

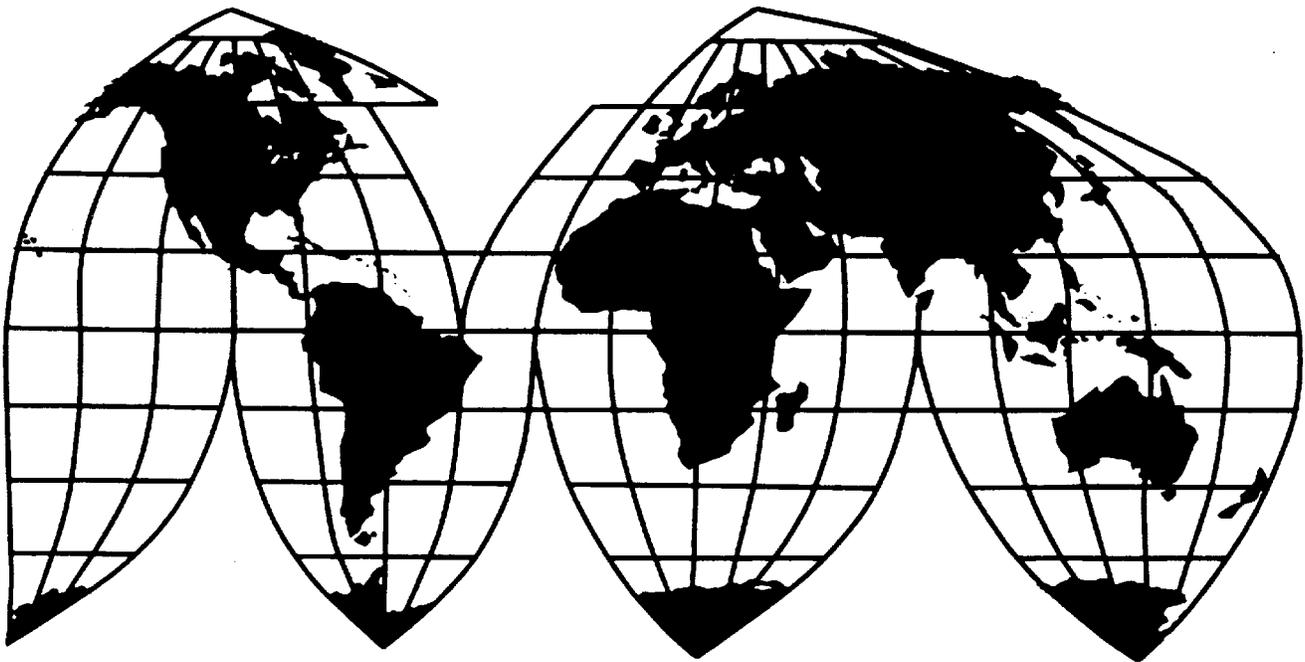
Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico (Views on Remand)

Investigation Nos. 701-TA-364 (Review) (Remand)
and 731-TA-711 and 713-716 (Review) (Remand)

Publication 3795

September 2005

U.S. International Trade Commission



U.S. International Trade Commission

COMMISSIONERS

Stephen Koplan, Chairman
Deanna Tanner Okun, Vice Chairman
Jennifer A. Hillman
Charlotte R. Lane
Daniel R. Pearson
Shara L. Aranoff

Robert A. Rogowsky
Director of Operations

Staff assigned

Peter Sultan, *Office of the General Counsel*

**Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436

www.usitc.gov

Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico (Views on Remand)

Investigation Nos. 701-TA-364 (Review) (Remand)
and 731-TA-711 and 713-716 (Review) (Remand)



Publication 3795

September 2005

RESPONSE OF THE COMMISSION TO REMAND ORDER

By an order dated April 5, 2005, the U.S. Court of International Trade remanded the Commission's affirmative determinations in *Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico*, Inv. Nos. 701-TA-364 (Review) and 731-TA-711, and 713-716 (Review), USITC Pub. 3434 (June 2001).¹ The Court referred to its holding in *Siderca, S.A.I.C. v. United States*, Slip Op. 04-133 (Oct. 27, 2004),² and remanded "for clarification regarding the standard of 'likeness' employed, and, if an improper standard was used, reconsideration of the review in light of the proper standard."

The Commission hereby provides the following clarification in response to the Court's April 5, 2005 order. The "likely" standard has been the subject of several decisions by the Court,³ and of several Commission remands.⁴ The Commission has never applied a standard that

¹ On appeal is the Commission's affirmative determination in the sunset review of casing and tubing (oil country tubular goods other than drill pipe) from Argentina.

² That decision arose out of an appeal of the Commission's affirmative determinations in *Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy*, Inv. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review), USITC Pub. 3429 (June 2001).

³ See *NMB Singapore Ltd. v. United States*, 288 F. Supp. 2d 1306, 1352 (Ct. Int'l Trade 2003) ("likely" means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)); *Nippon Steel Corp. v. United States*, Slip Op. 02-153 at 7-8 (Ct. Int'l Trade Dec. 24, 2002) (same); *Usinor Industeel, S.A. v. United States*, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int'l Trade Dec. 20, 2002) ("more likely than not" standard is "consistent with the court's opinion"; "the court has not interpreted 'likely' to imply any particular degree of 'certainty'"); *Indorama Chemicals (Thailand) Ltd. v. United States*, Slip Op. 02-105 at 20 (Ct. Int'l Trade Sept. 4, 2002) ("standard is based on a likelihood of continuation or recurrence of injury, not a certainty"); *Usinor v. United States*, Slip Op. 02-70 at 43-44 (Ct. Int'l Trade July 19, 2002) ("likely" is tantamount to 'probable,' not merely 'possible').

⁴ *Certain Seamless Carbon Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, and Germany*, Inv. Nos. 731-TA-707-709 (Review) (Remand), USITC Pub. 3754 (Feb. 2005); *Ball Bearings From France, Germany, Italy, Japan, Singapore, and the United Kingdom*, Inv. Nos. 731-TA-391-394, 396, and 399 (Review) (Remand), USITC Pub. 3648 (Dec. 2003); *Grain-Oriented Silicon Electrical Steel From Italy and Japan*, Inv. Nos. 701-

equates “likely” with “possible,” either in the determination at issue here or in any previous five-year review determination. In our original views in these reviews we applied a “likely” standard that is consistent with how the Court has defined that term in Slip Op. 04-133 as well as in prior opinions addressing this issue.^{5 6 7 8}

TA-355 and 731-TA-659-660 (Review) (Remand), USITC Pub. 3585 (March 2003); *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom* (Views on Remand), Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002); and *Corrosion-Resistant Carbon Steel Flat Products From France and Germany*, Inv. Nos. 701-TA-348-349 and 731-TA-615 (Remand), USITC Pub. 3539 (Sept. 2002).

⁵ Vice Chairman Okun notes that consistent with her views set forth in *Pressure Sensitive Tape from Italy*, Inv. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the Court’s interpretation of the “likely” standard, but that she has adopted and will apply the Court’s standard in all reviews until either Congress clarifies the meaning or the U.S. Court of Appeals addresses the issue. Consequently, consistent with the Court’s remand instructions, she has reconsidered her determination in light of the standard set forth by the Court. Applying this standard, she concludes, based on the record evidence, that revocation of the orders would be more likely than not to lead to continuation or recurrence of material injury within a reasonably foreseeable time for the reasons set forth in the Commission’s prior views.

⁶ Commissioner Hillman interprets the statute as setting out a standard of whether it is “more likely than not” that material injury would continue or recur upon revocation. She assumes that this is the type of meaning of “probable” that the Court intended when the Court concluded that “likely” means “probable.” See Separate Views of Vice Chairman Jennifer A. Hillman Regarding the Interpretation of the Term “Likely”, in *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom* (Views on Remand), Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002) at 30-31. See also, *Usinor Industeel v. United States*, 26 CIT ___, Slip Op. 02-152 at 5-6 n.6.

⁷ Commissioner Lane has interpreted “likely” in the same way in her consideration of this remand. Commissioner Lane notes that, consistent with her views in *Pressure Sensitive Plastic Tape from Italy*, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in this review and all subsequent reviews until either

In that the Commission did not use an improper “likeliness” standard in the original five-year reviews reconsideration of the review by the Commission is not warranted.

Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue. Commissioner Lane, who did not participate in the original five-year review, considered the record evidence in these reviews and adopts the Commission’s prior views with respect to oil country tubular goods other than drill pipe in their entirety.

⁸ Commissioner Pearson, who did not participate in the original five-year reviews, considered the record evidence in these reviews and adopts the Commission’s prior views with respect to oil country tubular good other than drill pipe in their entirety. For purposes of this review, Commissioner Pearson takes no position on the correct interpretation of likely, but would have reached the same determination under any definition of “likely” other than equating likely with merely “possible.” *See, Pressure Sensitive Plastic Tape from Italy*, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17.