

U.S. International Trade Commission

Washington, DC 20436

Circular Welded Non-Alloy Steel Pipe from China, Indonesia, Malaysia, Romania, and South Africa

Investigations Nos. 731-TA-943-947 (Preliminary)

Publication 3439



July 2001

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-943-947 (Preliminary)

CIRCULAR WELDED NON-ALLOY STEEL PIPE FROM CHINA, INDONESIA, MALAYSIA,
ROMANIA, AND SOUTH AFRICA

DETERMINATIONS

On the basis of the record¹ 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)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of circular welded non-alloy steel pipe,² provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines³ that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Indonesia, Malaysia, Romania, and South Africa of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation with respect to China. The Commission will issue a final phase notice of scheduling, which 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 of an affirmative

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

² For a complete description of the product, see Commerce's *Federal Register* Notice of Initiation of Antidumping Duty Investigations, June 21, 2001, 66 FR 33227.

³ Commissioners Lynn M. Bragg and Dennis M. Devaney dissenting.

preliminary determination in the investigation under section 733(b) of the Act, or, if its preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigation with respect to China. 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 public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On May 24, 2001, a petition was filed with the Commission and Commerce on behalf of Allied Tube & Conduit Corp., Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; LTV Copperweld, Youngstown, OH; Northwest Pipe Co., Portland, OR; Western Tube & Conduit Corp., Long Beach, CA; Century Tube Corp., Pine Bluff, AR; Laclede Steel Co., St. Louis, MO; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Wheatland Tube Co., Wheatland, PA; and the United Steelworkers of America, AFL-CIO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of circular welded non-alloy steel pipe from China, Indonesia, Malaysia, Romania, and South Africa. Accordingly, effective May 24, 2001, the Commission instituted antidumping duty investigations Nos. 731-TA-943-947 (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 June 4, 2001 (66 FR 29988). The conference was held in Washington, DC, on June 14, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 9, 2001. The views of the Commission are contained in USITC Publication 3439 (July 2001), entitled *Circular Welded Non-Alloy Steel Pipe from China, Indonesia, Malaysia, Romania, and South Africa: Investigations Nos. 731-TA-943-947 (Preliminary)*.

By order of the Commission.

Donna R. Koehnke

Secretary

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Century Tube Corp., Pine Bluff, AR; Laclede Steel Co., St. Louis, MO; Maverick Tube Corp., Chesterfield, MO; Sharon Tube Co., Sharon, PA; Wheatland Tube Co., Wheatland, PA; and the United Steelworkers of America, AFL-CIO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of circular welded non-alloy steel pipe from China, Indonesia, Malaysia, Romania, and South Africa. Accordingly, effective May 24, 2001, the Commission instituted antidumping duty investigations Nos. 731-TA-943-947 (Preliminary).

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VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of circular welded pipe (“standard pipe”) from China that are allegedly sold in the United States at less than fair value (“LTFV”).¹ Based on the record in these investigations, we find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of standard pipe from Indonesia, Malaysia, Romania, and South Africa that are allegedly sold in the United States at LTFV.²

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping 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

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 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

¹ Commissioners Lynn M. Bragg and Dennis M. Devaney find there is a reasonable indication that an industry in the United States is materially injured by reason of subject imports from China. See Dissenting Views of Commissioner Lynn M. Bragg and Commissioner Dennis M. Devaney.

² Commissioners Lynn M. Bragg and Dennis M. Devaney dissenting. See Dissenting Views of Commissioner Lynn M. Bragg and Commissioner Dennis M. Devaney.

³ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999).

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).

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 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 Commerce’s determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹¹

B. Product Description

Commerce’s notice of initiation defines the imported merchandise within the scope of these investigations as:

The scope of these investigations covers certain welded carbon quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe.

Standard pipes and tubes are intended for the 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. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. It may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells, and for structural applications in general construction. It primarily is made to American Society for Testing and Materials (ASTM) A-53, A-135, and A-795 specifications, but can also be made to the British Standard (BS)-1387 specification.

Structural pipe is intended for use in the construction of bridges and buildings, and general structural applications. It also can be used for making steel scaffolding and for piling applications.

⁸ See, e.g., NEC Corp. v. Dep’t of Commerce and U.S. Int’l Trade Comm’n, 36 F. Supp. 2d 380 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁹ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁰ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991).

¹¹ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

It primarily is made to ASTM A-500 and A-252 specifications.

Hence, specifically included within the scope of these petitions are products stenciled to the ASTM standards A-53, A-135 A-795, A-120, A-500, A-252, or their equivalents. Standard and structural pipe products may also be produced to proprietary specifications rather than to industry standard. This is often the case with fence tubing, for example.

The scope does not include boiler tubes, pressure tubing, mechanical tubing, finished conduit, oil country tubular goods (OCTG), and line pipe. However, with regard to these excluded products, if petitioners or other interested parties provide to the Department reasonable grounds to believe or suspect that the products are being used in a standard or structural application, the Department may instruct the U.S. Customs Service (Customs) to require end-use certifications. In addition, line pipe meeting the American Petroleum Institute (API) line pipe specification is excluded from the scope of these investigations, and any resultant antidumping duty orders, if covered by the scope of another antidumping duty order from the same country.

The pipe products that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.30.10 and 7306.30.50. This petition also covers dual-certified A-53/API or single certified pipe that enters the United States if it is used in, or intended for use in, standard pipe or structural pipe applications. Such certified pipe may include API-5L or API-5L X-42 pipe. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.¹²

C. Domestic Like Product

Petitioners argue that the Commission should find one like product, coextensive with the scope, consisting of all circular welded pipe.¹³ No respondent has taken issue with petitioners' suggested domestic like product.

Absent any argument by the parties to the contrary or any evidence on the record suggesting that a different like product is appropriate, we find one domestic like product consisting of all circular welded pipe, coextensive with the scope in these investigations ("standard pipe").

III. DOMESTIC INDUSTRY

Section 771(4) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product."¹⁴ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant

¹² 66 Fed. Reg. 33,227, 33,228 (June 21, 2001).

¹³ Petition, Vol. I at 8.

¹⁴ 19 U.S.C. § 1677(4)(A).

market, provided that adequate production-related activity is conducted in the United States.¹⁵ Based on our like product determination, we determine that there is a single domestic industry consisting of all domestic producers of standard pipe.¹⁶

IV. NEGLIGENCE

A. In General

The statute provides that imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.¹⁷ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.¹⁸ However, if the aggregate volume from all countries whose imports individually are below three percent exceeds seven percent, imports from those countries shall not be deemed negligible.¹⁹ The Commission is authorized to make "reasonable estimates on the basis of available statistics" of pertinent import levels for purposes of deciding negligibility.²⁰

The parties agree that official import statistics do not precisely match the scope of these investigations. Petitioners initially argued that standard pipe imports from Canada should be adjusted by subtracting nonsubject imports of mechanical tubing but subsequently disavowed that argument, arguing in their postconference brief that an accurate adjustment could not be made.²¹ Malaysian and South African respondents agree, however, with petitioners' initial argument.²² Malaysian respondents have alternately suggested that import totals should include line pipe, since dual-stenciled and multiple-stenciled line pipe

¹⁵ See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Inv. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 and n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG"), Invs. Nos. 701-TA-363-364 (Final) and Invs. Nos. 731-TA-711-717 (Final), USITC Pub. 2911, at (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

¹⁶ No domestic producer is a related party as defined in 19 U.S.C. § 1677(4)(B).

¹⁷ 19 U.S.C. § 1677(24)(A)(i)(I).

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

¹⁹ 19 U.S.C. § 1677(24)(A)(ii).

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

²¹ Petition, Vol. III at 5-6 and n.2; Petitioners' Postconference Brief at 13. Petitioners also argued that import data on Japan and Mexico also included nonsubject merchandise, but offered no method for adjusting for those imports. Id. at 5 n.2.

²² Malaysian Respondents' Postconference Brief at 6; South African Respondents' Postconference Brief at 6 and 8; Miller & Chevalier Submission of 6/28/2001 at Revised Exh. C.

intended for standard pipe applications are within the scope of these investigations.²³ Since precise data regarding dual-stenciled and multiple-stenciled line pipe imports by intended use are not available in the official statistics, Malaysian respondents have suggested using all line pipe imports as a reasonable estimate.²⁴

The Commission thus has been urged to look at four different data sets to determine whether subject imports from any of the five subject countries were negligible: 1) standard pipe imports; 2) standard pipe imports adjusted to subtract mechanical tubing from Canada; 3) standard plus line pipe imports; and 4) standard plus line pipe imports adjusted by subtracting mechanical tubing from Canada. Using official import statistics for the 12-month period from May 2000 to April 2001, the share (percent) of total subject imports from each of the five countries is as follows:

Country	No line pipe, No adjustment for Canada (Percent)	No line pipe, Adjustment for Canada (Percent)	Line pipe included, No adjustment for Canada (Percent)	Line pipe included, Adjustment for Canada (Percent)
China	16.0	17.9	14.4	16.0
Indonesia	1.7	1.9	2.0	2.2
Malaysia	2.5	2.7	2.2	2.4
Romania	1.8	2.0	1.6	1.8
South Africa	1.8	2.0	1.9	2.2
Total for Indonesia, Malaysia, Romania & South Africa	7.8	8.6	7.8	8.6 ²⁵

Regardless of which data set is used, the results are the same: subject imports from China are not negligible; subject imports for the 12-month period preceding the filing of the petition from Indonesia, Malaysia, Romania, and South Africa are below the three-percent threshold and thus individually negligible, but the total share of subject imports from those countries exceeds seven percent. Therefore we do not find subject imports from China, Indonesia, Malaysia, Romania, or South Africa to be negligible.

²³ Malaysian Respondents' Postconference Brief at 7-11.

²⁴ Malaysian Respondents' Postconference Brief at 10.

²⁵ CR at IV-5, PR at IV-4. Malaysian respondents alternately suggested that the Commission should rely on questionnaire data to determine negligibility. No useable export data were received from foreign producers in Indonesia. CR at VII-3, PR at VII-2. Using official import data for Indonesia, and questionnaire data for the other three countries, for the year 2000 the share of subject imports for the four negligible countries would be *** percent. (Subject imports from Indonesia, 23,563 short tons; exports from Malaysia, 11,632 short tons; exports from Romania, *** short tons; exports from South Africa, *** short tons; total, *** short tons; total of all imports, 1,089,847 short tons). CR at VII-3, VII-4, and VII-6 and Table IV-1, PR at VII-2, VII-3, and Table IV-1. Adjusting 2000 total imports to subtract nonsubject mechanical tubing from Canada would presumably increase that share.

V. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.²⁶ In assessing whether subject imports compete with each other and with the domestic like product,²⁷ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.²⁸

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.²⁹ Only a “reasonable overlap” of competition is required.³⁰

Because the petitions in the investigations concerning standard pipe from China, Indonesia, Malaysia, Romania, and South Africa were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule

²⁶ 19 U.S.C. § 1677(7)(G)(i).

²⁷ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” SAA, H.R. Rep. 103-316, vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

²⁸ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

²⁹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

³⁰ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

applies for purposes of these determinations.³¹ Therefore, we are required to determine whether there is a reasonable overlap of competition both among the subject imports from China, Indonesia, Malaysia, Romania, and South Africa and between the subject imports and the domestic like product.

B. Analysis

Fungibility. All responding producers indicated that subject imports from Indonesia, Malaysia, and South Africa were always interchangeable with the domestic like product.³² Eleven of the 12 who compared subject imports from Romania to the domestic like product found them always interchangeable, while one producer found them frequently interchangeable. Thirteen domestic producers compared subject imports from China to the domestic like product; 11 found them always interchangeable, one found them frequently interchangeable, and one found them sometimes interchangeable.³³

Responding importers also generally found subject imports and the domestic like product to be interchangeable. Most importers who made comparisons found subject imports from China, Indonesia, Malaysia, and South Africa to be always interchangeable with the domestic like product.³⁴ Importers found subject imports from South Africa to be always or frequently interchangeable with the domestic like product, while a number of importers found interchangeability more limited between the domestic like product and subject imports from China, Indonesia, and Malaysia.³⁵ Importers had greater reservations about subject imports from Romania. Importers were as likely to describe subject imports from Romania as never interchangeable with the domestic like product as they were to describe them as always interchangeable.³⁶

Chinese respondents argue that subject imports from China do not compete with the domestic like product or most other subject imports, since subject imports from China are directed to fencing and other less sensitive applications, markets which are of little interest to domestic producers.³⁷ However, the record indicates that the domestic like product was produced and sold for the same applications as were subject imports from China, including fencing.³⁸

Geographic Overlap. Domestically-produced standard pipe was sold throughout the U.S. market. Over 90 percent of all subject imports from Romania during the period of investigation entered the U.S. market through the Gulf region.³⁹ A substantial share of subject imports from each of the four other subject countries also entered the U.S. market through the Gulf region, including a majority of subject

³¹ These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

³² CR at Table II-1, PR at Table II-1.

³³ CR at Table II-1, PR at Table II-1.

³⁴ CR at Table II-1, PR at Table II-1.

³⁵ CR at Table II-1, PR at Table II-1.

³⁶ CR at Table II-1, PR at Table II-1.

³⁷ Chinese Respondents' Postconference Brief at 13-15.

³⁸ CR at I-4, PR at I-3; Petitioners' Postconference Brief at 8-9.

³⁹ Petition, Vol. III at Exh. 1.

imports from South Africa.⁴⁰ Significant shares of subject imports from China, Indonesia, and Malaysia entered the U.S. market through the East region and the West region as well.⁴¹ There is evidence from importer questionnaires that sales of subject imports, including subject imports from Romania, occur outside the Gulf region and throughout the U.S. market.⁴²

Channels of Distribution. Distributors were the primary purchasers of domestically-produced standard pipe, accounting for 94.5 percent of all U.S. sales during the period of investigation.⁴³ Similarly, a substantial majority of all subject imports from each country was sold to distributors during the period of investigation.⁴⁴

Simultaneous Presence. The domestic like product was present and available throughout the U.S. market throughout the period of investigation. Subject imports from every country except Romania were present in every single month of the period of investigation, and subject imports from every country were present throughout most of the latter part of the period of investigation.⁴⁵

Conclusion. Based on the foregoing, we find that a reasonable overlap of competition exists among subject imports and between subject imports and the domestic like product. The record contains evidence indicating that the fungibility of subject imports from Romania may be somewhat limited by quality differences, but the evidence also indicates that some degree of interchangeability between subject imports from Romania, other subject imports, and the domestic like product exists. The record indicates that subject imports from each of the five countries are largely interchangeable with each other and with the domestic like product. Similarly, the record indicates that subject imports and the domestic like product move in similar channels of distribution, are used in the same applications, and were simultaneously present in the U.S. market. We note that the record indicates that the Gulf region was an especially important region for subject imports, but that most subject imports were available in other regions of the U.S. market. Therefore, we have cumulated the volume and effect of subject imports from China, Indonesia, Malaysia, Romania, and South Africa for purposes of our material injury analysis.

VI. NO 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.⁴⁶ In making this determination, the Commission must consider the volume of subject 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.⁴⁷ The statute defines

⁴⁰ Petition, Vol. III at Exh. 1.

⁴¹ Petition, Vol. III at Exh. 1.

⁴² Petitioners' Postconference Brief at 10.

⁴³ CR at II-2, PR at II-1.

⁴⁴ CR at II-2, PR at II-1.

⁴⁵ Petition, Vol. III at Exh. 1.

⁴⁶ 19 U.S.C. §§ 1671b(a) and 1673b(a).

⁴⁷ 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

“material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴⁸ 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.⁴⁹ 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.”⁵⁰

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from China, Indonesia, Malaysia, Romania, and South Africa that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

Standard pipe is a commodity product, typically produced to common standards regarding materials, dimensions, and testing.⁵¹ Standard pipe is manufactured with similar processes and technologies throughout the world.⁵² It is used primarily in machinery, buildings, sprinkler systems, irrigation systems, and water wells.⁵³ Standard pipe may also be used for light load-bearing and mechanical applications, and for structural applications in general construction.⁵⁴ Most standard pipe, domestically-produced and subject imports alike, are sold to distributors rather than end users.⁵⁵

Demand for standard pipe is affected by overall economic activity and more particularly by demand in the construction sector.⁵⁶ Between 1998 and 1999 total apparent domestic consumption of standard pipe was essentially unchanged.⁵⁷ In 2000, however, total apparent domestic consumption of standard pipe increased sharply, rising by 17.6 percent.⁵⁸ Total apparent domestic consumption in 2000 was close to 2.5 million short tons, compared to 2.1 million short tons in 1998.⁵⁹

the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁴⁸ 19 U.S.C. § 1677(7)(A).

⁴⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁵¹ CR at I-7, PR at I-5.

⁵² CR at I-7, PR at I-5.

⁵³ CR at I-4, PR at I-3.

⁵⁴ CR at I-4, PR at I-3.

⁵⁵ CR at II-2, PR at II-1. During the period of investigation, internal consumption or transfers to related companies accounted for *** percent of total net sales by domestic producers. CR at Table VI-1, PR at Table VI-1. No party has argued that the captive production provision of the statute, 19 U.S.C. § 1677(7)(C), is applicable, and this level of internal transfers is not significant within the meaning of the statutory provision.

⁵⁶ CR at II-1, PR at II-1.

⁵⁷ CR at Table C-1, PR at Table C-1.

⁵⁸ CR at Table C-1, PR at Table C-1.

⁵⁹ CR at Table C-1, PR at Table C-1.

There are existing antidumping duty orders on imports of standard pipe from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey, as well as a countervailing duty order on standard pipe imports from Turkey.⁶⁰ Nonetheless, imports supply a significant portion of total apparent domestic consumption. Total imports of standard pipe accounted for more than a third of total apparent domestic consumption in each year of the period of investigation, rising from 33.7 percent in 1999 to 43.8 percent in 2000.⁶¹ The volume of nonsubject standard pipe imports rose steadily between 1998 and 2000. Nonsubject imports accounted for 25.9 percent of total apparent domestic consumption in 1998, and their market share rose to 33.0 percent by 2000.⁶²

Most domestic producers of standard pipe are non-integrated producers; they buy, rather than produce, the primary input for standard pipe, hot-rolled steel, on the spot market.⁶³ Hot-rolled steel accounts for between 45 and 70 percent of standard pipe production costs.⁶⁴ Hot-rolled steel prices have varied throughout the period of investigation. Hot-rolled prices fell in the latter part of 1998 and then began to rise in the second quarter of 1999.⁶⁵ Hot-rolled steel prices peaked in the second quarter of 2000 and fell thereafter, reaching an apparent low point for the period of investigation in the first quarter of 2001.⁶⁶ Falling hot-rolled steel prices tend to benefit non-integrated standard pipe-producers more than integrated pipe producers.⁶⁷

Domestic producers utilize two different types of technology to produce standard pipe. The continuous welding (CW) process and the electric resistance welding (ERW) process have similar energy and cost demands.⁶⁸ The ERW process is more common among domestic producers.⁶⁹

Domestic production capacity increased throughout the period of investigation, rising by 7.4 percent between 1998 and 2000.⁷⁰ Most domestic producers can and do produce other types of pipe.⁷¹ Although some finishing equipment is dedicated to standard pipe, firms may use the same equipment and same employees to make line pipe, oil country tubular goods, or mechanical pipe.⁷²

⁶⁰ Standard Pipe Sunset at 3.

⁶¹ CR at Table C-1, PR at Table C-1.

⁶² CR at Table C-1, PR at Table C-1.

⁶³ CR at VI-4, PR at VI-2

⁶⁴ CR at VI-5 n.6, PR at VI-5 n.6.

⁶⁵ CR at Table V-1, PR at Table V-1.

⁶⁶ CR at Table V-1, PR at Table V-1.

⁶⁷ Petition, Vol. III at 9 n.4.

⁶⁸ Tr. at 39 (Mr. Bussiere).

⁶⁹ Tr. at 39 (Mr. Bussiere).

⁷⁰ CR at Table C-1, PR at Table C-1.

⁷¹ CR at II-4, PR at II-3.

⁷² CR at II-4, PR at II-3.

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁷³

Total apparent domestic consumption for standard pipe declined by 0.8 percent between 1998 and 1999 before rising sharply in 2000, increasing from 2.1 million short tons in 1998 to nearly 2.5 million short tons in 2000.⁷⁴ Total apparent domestic consumption in the first quarter of 2001 was down 9.2 percent from the first quarter of 2000.⁷⁵ The volume of subject imports fluctuated during the period of investigation. Subject imports dropped by over 23 percent in 1999, falling from 182,398 short tons in 1998 to 139,468 short tons in 1999.⁷⁶ Subject import volume rebounded sharply in 2000, with the volume of subject imports nearly doubling to 268,869 short tons.⁷⁷ The cumulated volume of subject imports in the first quarter of 2001 was 46.9 percent higher than in the first quarter of 2000. Subject imports in 1998 accounted for 8.6 percent of total apparent domestic consumption. By 2000, that share reached 10.8 percent.⁷⁸ Subject imports accounted for 13.9 percent of total apparent domestic consumption in the first quarter of 2001, compared to 8.6 percent in the first quarter of 2000.

Therefore, we find the volume of subject imports to be significant.

C. Price Effects of the Subject Imports

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁷⁹

Generally, reported prices fluctuated within a narrow range during the period of investigation. Reported prices for domestically-produced product 1, the highest-volume product for which prices were gathered, fell from a peak in the first quarter of 1998 to a low in the third quarter of 1999,⁸⁰ then stabilized over the last five quarters.⁸¹ Prices for domestically-produced product 2 peaked in the second quarter of 1998 and fell irregularly thereafter, although prices in the first quarter of 2001 were not far below the 1998

⁷³ 19 U.S.C. § 1677(7)(C)(i).

⁷⁴ CR at Table C-1, PR at Table C-1.

⁷⁵ CR at Table C-1, PR at Table C-1.

⁷⁶ CR at Table C-1, PR at Table C-1.

⁷⁷ CR at Table C-1, PR at Table C-1.

⁷⁸ CR at Table C-1, PR at Table C-1.

⁷⁹ 19 U.S.C. § 1677(7)(C)(ii).

⁸⁰ CR at Table V-2, PR at Table V-2.

⁸¹ CR at Table V-2, PR at Table V-2.

peak.⁸² Prices for domestically-produced product 3 peaked much later, in the first quarter of 2000, and declined thereafter, with first quarter 2001 prices nearly reduced to the lows recorded in late 1999.⁸³ Despite these fluctuations, domestic prices stayed within fairly narrow ranges. For each product, the difference between the peak price and the price in the first quarter of 2001 was less than 10 percent.⁸⁴

Generally, subject imports undersold the domestic products by significant margins.⁸⁵ However, these margins typically remained stable during the period of investigation; some margins actually declined during the period of investigation.⁸⁶ Prices for subject imports were generally rising in 2000 while subject import volume was also rising.⁸⁷

We find no clear relationship between underselling by subject imports and fluctuations in domestic prices.⁸⁸ Domestic prices moved irregularly during the period of investigation, both rising and falling despite the persistence of underselling and the trend in the volume of cumulated subject imports. Domestic prices generally appear to reflect shifts in raw material costs and overall demand. Prices for hot-rolled steel, the primary input for standard pipe, peaked in mid-1998 and then fell through the first half of 1999. Prices for hot-rolled steel then rose again, peaking a second time in the second quarter of 2000, before sliding again.⁸⁹ The lowest prices for hot-rolled steel in the period of investigation occurred in the first quarter of 2001.⁹⁰ Similarly, overall demand weakened in 1999 before peaking in 2000; first quarter data for 2001 indicate that overall demand for standard pipe was lower than in the same period in 2000.⁹¹ As a final matter, we note the limited number of confirmed lost sales or lost revenue allegations.⁹² We thus find that subject imports have not depressed or suppressed domestic prices to a significant degree.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”⁹³ These factors include output, sales, inventories, capacity utilization, market share,

⁸² CR at Table V-2, PR at Table V-2.

⁸³ CR at Table V-2, PR at Table V-2.

⁸⁴ CR at Table V-2, PR at Table V-2.

⁸⁵ CR at Tables V-2-V-6, PR at Tables V-2-V-6.

⁸⁶ CR at Table V-2, PR at Table V-2.

⁸⁷ CR at Tables V-2, V-3, V-5, and V-6, PR at Tables V-2, V-3, V-5, and V-6.

⁸⁸ Both the domestic like product and the subject imports include a variety of products of differing sizes and qualities. CR at I-2, PR at I-2. Therefore we have relied on specific product/price comparisons rather than considering average unit values. See generally United States Steel Group v. United States, 96 F.3d 1352, 1363-64 (Fed. Cir. 1996).

⁸⁹ CR at Table V-1, PR at Table V-1.

⁹⁰ CR at Table V-1, PR at Table V-1.

⁹¹ CR at Table C-1, PR at Table C-1.

⁹² CR at Table V-7, PR at Table V-7.

⁹³ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury.

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 industry.”^{94 95}

The record in these investigations indicates that, by most economic indicators, the domestic industry performed well during the period of investigation. Total net sales, including internal consumption and related party transfers, were stable during the period, as were production and shipments.⁹⁶ Domestic production capacity increased throughout the period, rising 7.4 percent overall.⁹⁷ As a result, capacity utilization declined somewhat, falling from 58.3 percent in 1998 to 55.1 percent in 2000.⁹⁸ Inventories increased somewhat, rising from 13.9 percent of shipments in 1998 to 15.9 percent in 2000.⁹⁹ The number of production workers rose by 3.2 percent between 1998 and 2000.¹⁰⁰ Hours and wages also rose, by 10.8 percent and 15.4 percent, respectively.¹⁰¹

Between 1998 and 2000, the per-unit cost of goods sold declined, and the ratio of cost of goods sold to sales remained fairly steady.¹⁰² Operating income as a share of sales fell overall but only to 8.3 percent in 2000.¹⁰³ Net income remained positive throughout the period, including the first quarter of 2001.¹⁰⁴ Capital expenditures fell in both 1999 and 2000.¹⁰⁵ Research and development expenses were down somewhat between 1998 and 2000.¹⁰⁶

Although most of the domestic industry’s performance indicators declined in the first quarter of 2001 compared to the same time period in 2000, these declines occurred in the context of a decline in the overall economy and total apparent domestic consumption of standard pipe. Despite these declines, however, the domestic industry was still reasonably profitable.

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).

⁹⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁹⁵ 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 estimated dumping margins as follows: China, from 105.32 percent to 134.12 percent; Indonesia, from 24.99 percent to 29.38 percent; Malaysia, 20.2 percent; Romania, from 122.12 percent to 149.63 percent; and South Africa, 81.7 percent. 66 Fed. Reg. 33,227 *et seq.* (June 21, 2001).

⁹⁶ CR at Tables VI-1 and C-1, PR at Tables VI-1 and C-1.

⁹⁷ CR at Table C-1, PR at Table C-1.

⁹⁸ CR at Table C-1, PR at Table C-1.

⁹⁹ CR at Table C-1, PR at Table C-1.

¹⁰⁰ CR at Table C-1, PR at Table C-1.

¹⁰¹ CR at Table C-1, PR at Table C-1.

¹⁰² CR at Table C-1, PR at Table C-1.

¹⁰³ CR at Table C-1, PR at Table C-1.

¹⁰⁴ CR at Table VI-1, PR at Table VI-1.

¹⁰⁵ CR at Table VI-6, PR at Table VI-6.

¹⁰⁶ CR at Table VI-6, PR at Table VI-6.

In light of our findings that subject imports have not suppressed or depressed domestic prices to a significant degree, we find no reasonable indication that subject imports have had a significant adverse impact on the domestic industry.

VII. CUMULATION FOR PURPOSES OF ANALYZING THE THREAT OF MATERIAL INJURY

Section 771(7)(H) of the Act permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of subject imports for purposes of conducting its threat analysis.¹⁰⁷ In addition to the factors considered in the cumulation for present injury analysis, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.¹⁰⁸

We exercise our discretion to cumulate subject imports from Indonesia, Malaysia, Romania, and South Africa for purposes of assessing threat of material injury in these preliminary determinations. We do not exercise our discretion to cumulate imports from China with those from other subject countries. The volume of subject imports from China considerably is considerably larger than the volume of imports from other subject countries, and in the most recent period grew rapidly compared to the other subject imports. Between 1998 and 2000, subject imports from China increased by 68.5 percent, from 97,246 short tons to 163,866 short tons.¹⁰⁹ Subject imports from China in the first quarter of 2001 were more than double the level recorded in the first quarter of 2000.¹¹⁰ By the first quarter of 2001, subject imports from China alone accounted for 10.5 percent of total apparent domestic consumption.¹¹¹

Volume trends for other subject imports were more mixed and differed significantly from those of subject imports from China. Subject imports from Romania were actually lower in both 1999 and in 2000 than in 1998, in contrast to the trends in subject imports from China.¹¹² Subject imports from Romania were higher in the first quarter of 2001 than in the first quarter of 2000.¹¹³ Subject imports from South Africa were only 1.7 percent higher in 2000 than in 1998, despite the robust increase in total apparent domestic consumption during that period. In the first quarter of 2001, subject imports from South Africa were down 5.7 percent from the same time period in 2000. Subject imports from both Indonesia and Malaysia increased significantly between 1998 and 2000, although import levels from each country were

¹⁰⁷ See Kern-Liebers v. United States, 36 F. Supp.2d 394 (Ct Int'l Trade 1999).

¹⁰⁸ See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

¹⁰⁹ CR at Table C-1, PR at Table C-1.

¹¹⁰ CR at Table C-1, PR at Table C-1.

¹¹¹ CR at Table C-1, PR at Table C-1.

¹¹² CR at Table C-1, PR at Table C-1.

¹¹³ Imports that entered the U.S. market in the first quarter of 2001 included orders that had been made as long ago as 1999 and delayed by production problems of the Romanian producer. Romanian Respondents' Postconference Brief at 14.

significantly lower than subject imports from China. In the first quarter of 2001, subject imports from Indonesia and Malaysia declined by 45 percent and 64 percent, respectively, from the levels recorded in the first quarter of 2000.

Import data clearly indicate that the volume of subject imports from China is following a different trend than the other four countries. This is particularly evident in the first quarter of 2001, when total apparent domestic consumption declined. Therefore, we do not cumulate subject imports from China with subject imports from the other countries. In light of the similarity in the import trends and volume levels for Indonesia, Malaysia, Romania, and South Africa, we exercise our discretion to cumulate imports from these countries in analyzing the threat of material injury. We analyze the threat of material injury by reason of subject imports from China alone below.

VIII. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM INDONESIA, MALAYSIA, ROMANIA, AND SOUTH AFRICA

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹¹⁴ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹¹⁵ In making our determination, we have considered all factors that are relevant to this investigation.¹¹⁶

Subject imports into the U.S. market from the four subject countries as a whole were lower in the first quarter of 2001 than in the first quarter of 2000, a trend that does not support a finding that likely substantial increases in imports are imminent.¹¹⁷ The market share of cumulated subject imports was also lower in the first quarter of 2001 than in the first quarter of 2000.¹¹⁸

Production capacity in the subject countries of Indonesia, Malaysia, Romania, and South Africa declined *** between 1998 and 2000 and is projected to ***.¹¹⁹ Capacity utilization is slated to rise in

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

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

¹¹⁶ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies is inapplicable to this antidumping investigation, as is Factor VII regarding raw and processed agricultural products.

¹¹⁷ CR at Table C-1, PR at Table C-1.

¹¹⁸ CR at Table C-1, PR at Table C-1.

¹¹⁹ CR at VII-3-VII-6, PR at VII-2-VII-3. The Commission received questionnaire responses from all subject producers in Romania and South Africa and received questionnaire responses from four of five producers in Malaysia. CR at VII-3-VII-6, PR at VII-2-VII-3. The Commission received a questionnaire response from one producer in Indonesia. CR at VII-3, PR at VII-2.

2001 and 2002.¹²⁰ We are aware that product shifting is a possibility for these subject foreign producers,¹²¹ and that there is some uncertainty regarding the true extent of capacity available in these countries, especially Indonesia and Malaysia.¹²² Nonetheless, despite some increase in volume, cumulated subject imports from these four countries accounted for a modest and steady share of total domestic apparent consumption. Cumulated subject imports accounted for 4.1 percent of total apparent domestic consumption in 1998 and for 4.2 percent in 2000.¹²³ Cumulated subject imports from these four countries were lower in the first quarter of 2001 than in the first quarter of 2000 and accounted for only 3.3 percent of total apparent domestic consumption. Foreign producers in these four countries have shown little inclination to turn available excess capacity toward production for the U.S. market.

The United States is not a primary market for producers in these four countries. Exports to the United States accounted for only *** percent of total cumulated shipments in 1998 and *** percent in 2001.¹²⁴ The domestic industries in Malaysia and South Africa in particular are ***.¹²⁵

While there is available capacity in each of the subject countries, as well as inventories of standard pipe, both inventories and unused capacity were lower in 2000 than in 1999.¹²⁶ Inventories held by distributors in the United States were *** short tons at the end of the first quarter of 2001, or *** percent of total apparent domestic consumption, down from *** short tons at the end of 2000.¹²⁷ Standard pipe from Romania is subject to an antidumping finding in Canada, but there are no other trade restrictions on standard pipe from the subject countries.¹²⁸

We also find it unlikely that subject imports from these four countries will enter the U.S. market at prices likely to suppress or depress domestic prices to any significant degree. As noted above, underselling has been persistent, but it has had little apparent adverse effect on domestic prices. Also, underselling margins narrowed throughout 2000. We note also the lack of confirmed lost sales and lost revenue allegations regarding subject imports from these four countries.

In light of recent declines in capacity and unused production capacity and decreases in recent shipments to the United States, along with a general lack of dependence on the U.S. market, we find no reasonable indication of threat of material injury by reason of cumulated subject imports from Indonesia, Malaysia, Romania, and South Africa.

IX. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA

¹²⁰ CR at VII-3-VII-6, PR at VII-2-VII-3

¹²¹ However, Malaysian respondents argue that product shifting, while theoretically possible, is difficult practically. Malaysian Respondents' Postconference Brief at 12.

¹²² CR at VII-2-VII-4, PR at VII-2-VII-3.

¹²³ CR at Table C-1, PR at Table C-1.

¹²⁴ CR at VII-3-VII-6, PR at VII-2-VII-3

¹²⁵ CR at VII-3 and VII-6, PR at VII-2-VII-3.

¹²⁶ CR at VII-3-VII-6, PR at VII-2-VII-3.

¹²⁷ CR at VII-3-VII-6, PR at VII-2-VII-3.

¹²⁸ CR at VII-3-VII-6, PR at VII-2-VII-3.

Subject imports from China more than doubled between 1999 and 2000, rising from 4.6 percent of total apparent domestic consumption in 1998 to 6.6 percent in 2000.¹²⁹ In the first quarter of 2001, subject imports from China accounted for 10.5 percent of total apparent domestic consumption, up from only 4.6 percent during the same time period in 2000.¹³⁰

These rapid increases in the volume of subject imports from China have occurred at a time when the domestic industry in China was already operating at relatively high rates of capacity utilization.¹³¹ In 2000, the industry in China was reportedly operating at 90 percent capacity utilization, yet the industry was able to more than double its exports to the U.S. market.¹³² Furthermore, foreign producers in China estimate that in 2001 there will be approximately 78,375 short tons of unused capacity in China.¹³³ That figure represents nearly a 50 percent potential increase over 2000 imports from China. That figure also represents a minimum of the capacity actually available to produce for the U.S. market given producers' ability to shift between standard pipe and other pipe production.¹³⁴ Furthermore, end-of-period inventories grew steadily throughout the period of investigation, and at the end of 2000 producers in China had an additional 69,870 short tons of inventory on hand.¹³⁵

The standard pipe industry in China is at least somewhat export-oriented. In 2000, exports accounted for a third of total shipments.¹³⁶ The United States was the primary market for those exports, accounting for nearly 65 percent of all exports in 2000.¹³⁷

The recent increase in subject imports from China occurred notwithstanding declining overall demand in the U.S. market. Total apparent domestic consumption was 9.2 percent lower in the first quarter of 2001 compared to the same time period in 2000, and shipments of the domestic like product, other subject imports, and nonsubject imports also declined.¹³⁸ Therefore, we find the likely volume of subject imports to be significant.

In our negative present injury determination above, we noted the absence of any clear adverse relationship between subject import prices and domestic prices. We also noted that underselling margins, while persistent, generally narrowed in the later portion of the period of investigation. In contrast, the

¹²⁹ CR at Table C-1, PR at Table C-1.

¹³⁰ CR at Table C-1, PR at Table C-1.

¹³¹ CR at VII-1, PR at VII-1. The Commission received questionnaires from nine producers in China. These producers account for approximately 80 percent of imports from China. *Id.* In our subsequent discussion of threat of injury from China, we are mindful that some uncertainty exists regarding the true capacity of Chinese producers.

¹³² CR at VII-1, PR at VII-1.

¹³³ CR at VII-1, PR at VII-1.

¹³⁴ Chinese respondents were particularly skeptical of the capacity figures submitted by domestic respondents, given the ease of product shifting. Tr. at 57 (Mr. Sailer); Chinese Respondents' Postconference Brief at 22-23. Chinese respondents gave no indication that product shifting was in some way easier or more practical for domestic producers than it would be for subject producers in China.

¹³⁵ CR at VII-2, PR at VII-1.

¹³⁶ CR at VII-2, PR at VII-1.

¹³⁷ CR at VII-2, PR at VII-1.

¹³⁸ CR at Table C-1, PR at Table C-1.

underselling margin for product 1 imports from China, the largest volume product category for which pricing data were obtained, widened in the first quarter of 2001, at the same time that imports were increasing notably.¹³⁹ Given the likely increase in volume and widening underselling by subject imports, we would expect subject imports from China likely to have significant effects on domestic prices.¹⁴⁰

We noted above that the domestic industry generally experienced good economic performance throughout the period of investigation, but that some weakness was apparent in the first quarter of 2001. We note that the weakness occurred at a time when overall demand was weakening, but subject imports from China were growing. Therefore we find that a substantial increase in the volume of LTFV imports from China is likely and that material injury by reason of those imports would occur.

CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of standard pipe from China that are allegedly sold in the United States at less than fair value. We determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of standard pipe from Indonesia, Malaysia, Romania, and South Africa that are allegedly sold in the United States at less than fair value.

¹³⁹ CR at Table V-2, PR at Table V-2.

¹⁴⁰ We intend to explore more fully the effect of subject imports from China on domestic prices in any final phase of this investigation.

DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG AND COMMISSIONER DENNIS M. DEVANEY

Based upon the record in these preliminary phase investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of circular welded non-alloy steel pipe (“standard pipe”) from China, Indonesia, Malaysia, Romania, and South Africa that are allegedly sold in the United States at less than fair value (“LTFV”). We also note that there are fundamental issues raised and unanswered in the limited record of these preliminary phase investigations which warrant affirmative determinations and the continuation of these investigations into the final phase. These unresolved issues include the following: the definition of the appropriate domestic like product; questions regarding the sufficiency and adequacy of price data received in response to questionnaires; and the role and impact of non-subject imports on the U.S. market.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

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

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

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

The decision regarding the appropriate domestic like product(s) in an investigation is a factual

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

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

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

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

B. Product Description

Commerce’s notice of initiation defines the imported merchandise within the scope of these investigations as:

The scope of these investigations covers certain welded carbon quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe.

Standard pipes and tubes are intended for the 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. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. It may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells, and for

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

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

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

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single 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).

structural applications in general construction. It primarily is made to American Society for Testing and Materials (ASTM) A-53, A-135, and A-795 specifications, but can also be made to the British Standard (BS)-1387 specification.

Structural pipe is intended for use in the construction of bridges and buildings, and general structural applications. It also can be used for making steel scaffolding and for piling applications. It primarily is made to ASTM A-500 and A-252 specifications.

Hence, specifically included within the scope of these petitions are products stenciled to the ASTM standards A-53, A-135 A-795, A-120, A-500, A-252, or their equivalents. Standard and structural pipe products may also be produced to proprietary specifications rather than to industry standard. This is often the case with fence tubing, for example.

The scope does not include boiler tubes, pressure tubing, mechanical tubing, finished conduit, oil country tubular goods (OCTG), and line pipe. However, with regard to these excluded products, if petitioners or other interested parties provide to the Department reasonable grounds to believe or suspect that the products are being used in a standard or structural application, the Department may instruct the U.S. Customs Service (Customs) to require end-use certifications. In addition, line pipe meeting the American Petroleum Institute (API) line pipe specification is excluded from the scope of these investigations, and any resultant antidumping duty orders, if covered by the scope of another antidumping duty order from the same country.

The pipe products that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.30.10 and 7306.30.50. This petition also covers dual-certified A-53/API or single certified pipe that enters the United States if it is used in, or intended for use in, standard pipe or structural pipe applications. Such certified pipe may include API-5L or API-5L X-42 pipe. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.¹⁰

C. Domestic Like Product

A crucial like product issue in these investigations is whether the domestic like product should be defined to include “multiple-stenciled” pipe, as the Commission did in the 1996 investigations of standard pipe from Romania and South Africa. Multiple-stenciled pipe is certified to meet both ASTM certification standards for standard pipe applications and API certification standards for line pipe applications. Only multiple-stenciled pipe actually used in standard pipe applications is within Commerce’s scope determinations in the pending investigations.

It is apparent that multiple-stenciled pipe actually used in standard pipe applications should be included in the same like product with single-stenciled standard pipe. However, it is not clear whether multiple-stenciled pipe not used in standard pipe applications should also be included in the same

¹⁰ 66 Fed. Reg. 33,227, 33,228 (June 21, 2001).

domestic like product with single-stenciled standard pipe and multiple-stenciled pipe actually used in standard pipe applications.¹¹

In the present investigations, Commerce's scope is similar to that relied upon in the 1996 investigations in which the Commission included multiple-stenciled line pipe regardless of intended use. While this supports a similar like product determination in these investigations, there are no data on the record regarding multiple-stenciled pipe not used in standard pipe applications. Importantly, the absence of such data would raise significant American Lamb issues if we were to follow Commission practice and define the domestic like product to also include multiple-stenciled pipe not used in standard pipe applications. For purposes of these preliminary investigations, we therefore define the domestic like product as standard pipe, consistent with Commerce's scope. We note that the unresolved question of whether to include multiple-stenciled pipe regardless of uses in the domestic like product further supports affirmative determinations, particularly when to not do so departs from Commission practice.

D. Domestic Industry and Related Parties

In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.¹² Based on our definition of the domestic like product, we define the domestic industry to include all domestic producers of standard pipe as defined in Commerce's scope.

¹¹ We note that the Commission recently considered the like product issue for standard pipe in the July 2000 sunset reviews of standard pipe from Brazil, India, Korea, Mexico, Taiwan, Thailand, Turkey, and Venezuela. In those investigations, however, the Commission did not squarely address the issue of whether to include multiple-stenciled pipe within the domestic like product. In addition, some of the of the older orders within those grouped sunset reviews did not expressly exclude multiple-stenciled pipe products that were expressly excluded from other, later orders within the sunset review grouping. In contrast, in the 1996 investigations of standard pipe from Romania and South Africa, Commerce's scope specifically included multiple-stenciled pipe products used in standard pipe applications. We further note that as a general practice the Commission has tended to be less rigorous in its like product analysis in review investigations than in original investigations (given that the Commission is directed to use as its starting point in sunset review investigations its like product determination in the related original investigation). We therefore do not view the like product determination in the July 2000 review investigations as controlling the like product issues raised in these investigations.

¹² See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir.1996).

III. CUMULATION¹³

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.¹⁴ In assessing whether subject imports compete with each other and with the domestic like product,¹⁵ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.¹⁶

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.¹⁷ Only a “reasonable overlap” of competition is required.¹⁸

¹³ We find that each of the negligibility methodologies put forth by the parties indicates that subject imports from each of the subject countries are not negligible for purposes of our injury analysis, *i.e.*, subject imports from China individually exceed the three percent statutory threshold while the combined shares of the remaining countries, although individually below the three percent threshold, exceed 7.0 percent of total imports in the aggregate. CR at IV-4-IV-5, PR at IV-1-IV-4.

¹⁴ 19 U.S.C. § 1677(7)(G)(i).

¹⁵ The Uruguay Round Agreements Act (URAA) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 316, 103d Cong., 2d Sess. at 848 (1994), *citing*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

¹⁶ *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).

¹⁷ *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

¹⁸ *See* Goss Graphic System, Inc. v. United States, 33 F. Supp.2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping

B. Analysis

We cumulate the subject imports from China, Indonesia, Malaysia, Romania, and South Africa for purposes of our analysis of present material injury. The petitions in these investigations were filed on the same day. Based on the record in these preliminary investigations, we find that there is a reasonable overlap of competition among imports from each of the subject countries and between subject imports and the domestic like product.

First, we find there is a reasonable degree of fungibility between the subject imports and the domestic like product. Both producers and importers generally agree that subject imports and the domestic like product are interchangeable.¹⁹ The one exception is the fungibility of Romanian subject imports; three importers reported that the Romanian product is never interchangeable with the domestic like product.²⁰ However, an equal number of importers reported that the Romanian subject imports were interchangeable and two additional importers found the products somewhat interchangeable.²¹

Second, the record indicates that there is geographic overlap among subject imports and the domestic like product. Although subject import shipments are concentrated in the Gulf region of the United States, this area is also an important sales region for the domestic like product.²² In addition, a substantial portion of subject imports from each subject country entered the United States through the Eastern region of the country and a substantial share of subject imports from China, Indonesia, and Malaysia entered the United States through the Western region.²³ Accordingly, we find that there is a geographic overlap in sales among the subject imports and the domestic like product.

Third, imports from each of the subject countries and the domestic like product were sold primarily to distributors, and therefore moved in similar channels of distribution.²⁴

And fourth, both domestically-produced standard pipe and subject imports from each of the subject countries were present in the United States throughout at least the latter part of the period of investigation.²⁵ Subject imports from five of the subject countries were present in every month of the period of investigation.²⁶

We therefore find that there is a reasonable overlap of competition among the subject merchandise from China, Indonesia, Malaysia, Romania, and South Africa, and between subject imports and the domestic product. Consequently, we cumulate subject imports from China, Indonesia, Malaysia, Romania, and South Africa for purposes of our preliminary determinations.

markets are not required.”).

¹⁹ CR and PR at Table II-1.

²⁰ CR and PR at Table II-1.

²¹ CR and PR at Table II-1.

²² Petition, Vol. III at Exh. 1.

²³ Petition, Vol. III at Exh. 1.

²⁴ Petition, Vol. III at Exh. 1.

²⁵ Petition, Vol. III at Exh. 1.

²⁶ Petition, Vol. III at Exh. 1.

IV. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS²⁷

In the preliminary phase of an antidumping duty investigation, 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.²⁸ In making this determination, the Commission must consider the volume of subject 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.²⁹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³⁰ 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.³¹ 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.”³²

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from China, Indonesia, Malaysia, Romania, and South Africa.

A. Conditions of Competition

We find several conditions of competition pertinent to the U.S. market for standard pipe.

Standard pipe is a commodity product³³ typically produced following American Society for Testing and Materials and/or British Standard specifications.³⁴ The primary customers for this pipe are distributors/service centers, whose inventory management decisions largely impact price.³⁵ When

distributors expect prices to rise, they stockpile inventories.³⁶ When they expect prices to fall, they sell off

²⁷ We note that only a limited number of parties responded to the Commission’s questionnaires, and those that did respond, in many instances, provided incomplete data regarding many of the key statutory factors to be considered by the Commission in assessing volume, price, and impact. Therefore, given the American Lamb standard, based on the limited record, several important issues before us cannot be resolved. Accordingly, we believe negative determinations would be premature at this stage of the proceedings.

²⁸ 19 U.S.C. §1673b(a).

²⁹ 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).

³⁰ 19 U.S.C. § 1677(7)(A).

³¹ 19 U.S.C. § 1677(7)(C)(iii).

³² 19 U.S.C. § 1677(7)(C)(iii).

³³ Petitioner’s Post-Conference Brief at 2.

³⁴ CR at I-4, PR at I-4.

³⁵ CR at V-1, PR at V-1.

³⁶ Petition, Vol. III at 7.

inventories.³⁷

Standard pipe consists of hot-rolled steel that has been shaped into a circular pipe and welded together.³⁸ Only a few U.S. producers manufacture their own hot-rolled steel.³⁹ The primary practice for buying hot-rolled steel by the domestic industry has been to purchase it on the spot market.⁴⁰

There are two types of production methods used to produce standard pipe: continuous welding and electric resistance welding (“ERW”).⁴¹ Both methods are energy-intensive, and use natural gas as an energy source.⁴² The ERW process uses electricity in addition to natural gas.⁴³ The primary costs of manufacturing standard pipe are two-fold: hot-rolled steel and energy in the form of natural gas and/or electricity.⁴⁴ The prices of electricity and natural gas grew dramatically in 2000 and have only slightly stabilized in 2001.⁴⁵ As of the first quarter of 2001, the average price of natural gas was more than twice its pre-2000 average price.⁴⁶ The quarterly prices of hot-rolled steel reveal a great deal of volatility for this product.⁴⁷

Domestic producers can and do use their standard pipe production lines to produce other types of pipe.⁴⁸ However, domestic producers reportedly cannot easily shift production to other types of pipe.⁴⁹ Production shifting is alleged to be a gradual process requiring capital expenditures, such as the purchase of finishing equipment.⁵⁰

U.S. demand is closely tied to construction projects and the state of the U.S. economy.⁵¹ Domestic demand showed little to no growth from 1998 to 1999.⁵² In 2000, demand increased significantly as construction activities increased.⁵³ In 2001, demand has dropped off as the economy has slowed.⁵⁴

Both U.S. producers and importers of standard pipe from subject countries sell principally to distributors/service centers, with a small percentage sold to end-users.⁵⁵ U.S. producers shipped 94.5

³⁷ Id.

³⁸ CR at I-5-6, PR at I-4-5.

³⁹ Tr. at 41 & 51.

⁴⁰ Tr. at 42 (Schagrin).

⁴¹ CR at I-5, PR at I-4.

⁴² Tr. at 37-39.

⁴³ Id.

⁴⁴ Petitioners’ Postconference Brief at 17-19.

⁴⁵ Petitioners’ Postconference Brief at 18.

⁴⁶ Petitioners’ Postconference Brief at 19.

⁴⁷ CR and PR at Figure V-6.

⁴⁸ CR at II-4, PR at II-3.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ CR at II-11, PR at II-8.

⁵² CR and PR at Figure II-2.

⁵³ Id.

⁵⁴ Id.

⁵⁵ CR at V-1, PR at V-1.

percent of their total U.S. sales to distributors, while U.S. importers made 99.5 percent of their sales to distributors.⁵⁶ Both U.S. producers and responding importers make most of their sales on the spot market.⁵⁷

B. Volume

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁵⁸

Over the POI, the cumulated volume of subject imports increased from 182,398 short tons in 1998 to 268,869 short tons in 2000.⁵⁹ Between the interim periods, the volume continued to increase, from 53,046 short tons in interim (January-March) 2000 to 77,949 short tons in interim 2001.⁶⁰ As a result of the increase in subject imports, domestic producers experienced a loss of market share during a period of increased apparent U.S. consumption, 1998 to 2000.⁶¹ Thus, subject producers, in part, prevented the domestic industry from taking full advantage of a growing U.S. market during an upturn in the business cycle.⁶² Furthermore, in interim 2001, as apparent U.S. consumption declined, subject imports’ share of the U.S. market continued to grow.⁶³

The record further indicates that from 1998 through 2000, non-subject imports also increased their share of apparent U.S. consumption.⁶⁴ However, non-subjects’ share of apparent U.S. consumption declined slightly between the interim periods.⁶⁵ The record therefore indicates that from 1998 through 2000, both subject imports and non-subject imports increased market share at the same time as domestic producers lost market share.⁶⁶ Importantly, the rapid decline in domestic producers’ market share between the interim periods is clearly attributable to the gains in apparent U.S. consumption by subject imports.

Accordingly, we find the volume of subject imports, both in absolute terms and relative to apparent U.S. consumption, to be significant. We further note that given the behavior of non-subject imports over the POI, and recognizing that there is only a limited record in this preliminary phase of the investigations,

⁵⁶ CR at II-2, PR at II-1.

⁵⁷ CR at V-9, PR at V-7-8.

⁵⁸ 19 U.S.C. § 1677(7)(C)(i).

⁵⁹ CR and PR at Table IV-1.

⁶⁰ CR and PR at Table IV-1.

⁶¹ CR and PR at Table IV-1. Domestic producers’ share of apparent U.S. consumption declined from 65.5 percent in 1998 to 56.2 percent in 2000. Id. Domestic market share further declined from 61.0 percent in interim 2000 to 56.4 percent in interim 2001. Id. Apparent U.S. consumption increased from 2,130,626 short tons in 1998 to 2,486,429 short tons in 2000, but then declined from 615,723 short tons in interim 2000 to 559,236 short tons in interim 2001. Id.

⁶² CR and PR at Table IV-1.

⁶³ CR and PR at Table IV-1.

⁶⁴ CR and PR at Table IV-1. Non-subjects’ share of apparent U.S. consumption increased from 25.9 percent in 1998 to 33.0 percent in 2000. Id.

⁶⁵ CR and PR at Table IV-1. Between the interim periods, non-subject imports’ market share declined from 30.4 percent in interim 2000 to 29.6 percent in interim 2001. Id.

⁶⁶ CR and PR at Table IV-1.

final investigations would provide the opportunity to more adequately assess the role of both subject imports and non-subject imports in the U.S. market.

C. Price

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

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

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁶⁰

As set forth in the Commission’s staff report, the quantities of standard pipe involved in the reported price data for the domestic like product and subject imports were limited.⁶¹ Price data based upon such quantities are therefore of limited probative value. Nonetheless, the record indicates that subject imports undersold the domestic like product in 67 out of 72 instances where direct price comparisons were possible, by margins ranging from *** to *** percent.⁶² In addition, subject import average unit values (“AUVs”) were consistently priced well below AUVs for both the domestic like product and non-subject imports throughout the POI.⁶³

The record also indicates that domestic prices displayed a falling trend in the period from the middle of 1998 into much of 2000.⁶⁴ In addition, all reported domestic products were priced lower in the first quarter of 2001 than in the first quarter of 1998.⁶⁵

Although the record is limited at this stage of the proceedings, we nonetheless find, based in large part upon the shift in market share from the domestic like product to subject imports and the numerous instances of underselling, that subject imports are having significant negative price effects on the domestic like product. We further note that given our recognition that the quantities of standard pipe involved in the reported price data for the domestic like product and subject imports are limited, final investigations would provide the opportunity to more adequately assess the price effects of subject imports, as well as the role of non-subject imports, energy costs, and fluctuating hot-rolled prices on prices for the domestic like product.

D. Impact on the Domestic Industry

In examining the impact of the subject imports on the domestic industry, we consider all relevant

⁶⁰ 19 U.S.C. § 1677(7)(C)(ii).

⁶¹ CR at V-30, PR at V-15.

⁶² CR and PR at Tables V-2-V-6.

⁶³ We recognize the limited probative value of AUVs in these investigations given the varied mix of standard pipe products.

⁶⁴ CR and PR at Tables V-2-V-6.

⁶⁵ CR and PR at Tables V-2-V-6.

economic factors that bear on the state of the industry in the United States.⁶⁶ 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.”^{67 68 69}

The record indicates that over the POI, nearly every important indicator of the health of the domestic industry (with the exception of production capacity and shipments) trended downward, with all trends accelerating downward between the interim periods. Importantly, domestic producers’ operating margins, although positive, declined from 10.0 percent in 1998 to 8.3 percent in 2000, and then fell to 6.7 percent in interim 2001, compared to 8.2 percent in interim 2000.⁷⁰ In addition, domestic producers’ end-of-period inventories have shown a steady increase from 198,034 short tons in 1998 to 228,135 short tons in 2000.⁷¹ Inventories then increased from 203,322 short tons in interim 2000 to 244,473 short tons in interim 2001.⁷² Although domestic industry employment indicators trended upward from 1998 to 2000, recent employment trends have shown a dramatic drop, with 2,843 domestic workers and 1,677,000 hours worked in interim 2000 falling to 2,584 workers and 1,256,000 hours worked in the first quarter of 2001.⁷³

The record further indicates that some domestic producers have either exited the industry or mothballed productive facilities. For example, *** opened a new standard pipe facility in 2001, but the company was subsequently forced to exit the domestic industry due to ***.⁷⁴ Similarly, domestic

producer *** was forced to close a continuous welding pipe mill and *** recently closed two welded pipe plants.⁷⁵

⁶⁶ 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.”)

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

⁶⁸ 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).

⁶⁹ Commissioner Bragg notes that she does not ordinarily consider the magnitude of dumping to be of particular significance in evaluating the effects of subject imports on the domestic products. 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); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

⁷⁰ CR and PR at Table C-1.

⁷¹ CR and PR at Table III-1.

⁷² CR and PR at Table C-1.

⁷³ Tr. at 58-9 (Sailer).

⁷⁴ Petitioners’ Postconference Brief at 29 & Exhibit 16.

⁷⁵ Petitioners’ Postconference Brief at 28, n.20.

Consequently, the price effects of the significant volume of subject imports have led to declining industry operating performance. We therefore conclude, for purposes of these preliminary determinations, that subject imports are having a significant adverse impact on the domestic industry. Accordingly, we determine that there is a reasonable indication of material injury by reason of cumulated subject imports.

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of circular welded non-alloy steel pipe from China, Indonesia, Malaysia, Romania, and South Africa that are allegedly sold in the United States at less than fair value.