

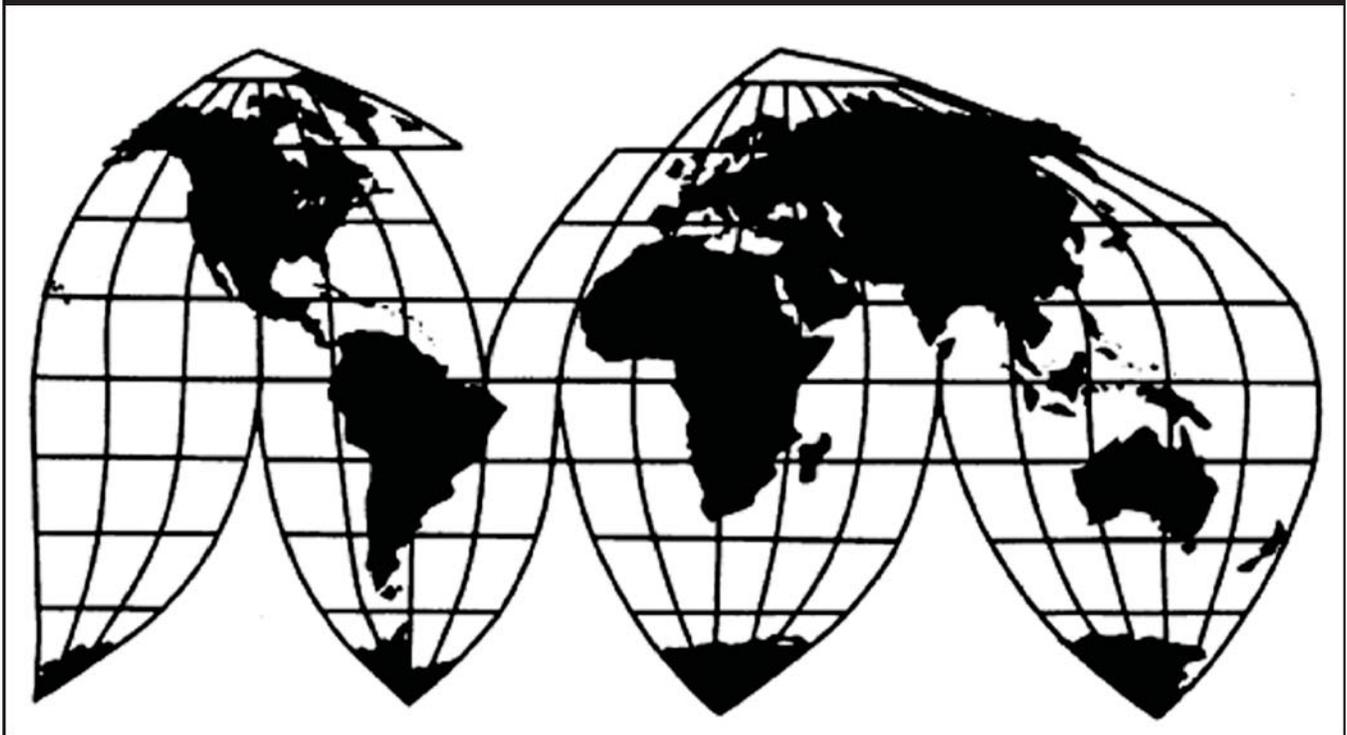
Drill Pipe and Drill Collars from China

Investigation Nos. 701-TA-474 and 731-TA-1176 (Final) (Remand)

Publication 4507

December 2014

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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David Goldfine, Attorney

Douglas Corkran, Supervisory Investigator

Commissioners and Staff are identified according to their positions in December 2013 when the Commission issued its remand determination (subsequently upheld by the United States Court of International Trade in slip opinion 14-130).

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

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VIEWS OF THE COMMISSION ON REMAND

By decision and order dated August 19, 2013, the U.S. Court of International Trade (per Judge Stanceu) remanded the Commission's determination in *Drill Pipe and Drill Collars from China*, Inv. Nos. 701-TA-474 and 731-TA-1176 (Final), USITC Pub. 4213 (Feb. 2011). *Downhole Pipe & Equipment, LP v. United States*, Slip Op. 13-108 (Aug. 19, 2013) (hereafter "Slip Op."). Upon consideration of the Court's remand instructions and the parties' comments, and based on the record in these remand proceedings, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of subject imports of drill pipe and drill collars from China that are sold in the United States at less than fair value and subsidized by the government of China.^{1 2 3}

I. BACKGROUND

A. The Commission's Original Determinations

The petitions in these investigations were filed on December 31, 2009.⁴ In the Commission's original determinations, three Commissioners reached affirmative threat determinations (Vice Chairman Williamson and Commissioners Pinkert and Lane) while three Commissioners reached negative determinations (Chairman Okun and Commissioners Pearson and Aranoff).⁵

In reaching affirmative threat determinations, Vice Chairman Williamson and Commissioners Pinkert and Lane found that the volume of subject imports was likely to be significant in the imminent future.⁶ They found that, in the imminent future, price competition demonstrated by subject imports from

¹ Commissioners Williamson and Pinkert dissent, finding that an industry in the United States is threatened with material injury by reason of the subject imports. *See* Dissenting Remand Views of Commissioners Williamson and Pinkert.

² Commissioners Johanson and Broadbent were not members of the Commission at the time of the original determinations. They made their determinations in these remand proceedings *de novo* by weighing all of the evidence in the record and reaching their own independent conclusions.

³ Commissioner Kieff did not participate in these remand proceedings.

⁴ CR/PR at I-1.

⁵ *Drill Pipe and Drill Collars from China*, Inv. Nos. 701-TA-474 and 731-TA-1176 (Final), USITC Pub. 4213 (Feb. 2011).

⁶ USITC Pub. 4213 at 27-32.

China at the end of the period of investigation (“POI”) would likely continue, and that increased quantities of aggressively priced subject imports would likely put pressure on domestic producers to lower prices in a market recovering from depressed demand, thereby having likely significant adverse price effects.⁷ In light of the domestic industry’s vulnerable condition, and the likely significant volume and likely significant adverse price effects by subject imports, they also found that subject imports would likely have a significant adverse impact on the domestic industry in the imminent future.⁸ Finally, they found that changes in demand and nonsubject imports were not credible alternative causes of future injury.⁹

As discussed above, three Commissioners (Chairman Okun and Commissioners Pearson and Aranoff) reached negative determinations. The three dissenting Commissioners found that subject import volume was not likely to increase significantly in the imminent future.¹⁰ They also found that subject imports did not have significant price-depressing or price-suppressing effects during the POI, nor were they likely to have significant adverse price effects in the imminent future.¹¹ Finally, they found that subject imports did not have a significant adverse impact on the domestic industry during the POI since the industry’s declining financial performance coincided with the global economic downturn and appeared to be demand driven.¹² Having found that the domestic industry was not vulnerable and that there was neither a likelihood of a significant increased volume of subject imports in the imminent future nor that subject imports would enter the U.S. market at prices that were likely to have significant price-depressing or price-suppressing effects, they found that there was no imminent threat of a significant

⁷ *Id.* at 33-34.

⁸ *Id.* at 35-36.

⁹ *Id.* at 36-37.

¹⁰ *Id.* at 43-46.

¹¹ *Id.* at 46-54.

¹² *Id.* at 54-59.

adverse impact on the domestic industry producing drill pipe and drill collars by reason of subject imports from China.¹³

B. The Court of International Trade's Remand Order

Downhole Pipe & Equipment, LP (“Downhole”), an importer of subject merchandise from China, appealed the Commission’s affirmative threat determinations to the U.S. Court of International Trade, which affirmed those determinations in part and remanded them in part. At the outset, the Court rejected Downhole’s challenge to the Commission’s domestic like product analysis on the grounds of judicial estoppel and failure to exhaust administrative remedies. Slip Op. at 6-8.

The Court next concluded that the Commission’s affirmative threat determinations contained two erroneous findings in the volume analysis. *Id.* at 11-19. In the Court’s view, “. . . the impermissible findings were that only smaller domestic purchasers, as opposed to purchasers the ITC considered ‘large,’ were buying subject merchandise at the start of the POI and that, during the POI, the participation of Chinese suppliers in the U.S. market broke through a prior limitation to smaller suppliers.” *Id.* at 16. The Court concluded that “‘from these erroneous findings, the ITC reached the unsupported conclusion that ‘the participation of suppliers of Chinese product in the U.S. market has evolved and grown over the period in ways that indicate further expansion is imminent,’ and the related conclusion that ‘the fact that suppliers of Chinese product have broken through a major prior limitation on their reach in the U.S. market is an indication that their U.S. market share is poised to increase.’” *Id.* at 16 (internal citations omitted). On remand, the Court instructed the Commission to reconsider its affirmative threat determinations “‘on the whole, in the absence of these findings and conclusions.” *Id.* at 19.

The Court also remanded two other aspects of the Commission’s affirmative threat determinations for further explanation. First, the Court directed the Commission “to explain why, and to what extent, it based its overall determinations related to likely future import volume on its stated findings that the U.S. market share of subject merchandise was ‘substantial’ throughout the POI and ‘grew’ in

¹³ *Id.* at 59-62.

first-half 2010.” *Id.* at 20. Second, the Court instructed the Commission to provide further explanation in support of its finding that ““U.S. importers have increased their quantities of inventories of Chinese product to levels that are particularly significant in the context of current market conditions.”” *Id.* at 21.

C. Current Remand Proceedings

Following the Court’s remand order, the Commission instituted the remand proceedings in these investigations.¹⁴ The Commission afforded the parties the opportunity to submit comments on the remand proceedings.¹⁵ Remand comments were submitted on behalf of the domestic industry by VAM Drilling USA Inc. (“VAM”), Houston, Texas; Rotary Drilling Tools (“RDT”), Beasley, Texas; Texas Steel Conversions, Inc. (“TSC”), Houston, Texas; and TMK IPSCO (“TMK”), Downers Grove, Illinois (collectively “Petitioners”). United States Steel Corporation (“U.S. Steel”) also submitted comments on behalf of the domestic industry. Downhole, the plaintiff in the Court of International Trade proceedings, submitted comments on behalf of the Chinese respondents.¹⁶

II. DOMESTIC LIKE PRODUCT & DOMESTIC INDUSTRY

We reaffirm the Commission’s prior finding concerning the definition of a single domestic like product, which was affirmed by the Court, and adopt it in its entirety here.¹⁷ We also adopt the Commission’s prior finding concerning the definition of the domestic industry (including the Commission’s original related party analysis) and incorporate it by reference herein.¹⁸

¹⁴ 78 Fed. Reg. 59972-73 (Sept. 24, 2013).

¹⁵ *Id.* at 59973.

¹⁶ In its opinion, the Court identified two instances where the Staff Report misclassified certain data from two purchasers ***. First, as the Court found, the Staff Report reported that ***.

¹⁷ USITC Pub. 4213 at 4-14; Slip Op. at 8.

¹⁸ USITC Pub. 4213 at 14-17.

III. CONDITIONS OF COMPETITION

We reaffirm the Commission's prior findings concerning conditions of competition in the United States market for drill pipe and drill collars during the POI and adopt them in their entirety herein.¹⁹

IV. NO MATERIAL INJURY OR THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA

We have reviewed the record of these remand proceedings, the Court's remand instructions, and the comments of the parties relating to the Court's instructions. Having taken these steps, we determine that the domestic industry is neither materially injury nor threatened with material injury by reason of subject imports from China. In reaching our negative determinations on remand, we adopt the Original Dissenting Views of the Commission in their entirety and incorporate them fully herein.²⁰

The Court's remand instructions are directed only to certain aspects of the affirmative threat determinations previously reached by the Commission. Since we have adopted the Original Dissenting Views in their entirety, the Court's remand instructions do not apply to our negative determinations on remand. We nevertheless address below certain remand comments submitted by the domestic industry pertaining to the Original Dissenting Views that we have now adopted on remand.²¹

In their remand comments, Petitioners question the analysis in the original dissenting views of Chairman Okun and Commissioners Pearson and Aranoff concerning U.S. purchasers' inventories.²² Notwithstanding Petitioners' suggestion to the contrary, the dissent relied upon inventory levels held by U.S. importers and not just inventory levels of U.S. purchasers, in finding that subject import volumes were not likely to increase significantly in the imminent future. As explained by the three dissenting Commissioners, and as the Court observed, record evidence in these final phase investigations showed no significant increase during the POI in the quantities of finished drill pipe and drill collars held in

¹⁹ USITC Pub. 4213 at 22-27.

²⁰ USITC Pub. 4213 at 41-62.

²¹ We note that, for the most part, the comments submitted by the domestic industry in these remand proceedings pertain to the affirmative threat determination previously entered by the Commission. *See, e.g.*, U.S. Steel Remand Comments at 1-9; Petitioners' Remand Comments at 2-5 & 8-14.

inventory by U.S. importers.²³ As the Court also observed, the record also “show{s} a sizeable increase in *** importers’ inventories only from 2007 to 2008 and show{s} modest declines thereafter.”²⁴ Indeed, U.S. importers’ inventories of subject imports of finished goods were *** short tons in 2007, *** short tons in 2008, *** short tons in 2009, and remained at *** short tons in the first half of 2010.²⁵

In their remand comments, Petitioners also question the analysis in the original dissenting views of Chairman Okun and Commissioners Pearson and Aranoff concerning U.S. purchasers’ inventories.²⁶ As they explained, however, the record evidence did not support Petitioners’ claims about U.S. purchasers’ inventories.²⁷ Moreover, as the Court observed, the record shows that “. . . while {U.S. purchasers’} inventories of finished products from U.S. sources predictably increased from 2007 to 2009 as demand declined, {U.S. purchasers’} inventories of subject imports of finished products dropped substantially over the same period.” Slip Op. at 21 (*quoting* Original Dissenting Views at 8).²⁸

²² Petitioners’ Remand Comments at 13-14.

²³ Slip Op. at 21.

²⁴ *Id.* at 21.

²⁵ CR/PR at Table C-2. In its remand comments, U.S. Steel argues that, as a ratio to U.S. apparent consumption, U.S. importers’ inventories of subject imports increased during the POI, which is an indicator that subject imports therefore threaten injury to the domestic industry. *See e.g.*, U.S. Steel Remand Comments at 8. Even though there was a significant increase in the ratio of U.S. importers’ inventories of subject imports relative to apparent U.S. consumption throughout the POI, the record did not establish that these relative inventory increases were a factor having a significant injurious impact on the domestic industry during the POI, including in interim 2010. Absent any significant changes in market conditions that would suggest otherwise, we do not see any basis to conclude that continued high ratios of subject inventories relative to apparent consumption would be an indication that subject imports would likely have a significant adverse impact on the domestic industry in the imminent future. Similarly, we do not find that any increases in the ratios of Chinese producers’ inventories of subject merchandise relative to Chinese subject producers’ total shipments and apparent U.S. consumption would be likely to have a significant adverse impact on the domestic industry in the imminent future, especially given that they had also not led to injury during the POI.

²⁶ Petitioners’ Remand Comments at 14.

²⁷ USITC Pub. 4213 at 45.

²⁸ In their remand comments, Petitioners also argue that declines in U.S. purchasers’ inventories of subject merchandise from China and increases in U.S. purchasers’ inventories of domestically produced finished drill pipe and collars “suggest . . . that purchasers will imminently slow purchases of U.S.-made drill pipe, and accelerate purchases of Chinese-made drill pipe, as indeed occurred in the first half of 2010.” Petitioners’ Remand Comments at 14. As Chairman Okun and Commissioners Pearson and Aranoff found, however, the record in these investigations reflect that, in terms of their inventory levels, U.S. purchasers shifted away from subject merchandise to domestically-produced drill pipe and collars during the POI. *See e.g.*, USITC Pub. 4213 at 45. Moreover, Petitioners’ speculation that U.S. purchasers must significantly replenish their inventories of finished drill pipe from

In their remand comments, Petitioners again argue that the domestic industry is in a vulnerable condition emphasizing that certain expenses incurred by domestic producer NOV Grant Prideco should be considered when assessing vulnerability.²⁹ However, as explained in their original views, the three dissenting Commissioners expressly considered the adjusted data for NOV Grant Prideco and found that the domestic industry nevertheless was currently not vulnerable.³⁰

Petitioners claim on remand that the three dissenting Commissioners “did not grapple with the most salient aspects” of the *** in the first half of 2010.³¹ Petitioners overlook, however, that the three dissenting Commissioners expressly considered and rejected their arguments on this issue as follows:

We also do not consider ***, to indicate that increased volumes of subject imports are imminent. As an initial matter, Petitioners drew the Commission’s attention to this particular sale in order to rebut Respondents’ contention that the domestic industry and importers of subject merchandise sold to distinct groups of customers. Petitioners’ Posthearing brief at 1-2. As Respondents’ contention does not underpin our analysis in any way, we do not consider Petitioners’ rebuttal germane to that analysis. In any event, the record indicates that ***. ***. Respondents’ posthearing brief at exhibit 23 (***), CR at V-31, PR at V-12. Given the specific circumstances surrounding this sale, we do not find that it predicts any imminent surge in subject imports.³²

As the Court observed, “***.”³³ The Court added that the record evidence indicates that the *** occurred largely for non-price related factors “as a result of the seller’s willingness to do an exchange of new and/or used drill pipe.”³⁴ We agree with the Court that “{t}he evidence pertaining to the *** transaction or transactions occurring in early 2010 involves only one importer and one large domestic

China in the imminent future is not consistent with the record evidence, which shows that U.S. purchasers’ inventories of subject imports of finished drill pipe declined throughout the POI. *See e.g.*, CR/PR at Table II-4.

²⁹ Petitioners’ Remand Comments at 7-8.

³⁰ *See, e.g.*, USITC Pub. 4213 at 59-62 & n.122; Confidential Dissenting Views of Chairman Okun and Commissioners Pearson and Aranoff at 32-37 & n.122 (EDIS Doc. #445369).

³¹ Petitioners’ Remand Comments at 6.

³² USITC Pub. 4213 at 46 n.30.

³³ Slip Op. at 16 n.10.

³⁴ *Id.* at 16 n.10.

purchaser; in addition, the record evidence refutes a finding or inference that the transaction or transactions involved were representative or typical.”³⁵

Petitioners argue that the finding in the original dissenting views that subject imports would not likely have significant adverse price effects was a “stretch” based upon the record evidence.³⁶ We disagree. As the three dissenting Commissioners explained, the record evidence shows that subject imports generally oversold the domestic like product during the POI and there was not significant underselling.³⁷ Substantial evidence also supports the three dissenters’ conclusions that subject imports did not have significant price depressing or price suppressing effects during the POI since they mostly oversold the domestic like product, lost market share in the more important finished portion of the market, and provided little or no competition for the growing share of domestic sales of premium drill pipe.³⁸ Given the absence of significant adverse price effects during the POI, and in the absence of any changes in the market likely to bring about such effects in the imminent future, we also do not expect subject imports to enter at prices that are likely to have a significant depressing or suppressing effect on domestic prices in the imminent future.³⁹

Petitioners also claim that the record evidence concerning the Chinese industry’s excess capacity and demand trends in the U.S. market warrant an affirmative determination on remand.⁴⁰ These issues, however, were addressed in considerable detail by the three dissenting Commissioners in reaching a negative determination.⁴¹ We agree with their analysis.⁴²

³⁵ *Id.* at 15-16.

³⁶ Petitioners’ Remand Comments at 7.

³⁷ USITC Pub. 4213 at 51.

³⁸ USITC Pub. 4213 at 51-52.

³⁹ USITC Pub. 4213 at 53-54.

⁴⁰ Petitioners’ Remand Comments at 6.

⁴¹ USITC Pub. 4213 at 43-46 & 59-62.

⁴² In their remand comments, the domestic industry emphasizes that the market share of subject imports increased between the second half of 2009 and the first half of 2010. U.S. Steel Remand Comments at 7. As the three dissenting Commissioners found, however, the market share of subject imports declined between the first half of 2009 and the first half of 2010. See e.g., USITC Pub. 4213 at 41-42; Confidential Dissenting Views of Chairman

For the above reasons, based on consideration of the Court's remand instructions and the parties' comments, and based on the record in these remand proceedings, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of subject imports of drill pipe and drill collars from China that are sold in the United States at less than fair value and subsidized by the government of China.

Okun and Commissioners Pearson and Aranoff at 2 (EDIS Doc. #445369). Indeed, the Commission's typical methodology – which the three dissenting Commissioners applied here – is to compare partial calendar years, such as interim periods, with the same portion of prior (or subsequent) years. *See, e.g., Welded Stainless Steel Pressure Pipe from Malaysia, Thailand, and Vietnam*, Inv. Nos. 731-TA-1210-12 (Preliminary), USITC Pub. 4413 at 14-16 (July 2013); *Silica Bricks and Shapes from China*, Inv. No. 731-TA-1205 (Preliminary), USITC Pub. 4369 at 13-14 (Jan. 2013); *Crystalline Silicon Photovoltaic Cells and Modules from China*, 701-TA-481 & 731-TA-1190 (Final), USITC Pub. 4360 at 28-30 (Nov. 2012); *Certain Steel Wheels from China*, Inv. Nos. 701-TA-478 & 731-TA-1182 (Final), USITC Pub. 4319 at 17-20 (May 2012).

DISSENTING VIEWS OF CHAIRMAN WILLIAMSON AND COMMISSIONER PINKERT ON REMAND

By decision and order dated August 19, 2013, the U.S. Court of International Trade (per Judge Stanceu) remanded the Commission's determination in *Drill Pipe and Drill Collars from China*, 701-TA-474 & 731-TA-1176 (Final), USITC Pub. 4213 (Feb. 2011). *Downhole Pipe & Equipment, L.P. v. United States*, Slip Op. 13-108 (Aug. 19, 2013) (hereafter "Slip Op."). Upon consideration of the Court's remand instructions and the parties' comments, and based on the record in these remand proceedings, we again determine that an industry in the United States is threatened with material injury by reason of subject imports of drill pipe and drill collars from China that are sold in the United States at less than fair value and subsidized by the Government of China.

I. BACKGROUND

We adopt in its entirety the background discussion set forth in the Commission's Views on remand in these remand proceedings.¹

II. DOMESTIC LIKE PRODUCT & DOMESTIC INDUSTRY

We reaffirm the Commission's prior findings concerning the definition of a single domestic like product, which were affirmed by the Court, and adopt them in their entirety here.² We also adopt the Commission's prior findings concerning the definition of the domestic industry (including the Commission's original related party analysis) and incorporate them by

¹ Remand Views at 3-6.

² *Drill Pipe and Drill Collars from China*, Inv. Nos. 701-TA-474 & 731-TA-1176 (Final), USITC Pub. 4123 at 4-17. The confidential version of these determinations are referred to herein as "Views." The public version of these determinations are referred to herein as "USITC Pub. 4213."

reference herein.³

III. CONDITIONS OF COMPETITION

We reaffirm the Commission's prior findings concerning conditions of competition in the United States market for drill pipe and drill collars during the period of investigation ("POI") and adopt them in their entirety herein.⁴

IV. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA

We have reviewed the record of these remand proceedings, the Court's remand instructions, and the comments of the parties relating to the Court's instructions. We again determine that the domestic industry is not materially injured by reason of subject imports from China. In reaching our negative present material injury determination on remand, we adopt the discussion of no present material injury contained in the Original Views of the Commission and incorporate it fully herein.⁵

V. THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA

We again determine that the domestic industry is threatened with material injury by reason of subject imports from China. In reaching our affirmative threat determination on remand, we adopt the discussion of threat of material injury in the Original Views of the Commission in its entirety and incorporate it fully herein, subject to the modifications and

³ USITC Pub. 4213 at 4-17.

⁴ USITC Pub. 4213 at 22-27.

⁵ *Views* at 53-55.

exceptions below in accordance with the Court's remand instructions.⁶

A. Likely Volume of Subject Imports from China

We reaffirm our prior findings that subject imports will likely be significant in the imminent future and adopt them in their entirety here except to the extent they are modified below.

We note that many of our prior findings in support of our likely significant volume analysis are not called into question by the Court's remand instructions. As we previously found, the record showed that subject imports maintained a significant presence in the U.S. market throughout the POI.⁷ Further, as we noted, Chinese capacity was large and increased significantly during the POI. In fact, it was equivalent to *** percent of U.S. apparent consumption in 2009.⁸ Moreover, Chinese subject producers' capacity utilization declined sharply from *** percent in 2007 to *** percent in 2009, and remained low in the first half of 2010 at *** percent.⁹ In fact, by 2009, the last full year of the POI, Chinese subject producers' excess capacity was equivalent to *** percent of U.S. apparent consumption.¹⁰ Accordingly, we continue to find that the large excess capacity of the Chinese industry at the end of the POI is

⁶ *Views* at 1-53.

⁷ *Views* at 39 & 54.

⁸ *Views* at 41-42; CR/PR at Tables VII-3b, VII-3d, & C-2.

⁹ *Views* at 41-42.

¹⁰ Derived from CR/PR at Tables VII-3b & C-2. Chinese subject producers' excess capacity was equivalent to *** percent of apparent U.S. consumption in the first half of 2010. Derived from CR/PR at Tables VII-3d & C-2.

strongly indicative of imminent likely subject import volume.¹¹ Additionally, the Chinese industry was export-oriented and Chinese producers had an established track record of exporting large and increasing quantities of the product to export markets during the POI, including significant volumes to the United States.¹² Finally, in light of the 2010 antidumping and countervailing duty orders on OCTG from China, subject producers had a significant incentive for product shifting and increasing their shipments of Chinese drill pipe to the U.S. market. *Id.* at 44. In our view, the record evidence on these factors warrants our finding that there is likely to be a significant increase in subject imports in the imminent future.

As discussed above, the Court remanded three aspects of our affirmative threat determination which each relate to our likely significant volume analysis. We discuss them in turn below.

1. Large Purchasers

a. Court's Remand

Based on its review of the record, the Court found that “substantial evidence does not support two findings made by the Commission and two general conclusions the ITC reached on

¹¹ Views at 41-42 & 45-46.

¹² Views at 43-44. As the Commission found, China’s production of drill pipe and collars far outpaced its home market demand, which therefore necessitated the Chinese industry’s reliance on substantial exports. *Id.* at 43-44. Moreover, Chinese producers had an established track record of exporting large and increasing quantities of the product to export markets during the POI, including significant volumes to the United States. *Id.* at 43-46. As the Commission found, Chinese producers’ total exports of finished drill pipe and collars, as a percent of their total shipments, increased from *** percent in 2007 to *** percent in 2009, while their exports to the United States, as a percent of their total shipments, increased somewhat from *** percent in 2007 to *** percent in 2009. *Id.* at 43. Moreover, as the Commission found, Chinese drilling activity was projected to grow only modestly by one to two percent in the imminent future, thus indicating that the Chinese market for drill pipe and collars was not nearly large enough to absorb China’s current or imminent future production capacity. *Id.* at 43-44 & n.253.

the basis of those two findings.”¹³ As the Court explained, the two “impermissible findings were that only smaller domestic purchasers, as opposed to purchasers the ITC considered ‘large,’ were buying subject merchandise at the start of the POI and that, during the POI, the participation of Chinese suppliers in the U.S. market broke through a prior limitation to smaller suppliers.”¹⁴ The Court stated that, “[f]rom these erroneous findings, the ITC reached the unsupported conclusion that ‘{t}he participation of Chinese suppliers in the U.S. market has evolved and grown over the period in ways that indicate further expansion is imminent,’ and the related conclusion that ‘{t}he fact that suppliers of Chinese product have broken through a major prior limitation on their reach in the U.S. market is an indication that their U.S. market share is poised to increase.”¹⁵ On remand, the Court instructed the Commission to reconsider its determination in the absence of these findings and conclusions.¹⁶

b. Arguments of the Parties

i. Domestic Industry Comments

Domestic producer U.S. Steel claims that the Court’s remand on this issue represents a misreading of the Commission’s opinion, and that the Court’s statement that the ITC found that only smaller domestic purchasers were buying subject merchandise at the start of the period of

¹³ Slip Op. at 16.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 19.

investigation was incorrect.”¹⁷ Instead, according to U.S. Steel, “the Commission's analysis on this point represented an effort by the Commission to address a significant inconsistency between statements made by the respondents during the preliminary phase of this investigation, and the factual record as it stood when the investigation was complete.”¹⁸

Petitioners¹⁹ argue that there are not significant quality differences between the domestic like product and subject imports, and that Chinese subject imports are therefore capable of being sold to a broad range of customers in the U.S. market, including large purchasers.²⁰ They also note that large purchasers bought significant amounts of subject merchandise throughout the POI.²¹ Given these factors, Petitioners argue that the Commission reasonably found that subject imports were sold to both small and large purchasers during the POI.²²

ii. Respondents' Comments

Chinese Respondents argue that “{i}n light of the Court’s finding that the Commission’s likely volume effects finding is not supported by substantial evidence, the record evidence compels the Commission to reach a negative threat redetermination” on remand.²³ They contend

¹⁷ U.S. Steel Remand Comments at 2-5.

¹⁸ U.S. Steel Remand Comments at 2.

¹⁹ The Petitioners include the following four domestic producers of drill pipe and collars: VAM Drilling USA Inc., Rotary Drilling Tools, Texas Steel Conversions, Inc., and TMK IPSCO.

²⁰ Petitioners’ Remand Comments at 10.

²¹ Petitioners’ Remand Comments at 10.

²² Petitioners’ Remand Comments at 10.

²³ Chinese Respondents’ Remand Comments at 10.

that “{i}n the absence of the Commission’s erroneous findings regarding large U.S. purchasers turning to subject imports by the end of the POI, the record supports only the conclusion that there is no evidence of imminent ability of subject imports to gain additional U.S. market share.”²⁴ According to Chinese Respondents, “{t}he absence of record evidence to support the conclusion that subject imports could gain market share prevents an affirmative threat determination.”²⁵

c. Analysis

In our prior discussion of large purchasers, we did not intend to suggest that only smaller domestic purchasers were buying subject merchandise at the start of the POI . If our prior discussion gave the Court the impression that we made such a finding, we wish to correct that impression here.

Our analysis on this point was intended to address a significant inconsistency between statements made by the Chinese Respondents during the preliminary phase of these investigations and the factual record as it stood in the final phase of these investigations, after the record was more fully developed. At the Staff Conference during the preliminary phase, counsel for Chinese Respondents testified that “subject imports don’t even compete with the U.S. producers for the same customers.”²⁶ Counsel for Chinese Respondents also stated at the Staff Conference that “U.S. producers completely dominate sales of drill pipe to the large drilling

²⁴ Chinese Respondents’ Remand Comments at 11.

²⁵ Chinese Respondents’ Remand Comments at 11.

²⁶ USITC Pub. 4213 at 28 n.231 (emphasis added).

contractors.”²⁷ Similarly, Charlie Garvey, CEO of importer/respondent Command, testified that his company’s customers “generally are small, independently owned companies in Canada and the United States.”²⁸ Thus, during the preliminary phase, Chinese Respondents appeared to be arguing that they were unable to make any significant sales to large purchasers in the U.S. market.

In contrast to the Chinese Respondents’ claims during the preliminary phase, the record of the final phase established that suppliers of Chinese subject imports were able to make sales to large customers throughout the POI. For example, in 2007, ***, a large purchaser, bought subject merchandise from China valued at \$***.²⁹ Similarly, ***, another large purchaser, bought subject merchandise from China valued at \$*** in 2007 and \$*** in 2008.³⁰ And, ***, one of the largest purchasers in the market, purchased \$*** worth of subject drill pipe and collars in interim 2010, the final six months of the POI.³¹ Thus, despite Chinese Respondents’ claims that subject importers had been unable to sell to large purchasers at some point in the past, they had clearly broken through any such alleged limitation by 2007 and made sales to large purchasers throughout the POI.

Moreover, the 2010 sale by *** provided a significant indication that subject imports

²⁷ USITC Pub. 4213 at 28 n.231 (emphasis added).

²⁸ USITC Pub. 4213 at 28 n.231.

²⁹ Revised CR at II-7 (INV-LL-079) (Oct. 18, 2013); *** Purchaser Questionnaire at II-2.

³⁰ CR at Revised II-7 (INV-LL-079) (Oct. 18, 2013); *** Purchaser Questionnaire at II-2.

³¹ CR at V-31.

were likely to increase in volume and market share in an injurious manner in the imminent future for a number of reasons. First, it was a very large sale relative to the size of the market at the end of the POI, a period of depressed (albeit increasing) demand. Specifically, the value of the sale, ***, was equivalent to almost *** percent of U.S. producers' net sales in interim 2010.³² Second, *** confirmed that the sale was awarded to *** because ***,³³ *** was ***, which was \$*** lower than ***.³⁴ Finally, the sale by *** involved innovative terms of sale that *** were unwilling to match. As we explained in our *Views*, not only was *** lower than ***, but ***.³⁵ ***,³⁶ In our view, the ***, indicate an aggressive marketing strategy by subject imports focused on increasing volume and market share in an injurious manner in the imminent future. The significance of this strategy is underscored by the incentive provided by the 2010 OCTG orders to increase exports of unfinished drill pipe to the United States.

In sum, as we previously found, the record showed that subject imports maintained a significant presence in the U.S. market throughout the POI, a share that increased in the first half of 2010. It also showed that several of the largest U.S. purchasers bought significant amounts of Chinese subject merchandise during the POI. Moreover, the Chinese industry was very large and growing, was export-oriented, possessed substantial unused capacity, and maintained an

³² CR at Revised Table C-2.

³³ *Views* at 40 n.232.

³⁴ CR at Table V-11; CR at V-31.

³⁵ *Views* at 40 n. 232.

³⁶ *Views* at 40 n. 232.

aggressive strategy toward the U.S. market. We thus again conclude that subject imports will increase significantly in absolute terms and relative to domestic consumption and production in the imminent future.

2. Significant Rate of Increase of Subject Imports

a. Court's Remand Instructions

In its remand instructions, the Court also explained that “{i}t is not clear whether the Commission, in characterizing the market share of subject imports as ‘substantial,’ was referring only to finished imports, which it discussed, or also to unfinished products.”³⁷ The Court noted that “the data the ITC cited earlier referred only to finished products,” and that “{a}s to the finished products, the use of the term ‘substantial’ to describe the market share is questionable as applied to the POI as a whole, in which that market share fluctuated considerably, at times to levels that would not appear to qualify as ‘substantial,’ and never exceeded a particular threshold.”³⁸

The Court observed that the “Commission’s statement that the market share ‘grew’ in first-half 2010 must be interpreted in light of those data, which showed that the market share of finished subject merchandise grew from second-half 2009 to first-half 2010 but in first-half 2010 still was considerably less than it was in first-half 2009.”³⁹ In the Court’s view, “{t}he same data showed that the increase in first-half 2010 must be seen in the context of a precipitous drop in

³⁷ Slip Op. at 20.

³⁸ *Id.*

³⁹ *Id.*

that market occurring in second-half 2009.”⁴⁰ Accordingly, on remand, the Court directed the Commission “to explain why, and to what extent, it based its overall determination related to likely future import volume on its stated findings that the U.S. market share of subject merchandise was 'substantial' throughout the POI and 'grew' in first-half 2010.”⁴¹ In doing so, the Court instructed the Commission to be “mindful of the statutory directive that the ITC, when evaluating a threat of material injury, must consider whether there has been ‘a significant rate of *increase*’ of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports.”⁴²

b. Arguments of the Parties

i. Domestic Industry Comments

The domestic industry observes that the market share of subject imports increased from *** percent in 2007, the first full year of the POI, to *** percent in 2009, the last full year of the POI.⁴³ They also highlight the fact that the market share of subject imports fell from a period-high *** percent in the first half of 2009 to *** percent in the second half of 2009, but then rose

⁴⁰ *Id.*

⁴¹ Slip Op. at 20.

⁴² *Id.* at 20 (*citing* 19 U.S.C. 1677(7)(F)(i)(III) (emphasis in original)).

⁴³ U.S. Steel Remand Comments at 7; Petitioners’ Remand Comments at 12-13.

to *** percent in the first half of 2010.⁴⁴ Given these considerations, they note that subject imports held a substantial portion of the domestic market throughout the POI, and that subject imports gained *** market share from the second half of 2009 to the first half of 2010.⁴⁵ In their view, the rapid increase in Chinese imports from the second half of 2009 to the first half of 2010 at the end of the POI illustrates that there was a significant rate of increase of the market penetration of Chinese imports, thus indicating the likelihood of substantially increased imports in the imminent future.⁴⁶ They also argue that, while the Commission expressly considered both finished and unfinished drill pipe and drill collars, the Commission properly focused its analysis on the finished product, which was dominant in terms of market share and value, compared to the unfinished product.⁴⁷

ii. Respondents' Comments

Chinese Respondents argue that the Court reasonably took issue with the Commission's conclusion that subject import market share of finished drill pipe and drill collars "grew" in the first half of 2010.⁴⁸ They emphasize that subject import market share declined from 2008 to 2009, and then declined again between interim periods, falling from *** percent in the first half

⁴⁴ U.S. Steel Remand Comments at 7.

⁴⁵ U.S. Steel Remand Comments at 7.

⁴⁶ U.S. Steel Remand Comments at 7.

⁴⁷ Petitioners' Remand Comments at 12.

⁴⁸ Chinese Respondents' Remand Comments at 13-14.

of 2009 to *** percent in the first half of 2010.⁴⁹ Explaining that the Commission “typically compares” interim periods covering comparable six-month time intervals (*e.g.*, the first half of 2009 to the first half of 2010), they suggest that the Commission incorrectly compared the subject import market share data for the second half of 2009 to the first half of 2010.⁵⁰ They contend that “the data regarding increases in market share between the second half of 2009 and the first half of 2010 can, at most, be deemed inconclusive, given that market share *** between the first half of 2009 and the first half of 2010 declined materially, that is, by *** percentage points.”⁵¹

c. Analysis

As discussed above, the Court indicated that “[i]t is not clear whether the Commission, in characterizing the market share of subject imports as ‘substantial,’ was referring only to finished imports, which it discussed, or also to unfinished products.”⁵² In our analysis, we focused primarily upon the market share data for finished drill pipe and drill collars. As we explained in our *Views*, we did so because, in terms of key factors such as number of employees and the value of consumption, the portion of the market for finished drill pipe and collars is much larger than the portion for unfinished drill pipe and collars.⁵³

⁴⁹ Chinese Respondents’ Remand Comments at 13.

⁵⁰ Chinese Respondents’ Remand Comments at 14.

⁵¹ Chinese Respondents’ Remand Comments at 14.

⁵² Slip Op. at 20.

⁵³ See *e.g.*, *Views* at 38 n.226. We also note that we focused on the market for finished drill pipe and collars because we could not eliminate the possibility of double-counting as unfinished drill pipe and collars are processed

With respect to the Court’s concerns about the fluctuating levels of subject import volume, we recognize that the U.S. market share of imports of finished drill pipe and drill collars from China fluctuated during the POI. Specifically, the market share of Chinese imports of finished drill pipe and drill collars increased irregularly between 2007 and 2009, growing from *** percent in 2007 to *** percent in 2008, and then dropping to *** percent in 2009, although remaining above 2007 levels.⁵⁴ The U.S. market share of subject imports of finished drill pipe and drill collars fell from a period-high *** percent in the first half of 2009 to *** percent in the second half of 2009, but then rose to *** percent in the first half of 2010, which also was above 2007 levels.⁵⁵

Notwithstanding the fact that there were fluctuations in these market share levels of subject imports, the U.S. market share of subject imports of finished drill pipe and drill collars was higher in the last full year of the POI than it was during the first full year. The U.S. market share of subject imports of finished drill pipe and drill collars ended *** percentage points higher in 2009 (*** percent), the last full year of the POI, than in 2007, the first full year of the POI (*** percent).⁵⁶ Furthermore, the U.S. market share of subject imports of finished drill pipe and drill collars grew between the second half of 2009 and the first half of 2010.⁵⁷ Specifically,

into finished drill pipe and collars. Nevertheless, the Commission did consider the market share data for unfinished drill pipe and drill collars which was *** percent in 2007, *** percent in 2008, *** percent in 2009, and *** percent in interim 2010. *Views* at 39 n.230 and 40 n.233 (Commissioner Pinkert footnote).

⁵⁴ CR/PR at Table C-2.

⁵⁵ CR/PR at Table C-2.

⁵⁶ CR/PR at Table C-2.

⁵⁷ *Views* at 40.

the U.S. market share of subject imports of finished drill pipe and drill collars increased from *** percent in the second half of 2009 to *** percent in the first half of 2010.⁵⁸ In our view, the growth in subject import market share at the end of the POI – an increase of almost *** percentage points between the second half of 2009 and the first half of 2010 – reflects a significant market move by subject imports during a period in which demand was recovering from its lowest level of the POI (in the second half of 2009).

We would add, moreover, that the U.S. market share of imports of finished drill pipe and drill collars was significant throughout the POI. With their market share ranging from *** percent to *** percent, subject imports of finished drill pipe and drill collars were present in the U.S. market at significant levels in every year of the POI.⁵⁹ In other words, regardless of any likely significant rate of increase, the record reflects that it is likely that subject imports will continue to have a significant presence in the U.S. market. We also note that the Chinese industry is large and growing, is export-oriented, possesses substantial unused capacity, and has an incentive to engage in product-shifting.

We examined half-year data for both 2009 and 2010 in order to provide us with a more complete understanding of the changing economic conditions in the market for drill pipe and collars at the end of the period examined.⁶⁰ We disagree with Chinese Respondents that our mode of analysis improperly compared the subject import market share data for the second half

⁵⁸ *Views* at 40.

⁵⁹ CR/PR at Table C-2.

⁶⁰ *Views* at 40 n.234.

of 2009 to the first half of 2010. As explained below, we find that it was appropriate to compare the half-year data given the impact of the recession in these final phase investigations.⁶¹ We note that there is no indication that the market for drill pipe and drill collars is seasonal in a way that could distort comparisons based on half-year increments.⁶²

In 2009, due to the economic recession, there was a particularly sharp decline in demand in the U.S. market. Due to the recession, U.S. demand for finished drill pipe and drill collars did not reach its period-low levels until the second half of 2009.⁶³ In fact, U.S. demand for finished drill pipe and drill collars fell by *** percent between the first half of 2009 and the second half of 2009, dropping from *** pounds to ***.⁶⁴ In 2010, however, U.S. demand for finished drill pipe and collars recovered somewhat from its nadir in the second half of 2009.⁶⁵ Given these circumstances, we concluded that it was best to compare the subject import market share trends in the second half of 2009 – when demand was lowest – with the subject import market share trends in the first half of 2010 – when demand was improving – to assess whether subject imports would continue to increase their market share in the imminent future. We found it reasonable to compare the second half of 2009 and first half of 2010 so we could best ascertain

⁶¹ We note that the Commission has examined half-year data in investigations in which the recession of 2008 to 2009 played an important role. *See e.g., Certain Potassium Phosphate Salts from China*, Inv. Nos., 701-TA-473 & 731-TA-1173 (Final), USITC Pub. 4171 at 24-25(July 2010); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia*, Inv. Nos. 701-TA-470-471 & 731-TA-1169-70 (Final), USITC Pub. 4192 at 28 (Nov. 2010).

⁶² Views at 40 n.234.

⁶³ CR/PR at Table C-2.

⁶⁴ CR/PR at Table C-2.

⁶⁵ CR/PR at Table C-2.

how subject imports would likely respond to market conditions in the imminent future when demand was projected to continue growing, as it had in interim 2010.

3. Inventories

a. Court's Remand Instructions

In its remand instructions, the Court also directed the Commission to provide further explanation for its finding that “U.S. importers have increased their quantities of inventories of Chinese product to levels that are particularly significant in the context of current market conditions.” Slip Op. at 21. The Court observed that “{t}he data the ITC cited for its finding . . . show a sizeable increase in importers’ inventories only from 2007 to 2008 and show modest declines thereafter.” *Id.* In contrast, the Court noted that “. . . the three dissenting Commissioners concluded that ‘{w}ith regard to inventories of the subject merchandise, there was no significant increase in inventories of subject product held by U.S. importers or purchasers over the period examined.’” Slip. Op. at 21 (*citing* Dissenting Views at 8). The Court also referenced the fact that the three dissenting Commissioners found that “. . . while inventories of finished products from U.S. sources predictably increased from 2007 to 2009 as demand declined, inventories of subject imports of finished products dropped substantially over the same period.” Slip Op. at 21. The Court further directed the Commission to “provide additional explanation of its stated finding in light of all of the relevant evidence, including evidence that may detract from that finding.” *Id.*

b. Arguments of the Parties

i. Domestic Industry Arguments

The domestic industry argues that U.S. importers' inventories were particularly significant in light of the contracting demand and the shrinking size of the U.S. market during the POI.⁶⁶ They highlight the fact that, as a ratio to U.S. apparent consumption, U.S. importers' inventories of Chinese imports of finished drill pipe and drill collars increased steadily from 2007 to 2009.⁶⁷ They observe that, as the Commission previously found, U.S. importers held subject import inventories of finished drill pipe and drill collars that were equivalent to almost *** percent of annualized 2010 apparent U.S. consumption.⁶⁸ They also note that U.S. importers' inventories of Chinese imports of finished drill pipe and drill collars *** exceeded the volume of subject imports of Chinese imports of finished drill pipe and drill collars in first half 2010 thereby indicating that such inventories were evidence of imminent threat to the U.S. industry.⁶⁹

ii. Respondents' Arguments

Chinese Respondents argue that the record evidence demonstrates no significant increase in subject imports held either by U.S. importers or U.S. purchasers during the POI.⁷⁰ They also

⁶⁶ Petitioners' Remand Comments at 14.

⁶⁷ U.S. Steel Remand Comments at 8.

⁶⁸ U.S. Steel Remand Comments at 8.

⁶⁹ U.S. Steel Remand Comments at 8-9.

⁷⁰ Chinese Respondents' Remand Comments at 14-15.

argue that the lack of correlation between subject import volumes and inventory levels further demonstrates that the Commission's threat analysis is unsupported by substantial evidence.⁷¹

c. Analysis

U.S. importers' inventories of subject imports of finished drill pipe and drill collars were *** short tons in 2007, *** short tons in 2008, *** short tons in 2009, and *** short tons in the first half of 2010. As we explained previously in our *Views*, U.S. importers' subject inventories of finished drill pipe and drill collars increased by *** percent from 2007 to 2009 and remained at near period-high levels through the first half of 2010.⁷²

In addition to the absolute volume of U.S. importer inventories, we have also relied heavily on the increase of U.S. importer inventories relative to apparent U.S. consumption and subject import volume as well as the ratio of Chinese producer inventories to their total shipments. These ratios are, in our view, the best indicators of inventory "build-up" during the POI, particularly given the depressed demand in the market.⁷³

The ratio of U.S. importers' inventories of subject merchandise to apparent U.S. consumption of finished drill pipe and drill collars increased steadily between 2007 and 2009, growing from *** percent in 2007, to *** percent in 2008 and *** percent in 2009.⁷⁴ Moreover,

⁷¹ Chinese Respondents' Remand Comments at 15.

⁷² *Views* at 41.

⁷³ When inventories increase on a relative basis compared to shipments or consumption, for example, it is often a strong indicator that producers or importers are not able to keep their inventories at a stable level compared to their shipments or sales. In such a situation, producers or importers will feel pressure to reduce their inventories to more typical levels by selling them aggressively in the market.

⁷⁴ Derived from CR/PR at Table C-2.

as we indicated in our *Views*, as of June 30, 2010, U.S. importers held subject imports of finished drill pipe and drill collars that were equivalent to almost *** percent of annualized 2010 apparent U.S. consumption, their peak level during the POI.⁷⁵

U.S. importers' inventories also grew significantly relative to subject imports of finished drill pipe and drill collars. U.S. importers' inventories of finished drill pipe increased from *** percent in 2007 to *** percent in 2008, grew further in 2009 to *** percent, and remained at near-peak levels in the first half of 2010.⁷⁶ By the same calculation, U.S. importers' inventories of finished drill collars increased from *** percent in 2007 to *** percent in 2008 and *** percent in 2009, and peaked in the first half of 2010.⁷⁷

The record evidence also indicates that Chinese subject producers stockpiled growing inventories in China during the POI. Relative to their total shipments, Chinese subject producers' inventories of finished drill pipe increased from *** in 2007 percent to *** percent in 2008 to *** percent in 2009. They were well above 2007 levels in interim 2010, at *** percent.⁷⁸ By the same calculation, Chinese producers' inventories of finished drill collars declined from *** in 2007 percent to *** percent in 2008 to *** percent in 2009 but they were above 2007 levels in interim 2010 at *** percent.⁷⁹ Moreover, as we previously explained in

⁷⁵ *Views* at 41.

⁷⁶ CR/PR at Table VII-4b.

⁷⁷ CR/PR at Table VII-4d.

⁷⁸ CR/PR at Table VII-3b.

⁷⁹ CR/PR at Table VII-3d.

our *Views*, Chinese producers' reported end-of-period inventories of (***) short tons) in June 2010 were equivalent to *** percent of annualized 2010 apparent U.S. consumption of finished drill pipe and drill collars.⁸⁰

The significant buildup of inventories of subject merchandise by U.S. importers and Chinese subject producers indicates that they would be likely to use their inventories to significantly increase their presence in the U.S. market in the imminent future.

B. Likely Price Effects of the Subject Imports

We reaffirm our prior findings that subject imports will likely have significant adverse price effects in the imminent future and adopt them in their entirety here.⁸¹

C. Likely Impact of the Subject Imports

We reaffirm our prior findings that subject imports will likely have a significant adverse impact on the domestic industry in the imminent future and adopt them in their entirety here.⁸²

For the above reasons, based on consideration of the Court's remand instructions and the parties' comments, we determine that an industry in the United States is threatened with material injury by reason of subject imports of drill pipe and drill collars from China that are sold in the United States at less than fair value and subsidized by the Government of China.

⁸⁰ *Views* at 44 n.252. CR/PR at Tables VII-3b, VII-3d, and C-2

⁸¹ *Views* at 46-49.

⁸² *Views* at 49-53.

