in 1996 to 61.7 percent in 1997, and to 46.5 percent in 1998. It fell from 60.6 percent to 51.6 percent between the interim periods. CR/PR at Table IV-3.

[105] Nonsubject import market share decreased from 19.4 percent in 1996 to 18.4 percent in 1997, then increased to 23.0 percent in 1998. It increased from 19.8 percent to 25.1 percent between the interim periods. CR/PR at Table IV-3.

(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.[106]

The evidence gathered in these investigations indicates that there is a significant degree of substitutability between the subject merchandise and the domestic like product.[107] [108] We note that importers view certain non-price differences to be important, such as delivery times, dependability, and the range of available sizes.[109]

The subject imports significantly undersold the domestic products throughout the period examined. In general, underselling increased in late 1998, when cumulated volumes of subject imports were highest. There was underselling in 78 of 86 quarters for which price comparisons were possible and the margins of underselling generally increased over the period.[110] The average unit value of the cumulated U.S. shipments of subject imports decreased steadily over the period examined.[111] At the same time, the domestic industry was unable to maintain prices, as evidenced by the downward trend in prices in products

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[106] 19 U.S.C. § 1677(7)(C)(ii).

[107] CR at II-14 - II-18, PR at II-10 - II-12.

[108] Commissioner Crawford finds that the substitutability between the domestic like product and imports of small diameter seamless pipe is moderated by differences in *physical characteristics*, (*e.g.*, specialty products accounted for *** percent of Japanese shipments but only *** percent of U.S. producers' shipments); *non-product characteristics* (*e.g.*, lead times ranging from one to two months for domestic producers but from three to six months for importers for pipe produced to order); and *other issues* (*e.g.*, the use by purchasers of "approved manufacturers lists" to restrict the universe of potential suppliers and "Buy American" restrictions). Her analysis of the price effects of the subject imports follows.

Commissioner Crawford finds that the subject imports are having only slight effects on domestic prices. To evaluate the price effects of unfairly traded imports, she compares the domestic prices that existed when the imports were traded unfairly with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. Small diameter seamless pipe is moderately substitutable among sources, and thus even relatively small margins likely would have resulted in a shift in demand away from the subject imports. In these investigations, the alleged margins of dumping are either fairly high (roughly 30-40 percent for Romania and South Africa) or very high (roughly 70-170 percent for the Czech Republic and Japan). Therefore, a large portion of the demand for subject imports likely would have shifted away at fairly traded prices. Nonsubject imports are a fairly substantial presence in the market, accounting for 23.0 percent of the market in 1998, and thus the shift in demand away from the subject imports likely would have been captured by both the domestic industry and the nonsubject imports.

However, the cumulated market share of the subject imports was quite large, 30.5 percent, in 1998, and thus, the shift in demand toward the domestic product would have been significant. Nonetheless, the increase in demand for the domestic product would not have allowed the domestic industry to raise its prices significantly. The domestic industry had sufficient unused capacity and inventories that would have been available to satisfy the increased demand. Available capacity, inventories, competition within the domestic industry and between the domestic like product and nonsubject imports, and the reverses in downstream oil and gas markets would have imposed considerable price discipline in the market. However, the increase in demand would have been sufficiently large that the domestic industry could have increased its prices somewhat. Consequently, Commissioner Crawford finds that the subject imports are having slight effects on domestic prices.

[109] *See* CR at II-14 - II-18, PR at II-10 - II-12.

[110] CR/PR at Tables V-1 - V-2.

[111] Average unit value of the cumulated U.S. shipments of subject imports decreased from $736.26 in 1996 to $708.07 in 1997, and to $690.34 in 1998. Between the interim periods average unit value decreased from $727.78 to $715.37. CR/PR at Table C-1.

1 and 2 at the end of the period examined.[112] There is testimony in the record that in 1999 domestic producers have dropped their prices substantially in an attempt to recover some of the lost volume they have experienced.[113] The decline in demand for small diameter seamless pipe appears to have been a factor in these price declines. Nonetheless, we find for purposes of these preliminary determinations that the increasing volumes of low-priced subject imports have contributed to the domestic industry's declining prices.

4. Impact

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.[114] 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."[115] [116] [117]

We find that increasing volumes of cumulated subject imports of small diameter seamless pipe are having an adverse impact on the domestic industry. The record shows declines in many key indicators of the condition of the domestic industry. We note that these declines may be tied to some extent to the decline in prices of oil and gas and we will analyze this issue further in any final phase of these investigations.

Production capacity decreased irregularly between 1996 and 1998, although it increased between the interim periods.[118] Production decreased substantially from 1996 to 1998 and declined by more than

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[112] *See* CR/PR at Table V-1 - V-2; Tr. at 31-32 (prices are now negotiated transaction by transaction and prices for third quarter 1999 are 16-20 percent lower than already low prices for first quarter). Product 1 is described as follows: seamless pipe that is single-,double-, or triple-stenciled to meet ASTM-106 Grade B, ASTM A-53 Grade B, and API 5L Grade B specifications; 1" nominal size (1.315" OD X 0.179" wall thickness); plain ends; schedule 80. CR/PR at Table V-1. Product 2 is described as follows: seamless pipe that is triple-stenciled (or more) to meet ASTM-106 Grade B, ASTM A-53 Grade B, and API 5L Grade B specifications; 4" nominal size (4.5" OD X 0.337" wall thickness); plain ends; schedule 80. CR/PR at Table V-2.

[113] Tr. at 31.

[114] 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.").

[115] 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).

[116] 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 stated that the estimated dumping margins were as follows: Czech Republic, from 161.18 to 167.42 percent; Japan, 74.17 to 106.07 percent; Romania, 30.83 to 42.36 percent; and South Africa, 36.82 to 43.51 percent. 64 Fed. Reg. 40825 (July 28, 1999).

[117] Chairman Bragg notes that she does 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).

[118] Capacity decreased from 352,480 short tons in 1996 to 332,452 short tons in 1997, and then increased to 345,330 short tons in 1998. It increased from 84,133 short tons in Jan.-Mar. 1998 to 120,725 short tons in Jan.-

one-half between the interim periods.[119] Capacity utilization also decreased irregularly but substantially, especially toward the end of the period examined.[120]

Likewise, net sales declined as measured by both quantity and value,[121] as did gross profit[122] and operating income -- which became an operating loss in the first quarter of 1999.[123] The ratio of the domestic industry's operating income to sales fell irregularly, turning negative in the first quarter of 1999.[124] The ratio of cost of goods sold to net sales decreased between 1996 and 1997, but increased between 1997 and 1998 and increased substantially between the interim periods,[125] indicating a cost/price squeeze.

The number of production and related workers, and the number of hours worked, decreased irregularly between 1996 and 1998 and declined significantly between the interim periods.[126] Capital expenditures increased between 1996 and 1998, but declined by almost one-half between the interim periods.[127]

For the foregoing reasons, we find that subject imports are having an adverse impact on the domestic industry producing small diameter seamless pipe.[128]

Mar. 1999. CR/PR at Table III-3.

[119] Production rose from 151,336 short tons in 1996 to 185,318 short tons in 1997, and then declined to 127,373 short tons in 1998. It fell from 56,280 short tons to 27,742 short tons between interim 1998 and interim 1999. CR/PR at Table III-3.

[120] Capacity utilization increased from 42.9 percent in 1996 to 55.7 percent in 1997, then declined to 36.8 percent in 1998. It declined from 66.8 percent to 22.9 percent between the interim periods. CR/PR at Table III-3.

[121] The quantity of net sales rose from 153,323 short tons in 1996 to 182,576 short tons in 1997, then fell to 135,011 short tons in 1998. It fell from 54,318 short tons to 25,486 short tons between the interim periods. CR/PR at Table VI-1.

The value of net sales increased from $114.9 million in 1996 to $137.0 million in 1997, then declined to $106.6 million in 1998. It declined from $40.7 million to $19.4 million between the interim periods. CR/PR at Table VI-1.

[122] Gross profit increased from $17.6 million in 1996 to $23.7 million in 1997, then decreased to $16.1 million in 1998. It fell from $9.2 million to $1.2 million between the interim periods. CR/PR at Table VI-1.

[123] Operating income increased from $10.0 million in 1996 to $14.1 million in 1997, then declined to $7.5 million in 1998. It declined from $6.5 million in Jan.-Mar. 1998 to an operating loss of $862,000 in Jan.-Mar. 1999. CR/PR at Table VI-1. There is evidence in the record that in the four quarters preceding the filing of the petitions, the domestic industry experienced an operating loss of $204,000. Petitioners' Postconference Brief at 22-23 & Exh. 18.

[124] The operating income to sales ratio rose from 8.7 percent in 1996 to 10.3 percent in 1997, then fell to 7.0 percent in 1998. It fell from 16.0 percent to negative 4.4 percent between the interim periods. CR/PR at Table VI-1.

[125] The ratio of cost of goods sold to net sales decreased from 84.7 percent in 1996 to 82.7 percent in 1997, then rose to 84.9 percent in 1998. It rose from 77.4 percent to 93.7 percent between the interim periods. CR/PR at Table VI-1.

[126] The number of production and related workers rose from 305 in 1996 to 322 in 1997, then fell to 262 in 1998. It fell from 324 to 262 between the interim periods. Hours worked rose from 672,000 in 1996 to 711,000 in 1997, then fell to 526,000 in 1998. Hours worked fell from 168,000 to 131,000 between the interim periods. CR/PR at Table III-6.

[127] Capital expenditures increased from $1.2 million in 1996 to $7.8 million in 1997, then to $30.2 million in 1998. They decreased from $14.7 million to $7.5 million between the interim periods. CR/PR at Table VI-8.

[128] Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors in her determination of a reasonable indication of material injury by reason of the subject imports, but concurs in the

IV. MATERIAL INJURY -- LARGE DIAMETER PIPE

A. Cumulation[129]

1. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports of large diameter pipe, 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 U.S. market.[130] In assessing whether subject imports compete with each other and with the domestic like product,[131] 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;[132]

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conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of unfairly traded imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were traded unfairly with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact through those effects. In this regard, the impact on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact.

As she noted earlier, the domestic industry would have been able to increase its prices only slightly had the subject imports been priced fairly. Therefore, the primary impact on the domestic industry would have been on its output and sales. At fairly traded prices, the shift in demand toward the domestic product would have been significant, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured a large share of the demand for the subject imports, and thus its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been unfairly traded. Therefore, the domestic industry would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

[129] The negligibility of subject imports is not an issue in these investigations. *See* 19 U.S.C. § 1677(24).

[130] 19 U.S.C. § 1677(7)(G)(i).

[131] The SAA (at 848) 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," *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).

[132] Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that the subject imports should be cumulatively assessed. However, in any final phase investigations she intends to examine further the substitutability between the domestic like product and subject imports of certain large diameter carbon and alloy steel pipe from Japan and Mexico, and the other

(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.[133]

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.[134] Only a "reasonable overlap" of competition is required.[135]

2. Analysis

For purposes of these preliminary determinations, we find that there is a reasonable overlap of competition among the subject imports of large diameter pipe and between the subject imports and the domestic like product.

a. Fungibility

The record shows that domestic producers believe their product to be interchangeable with the subject imports, with most characterizing them as always or frequently interchangeable.[136] Many importers divided large diameter seamless pipe into three market segments: standard (commodity), line (high-strength), and pressure (alloy) pipe. These importers stated that while commodity seamless pipe competes on the basis of price, there are non-price differences between the domestic and imported line and pressure pipe.[137] The Japanese respondents agree that there is the necessary overlap of competition among commodity grade multi-stenciled products in the large diameter size range.[138]

With respect to interchangeability among the subject imports, domestic producers often stated that the pipe was always or frequently interchangeable. The Japanese and Mexican respondents claim limited interchangeability because of the specialty nature of their products. Four Japanese respondents claimed that large diameter seamless pipe from Japan never competes with any other seamless pipe.[139] However, the data in the record indicate that approximately 46 percent of Japanese shipments of large diameter pipe

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countries subject to investigation. *See* Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

[133] *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 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

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

[135] *See* Goss Graphic System, Inc. v. United States, ___ CIT ___, Slip Op. 98-147, at 8 (Oct. 16, 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[136] CR at II-14 - II-17, PR at II-10 - II-12.

[137] CR at II-14 - II-17, PR at II-10 - II-12.

[138] Japanese Respondents' Postconference Brief at 26.

[139] CR at II-18, PR at II-12.

and 47 percent of Mexican shipments were of commodity grade pipe,[140] which compete with the domestic like product and with each other.[141]

b. Geographic Overlap

Six domestic producers reported that they serve the entire United States, although some excepted Hawaii. One domestic producer stated that it serves only the eastern and midwest states, stating that it could not compete with foreign prices on the Gulf and west coasts. Another producer reported that it serves only the region east of the Mississippi River.[142]

Most of the subject imports entered the Gulf region of the United States.[143] During the period examined, subject imports from Japan were present in all regions and subject imports from Mexico were present in four regions.[144]

c. Channels of Distribution

Both domestic and subject foreign producers of seamless pipe sell to distributors and end users. Approximately 89 percent of U.S. producers' shipments are sold to distributors, as are 56 percent of imports of large diameter seamless pipe from Japan and nearly 41 percent of Mexican imports.[145]

Respondents claim that distribution varies according to the type of seamless pipe. MCTP states that there were only six U.S. distributors for A-335 pipe, whereas A-106 pipe has a large distribution network. Japanese pipe is sold to both distributors and end users, but the Japanese respondents add that high-strength seamless pipe is usually sold directly to end users, *i.e.* oil and gas companies.[146]

d. Simultaneous Presence

Domestically produced large diameter seamless pipe was present throughout the United States during the entire period examined[147] as were subject imports from Japan and Mexico.[148]

e. Conclusion

Based on the record in this preliminary phase of these investigations, we find there is a reasonable overlap of competition among the subject imports of large diameter pipe and between the subject imports and the domestic like product and cumulate all subject imports for our analysis, particularly in light of the

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[140] *Compare* CR/PR at Table IV-7 *with* CR/PR at Table IV-2.

[141] In 1998, Japanese shipments of large diameter specialty seamless pipe (alloy and carbon) constituted 54.5 percent of all shipments from Japan of large diameter pipe. Mexican shipments of large diameter specialty seamless pipe (all carbon) constituted 52.6 percent of Mexican shipments of large diameter pipe. *Compare* CR/PR at Table IV-7 *with* CR/PR at Table IV-2.

[142] CR at II-1, PR at II-1.

[143] Petitioners' Postconference Brief, Exh. 32.

[144] Petitioners' Postconference Brief, Exh. 32.

[145] CR/PR at Table I-3.

[146] *See* CR at II-3, PR at II-2.

[147] *See* CR/PR at Table IV-2.

[148] Petitioners' Postconference Brief, Exh. 31.

overlap in commodity grade imports from Japan and Mexico. However, we intend to examine cumulation issues closely in any final phase of these investigations.

B. Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports

In the preliminary phase of antidumping 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.[149] [150] 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.[151] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[152] 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 in the United States.[153] 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."[154]

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[149] 19 U.S.C. § 1673b(a).

[150] Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford's analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with Commissioner Crawford's mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff'g* 873 F. Supp. 673, 694-95 (Ct. Int'l Trade 1994).

[151] 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).

[152] 19 U.S.C. § 1677(7)(A).

[153] 19 U.S.C. § 1677(7)(C)(iii).

[154] 19 U.S.C. § 1677(7)(C)(iii).

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing certain large diameter seamless carbon and alloy standard, line, and pressure pipe is materially injured by reason of subject imports from Japan and Mexico that are allegedly sold in the United States at less than fair value.

1. Conditions of Competition

Apparent consumption decreased irregularly from 1996 to 1998. Based in large part on demand in the oil and gas industries, the demand for large diameter seamless pipe began to decrease during 1998[155] and continued to decrease between the interim periods.[156]

Buy American policies still exist but they appear to be less relevant today than at the time of the previous Seamless Pipe investigations.[157] Approved manufacturers lists, or AMLs, also exist, especially for some of the larger end users, such as oil and gas companies, but their effect on the market is unclear.[158]

2. Volume

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."[159] [160]

The quantity and value of cumulated U.S. shipments of imports of large diameter pipe increased irregularly and substantially between 1996 and 1998, and increased further between the interim periods.[161] Import market share also increased irregularly but substantially over the period examined, nearly doubling between the interim periods.[162] Domestic market share dropped substantially between 1996 and 1998, and

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[155] CR at II-10 - II-11, PR at II-7 - II-8; Tr. at 55. Petitioners estimate that demand in the oil and gas industries drives approximately 75 percent of the market for large diameter seamless pipe. Tr. at 55.

[156] CR/PR at Table IV-4.

[157] *See* Tr. at 56-57.

[158] *See* CR at II-14, PR at II-10.

[159] 19 U.S.C. § 1677(7)(C)(i).

[160] Commissioner Crawford joins only in the factual, numerical discussion of the volume of imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of a reasonable indication of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of subject imports is significant in light of its price effects and impact.

[161] Cumulated U.S. shipments of subject imports decreased from *** short tons in 1996 to *** short tons in 1997, then increased to *** short tons in 1998. They increased from *** short tons in Jan.-Mar. 1998 to *** short tons in Jan.-Mar. 1999. CR/PR at Table IV-2. The value of cumulated U.S. shipments of subject imports fell from *** million in 1996 to *** million in 1997, then climbed to *** million in 1998. The value of cumulated subject imports rose from *** million in Jan.-Mar. 1998 to *** million in Jan.-Mar. 1999. CR/PR at Table IV-2.

[162] Cumulated subject import market share decreased from *** percent in 1996 to *** percent in 1997, then increased to *** percent in 1998. Between the interim periods, it increased from *** to *** percent. CR/PR at Table IV-4.

to an even larger degree between the interim periods.[163] Nonsubject import market share was fairly constant between 1996 and 1998, then fell by almost one-half between the interim periods.[164]

For purposes of these preliminary determinations, we find the volume of subject imports of large diameter seamless pipe to be significant.

3. 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.[165]

The evidence gathered in these investigations indicates that there is a significant degree of substitutability between the subject merchandise and the domestic like product.[166] [167] We note that

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[163] Domestic market share increased slightly from *** percent in 1996 to *** percent in 1997, then decreased to *** percent in 1998. It fell from *** percent to *** percent between the interim periods. CR/PR at Table IV-3.

[164] Nonsubject import market share was *** percent in 1996 and *** percent in 1997, then increased to *** percent in 1998. It decreased from *** percent to *** percent between the interim periods. CR/PR at Table IV-3.

[165] 19 U.S.C. § 1677(7)(C)(ii).

[166] CR at II-14 - II-18, PR at II-10 - II-12.

[167] Commissioner Crawford finds that the substitutability between the domestic like product and imports of large diameter seamless pipe is moderated by differences in *physical characteristics*, (*e.g.,* specialty products accounted for 54.5 percent of Japanese shipments and 52.6 percent of Mexican shipments in 1998 but only 5.2 percent of U.S. producers' shipments); *non-product characteristics* (*e.g.,* lead times ranging from one to two months for domestic producers, one-and-a-half to three months for imports from Mexico, and from four to six months for imports from Japan for pipe produced to order); and *other issues* (*e.g.*, remaining "Buy American" restrictions). Her analysis of the price effects of the subject imports follows.

Commissioner Crawford finds that the subject imports are having at most only slight effects on domestic prices. To evaluate the price effects of unfairly traded imports, she compares the domestic prices that existed when the imports were traded unfairly with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. Large diameter seamless pipe is moderately substitutable among most sources (though Japanese alloy steel pipe is a poor substitute for the more prevalent carbon steel pipe), and thus even relatively small margins likely would have resulted in a shift in demand away from the subject imports. In these investigations, the alleged margins of dumping are either moderate (26-27 percent for Mexico) or very high (64-108 percent for Japan). Therefore, a large portion of the demand for subject imports likely would have shifted away at fairly traded prices. Nonsubject imports are a fairly small presence in the market, accounting for 12.3 percent of the market in 1998, and thus most of any shift in demand away from the subject imports likely would have been captured by the domestic industry.

The cumulated market share of the subject imports was quite large, 31.6 percent, in 1998. Thus, the shift in demand toward the domestic product would have been significant. Nonetheless, the increase in demand for the domestic product would not have allowed the domestic industry to raise its prices significantly. The domestic industry had sufficient unused capacity and inventories that would have been available to satisfy the increased demand. Available capacity, inventories, competition within the domestic industry (especially between North Star

importers view certain non-price differences to be important, such as delivery times, dependability, and the range of available sizes.[168]

The Commission was able to collect only limited comparable price data in this preliminary phase of the investigations and intends to seek further data in any final phase of these investigations. However, the data before us indicate some negative impact by subject imports on domestic prices, notwithstanding limited underselling.[169] The average unit value of the cumulated subject imports decreased throughout the entire period examined. Declines were greatest in 1998 and the first quarter of 1999, corresponding to the period when import penetration was greatest.[170] Domestic prices declined at the end of the period as reflected in the prices of the specific products on which we collected pricing information.[171] One of the largest domestic producers testified that it had reduced its prices significantly in response to substantially lower prices of subject imports. Notwithstanding these price reductions, it testified that it continued to lose market share to subject imports.[172] We recognize that falling oil and gas prices resulted in a decline in demand for large diameter seamless pipe, which, in turn, was a factor in these price declines, but we find for purposes of these preliminary determinations that the increasing volumes of low-priced subject imports were also a contributing factor.

4. Impact

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.[173] 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

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Steel and other U.S. producers) and between the domestic like product and nonsubject imports, and particularly the reverses in downstream oil and gas markets would have imposed extensive price discipline in the market. However, the increase in demand would have been sufficiently large that the domestic industry could have increased its prices somewhat. Consequently, Commissioner Crawford finds that the subject imports are having very slight effects on domestic prices.

[168] *See* CR at II-14 - II-18, PR at II-10 - II-12.

[169] There was underselling by subject imports in 16 of 43 quarters for which price comparisons were possible. *See* CR/PR at Tables V-3 - V-4.

[170] The average unit value of cumulated U.S. shipments of subject imports increased from *** in 1996 to *** in 1997, then decreased to *** in 1998. The average unit value fell from *** to *** between the interim periods. CR/PR at Table C-2.

[171] Domestic prices for product 3 declined from *** cents per pound in the first quarter of 1998 to *** cents per pound in the first quarter of 1999. CR/PR at Table V-3. Domestic prices for product 4 declined from *** cents per pound in the first quarter of 1998 to *** cents per pound in the first quarter of 1999. CR/PR at Table V-4.

[172] Tr. at 45-56 (even with domestic prices discounted by 25 percent or more, subject imports continue to undersell domestic product).

[173] 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).

and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[174] [175] [176]

The data show declines in many key indicators of the condition of the domestic industry. We note that these declines may be tied to some extent to the decline in the prices of oil and gas and will analyze this issue further in any final phase of these investigations. However, for purposes of these preliminary determinations, we find a reasonable indication that increasing volumes of cumulated subject imports of large diameter seamless pipe are having an adverse impact on the domestic industry.

Domestic production capacity,[177] production,[178] and capacity utilization[179] steadily decreased throughout the period. Net sales also declined steadily throughout the period, when measured by both quantity and value.[180] Gross profit, operating income, and the ratio of operating income to sales declined irregularly between 1996 and 1998, then fell substantially between the interim periods, when import market share nearly doubled.[181]

The ratio of cost of goods sold to net sales increased between 1996 and 1998, as well as between the interim periods,[182] indicating a cost/price squeeze. The number of production and related workers

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[174] 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).

[175] 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 stated that the estimated dumping margins were as follows: Japan, 64.00 to 107.80 percent; and Mexico, 26.07 to 27.42 percent. 64 Fed. Reg. 40825 (July 28, 1999).

[176] Chairman Bragg notes that she does 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).

[177] Capacity decreased from *** short tons in 1996 to *** short tons in 1997, and to *** short tons in 1998. It declined from *** short tons to *** short tons between the interim periods. CR/PR at Table III-3.

[178] Production decreased from *** short tons in 1996 to *** short tons in 1997, and to *** short tons in 1998. It declined from *** short tons to *** short tons between the interim periods. CR/PR at Table III-3.

[179] Capacity utilization declined from *** percent in 1996 to *** percent in 1997, and to *** percent in 1998. It declined further from *** percent to *** percent between the interim periods. CR/PR at Table III-3. Other products, such as OCTG, are produced on the equipment used to manufacture large diameter seamless pipe, CR at I-13, PR at I-11, which suggests the ability of producers to shift production among various products in response to different demand conditions. As a result, the data pertaining to capacity utilization in the large diameter seamless pipe industry may not be a reliable measure for that particular industry.

[180] The quantity of net sales declined from *** short tons in 1996 to *** short tons in 1997, and to *** short tons in 1998. It declined further from *** short tons to *** short tons between the interim periods. CR/PR at Table VI-2.

Net sales decreased by value from *** million in 1996 to *** million in 1997, and to *** million in 1998. It decreased further from *** million to *** million between the interim periods. CR/PR at Table VI-2.

[181] Gross profit rose from *** million in 1996 to *** million in 1997, then fell to *** million in 1998. It fell from *** million to *** million between the interim periods. CR/PR at Table VI-2. Operating income increased from *** million in 1996 to *** million in 1997, then decreased to *** million in 1998. It declined from *** million to *** between the interim periods. The operating income ratio increased from *** percent in 1996 to *** percent in 1997, then fell to *** percent in 1998. It dropped from *** percent to *** percent between the interim periods. CR/PR at Table VI-2.

[182] The ratio of cost of goods sold to net sales decreased from *** percent in 1996 to *** percent in 1997, then increased to *** percent in 1998. It increased from *** to *** percent between the interim periods. CR/PR at

decreased steadily over the period,[183] as did hours worked.[184] Capital expenditures increased between 1996 and 1998,[185] as did research and development expenses, although the latter declined between the interim periods.[186] On balance, the condition of the domestic industry declined over the period examined.[187]

For the foregoing reasons, we find a reasonable indication that subject imports of large diameter pipe are having an adverse impact on the domestic industry producing large diameter seamless pipe.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing certain small diameter carbon and alloy steel standard, line, and pressure pipe is materially injured by reason of imports of certain small diameter carbon and alloy steel standard, line, and pressure pipe from the Czech Republic, Japan, Romania, and South Africa. We further determine that there is a reasonable indication that the domestic industry producing certain large diameter carbon and

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Table VI-2.

[183] The number of production and related workers decreased from *** in 1996 to *** in 1997, and to *** in 1998. It fell from *** to *** between the interim periods. CR/PR at Table III-6.

[184] Hours worked declined from *** in 1996 to *** in 1997, and to *** in 1998. They declined from *** to *** between the interim periods. CR/PR at Table III-6.

[185] Capital expenditures increased from *** million in 1996 to *** million in 1997, then to *** million in 1998. They increased from *** million to *** million between the interim periods. CR/PR at Table VI-8. In any final phase of these investigations, we intend to examine closely the allocation of expenses, especially capital expenditures.

[186] Research and development expenses increased from *** in 1996 to *** in 1997, then to *** in 1998. They declined from *** to *** between the interim periods. CR/PR at Table VI-8.

[187] Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors or the condition of the industry in her determination of a reasonable indication of material injury by reason of the subject imports, but concurs in the conclusion that the subject imports are having a significant impact on the domestic industry. In her analysis of material injury by reason of unfairly traded imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were traded unfairly with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact through those effects. In this regard, the impact on the domestic industry's prices, sales, and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact.

As she noted earlier, the domestic industry would have been able to increase its prices only slightly had the subject imports been priced fairly. Therefore, the primary impact on the domestic industry would have been on its output and sales. At fairly traded prices, the shift in demand toward the domestic product would have been significant, and the domestic industry could have increased its production and sales to satisfy the increased demand. The domestic industry likely would have captured a large share of the demand for the subject imports, and thus its output and sales, and therefore its revenues, would have increased significantly had the subject imports not been unfairly traded. Therefore, the domestic industry would have been materially better off if the subject imports had been fairly traded. Consequently, Commissioner Crawford determines that there is a reasonable indication that the domestic industry is materially injured by reason of the subject imports.

alloy steel standard, line, and pressure pipe is materially injured by reason of imports of certain large diameter pipe from Japan and Mexico.